United States Court of Appeals for the Second Circuit
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, NY 10007

DEBRA ANN LIVINGSTON
CHIEF JUDGE

CATHERINE O'HAGAN WOLFE
CLERK OF COURT

Date: January 20, 2021
Docket #: 21-108
Short Title: State of California v. United States Department of En

Agency #: 85 Fed Reg. 81359
Agency: Department of Energy

DOCKETING NOTICE

A petition for review filed by State of New York, State of California, State of Connecticut, State of Illinois, State of Maine, State of Minnesota, State of Nevada, State of New Jersey, State of New Mexico, State of Oregon, State of Vermont, State of Washington, Commonwealth of Massachusetts, Commonwealth of Pennsylvania, District of Columbia, City of New York in the above referenced case was docketed today as 21-108. This number must appear on all documents related to this case that are filed in this Court. For pro se parties the docket sheet with the caption page, and an Acknowledgment and Notice of Appearance Form are enclosed. In counseled cases the docket sheet is available on PACER. Counsel must access the Acknowledgment and Notice of Appearance Form from this Court's website http://www.ca2.uscourts.gov.

The form must be completed and returned within 14 days of the date of this notice. The form requires the following information:

YOUR CORRECT CONTACT INFORMATION: Review the party information on the docket sheet and note any incorrect information in writing on the Acknowledgment and Notice of Appearance Form.

The Court will contact one counsel per party or group of collectively represented parties when serving notice or issuing our order. Counsel must designate on the Acknowledgment and Notice of Appearance a lead attorney to accept all notices from this Court who, in turn will, be responsible for notifying any associated counsel.

CHANGE IN CONTACT INFORMATION: An attorney or pro se party who does not immediately notify the Court when contact information changes will not receive notices, documents and orders filed in the case.

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CAPTION: In an appeal, the Court uses the district court caption pursuant to FRAP 12(a), 32(a). For a petition for review or original proceeding the Court uses a caption pursuant to FRAP 15(a) or 21(a), respectively. Please review the caption carefully and promptly advise this Court of any improper or inaccurate designations in writing on the Acknowledgment and Notice of Appearance form. If a party has been terminated from the case the caption may reflect that change only if the district court judge ordered that the caption be amended.

APPELLATE DESIGNATIONS: Please review whether petitioner is listed correctly on the party listing page of the docket sheet and in the caption. If there is an error, please note on the Acknowledgment and Notice of Appearance Form. Timely submission of the Acknowledgment and Notice of Appearance Form will constitute compliance with the requirement to file a Representation Statement required by FRAP 12(b).

For additional information consult the Court's instructions posted on the website.

Inquiries regarding this case may be directed to 212-857-8546.

IN THE UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

STATES OF CALIFORNIA, CONNECTICUT, ILLINOIS, MAINE, MICHIGAN, MINNESOTA, NEW JERSEY, NEW MEXICO, NEW YORK, NEVADA, OREGON, VERMONT, and WASHINGTON, COMMONWEALTH OF MASSACHUSETTS, THE DISTRICT OF COLUMBIA, and the CITY OF NEW YORK, Petitioners, **v.** **U.S. DEPARTMENT OF ENERGY and DAN BROUILLETTE, Secretary, U.S. Department of Energy,** Respondents.	Docket No.

PETITION FOR REVIEW

Pursuant to Section 336(b)(1) of the Energy Policy and Conservation Act, 42 U.S.C. § 6306(b)(1), Section 10 of the Administrative Procedure Act, 5 U.S.C. § 702, and Rule 15 of the Federal Rules of Appellate Procedure, the States of California, Connecticut, Illinois, Maine, Michigan, Minnesota, New Jersey, New Mexico, New York, Nevada, Oregon, Vermont, and Washington; the Commonwealth of Massachusetts; the District of Columbia; and the City of New York hereby petition this Court for review of a final action taken by the respondents, published at 85 Fed. Reg. 81,359 (December 16, 2020), entitled "Energy Conservation Program for Appliance Standards: Establishment of New Product Classes for Residential Clothes Washers and Consumer Clothes Dryers." A copy of the final rule is attached. Petitioners seek a determination by the Court that the rule is unlawful and must be vacated.

Dated: January 19, 2020

Respectfully Submitted,

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distribution, or use of energy; or (2) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected effects on energy supply, distribution, and use.

DOE has concluded that the regulatory action in this document, reinterpreting the definition of ''showerhead'', is not a significant energy action because it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects for this rule.

M. Description of Materials Incorporated by Reference

In this final rule, DOE incorporates by reference the industry standard published by ISEA, titled ''American National Standard for Emergency Eyewash and Shower Equipment,'' ANSI/ISEA Z358.1–2014. ANSI/ISEA Z358.1 is an industry-accepted standard that established use and performance requirements for eyewash and emergency shower equipment. DOE incorporates by reference this industry consensus standard at 10 CFR 430.2, which defines term associated with energy conservation standards and test procedures for consumer products.

Copies of ANSI/ISEA Z358.1–2014, can be obtained from the International Safety Equipment Association, 1901 North Moore Street, Suite 808, Arlington, Virginia 22209, *www.safetyequipment.org* or American National Standards Institute, 25 West 43 St., 4th Floor, New York, NY 10036. *http://ansi.org.*

N. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this rule before its effective date. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final rule.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Small businesses.

Signing Authority

This document of the Department of Energy was signed on December 8, 2020, by Daniel R Simmons, 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 December 8, 2020.

Treena V. Garrett,

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

For the reasons stated in the preamble, DOE amends part 430 of title 10 of the Code of Federal Regulations as set forth below:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 2. Section 430.2 is amended by:
■ a. Adding, in alphabetical order, definitions for ''Body spray'' and ''Safety shower showerhead''; and
■ b. Revising the definition of ''Showerhead''.

The addition and revision read as follows:

§ 430.2 Definitions.

* * * * *

Body spray means a shower device for spraying water onto a bather from other than the overhead position. A body spray is not a showerhead.

* * * * *

Safety shower showerhead means a showerhead designed to meet the requirements of ISEA Z358.1 (incorporated by reference, see § 430.3).

* * * * *

Showerhead means any showerhead (including a handheld showerhead) other than a safety showerhead. DOE interprets the term ''showerhead'' to mean an accessory to a supply fitting for spraying water onto a bather, typically from an overhead position.

* * * * *

■ 3. Section 430.3 is amended by:
■ a. Redesignating paragraphs (c)(3)(iii) through (v) as paragraphs (c)(3)(iv) through (vi);
■ b. Redesignating the second paragraph (c)(3)(ii) as new paragraph (c)(3)(iii);
■ c. Redesignating paragraphs (q) through (u) and paragraphs (r) through (v); and
■ d. Adding new paragraph (q).

The addition reads as follows:

§ 430.3 Materials incorporated by reference.

* * * * *

(q) International Safety Equipment Association, 1901 North Moore Street, Suite 808, Arlington, Virginia 22209, (703) 525–1695, *www.safetyequipment.org.*

(1) ANSI/ISEA Z358.1–2014 (''ISEA Z358.1''), American National Standard for Emergency Eyewash and Shower Equipment, ANSI-approved January 8, 2015, IBR approved for § 430.2.

(2) [Reserved]

* * * * *

[FR Doc. 2020–27280 Filed 12–15–20; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

10 CFR Part 430

[EERE–2020–BT–STD–0001]

RIN 1904–AE86

Energy Conservation Program: Establishment of New Product Classes for Residential Clothes Washers and Consumer Clothes Dryers

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

ACTION: Final rule.

SUMMARY: The Energy Policy and Conservation Act, as amended (''EPCA''), prescribes energy conservation standards for various consumer products and certain commercial and industrial equipment, including residential clothes washers and consumer clothes dryers. In this final rule, the U.S. Department of Energy (''DOE'' or ''the Department'') establishes separate product classes for top-loading consumer clothes washers and consumer clothes dryers that offer cycle times for a normal cycle of less than 30 minutes, and for front-loading

residential clothes washers that offer cycle times for a normal cycle of less than 45 minutes. DOE's decision to establish these new product classes is based on the comments received in response to the proposed rule as well as testing and evaluation conducted by the Department. This rulemaking sets out the basis for the new product classes. DOE intends to determine the specific energy and water consumption limits for the new product classes in separate rulemakings in accordance with the requirements of the Department's Process Rule.

DATES: The effective date of this rule is January 15, 2021.

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

The docket web page can be found at *https://beta.regulations.gov/docket/EERE-2020-BT-STD-0001.* The docket web page contains instructions on how to access all documents, including public comments, in the docket.

FOR FURTHER INFORMATION CONTACT: Mr. Bryan Berringer, 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. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

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I. Summary of the Final Rule

In this final rule, DOE establishes separate product classes for top-loading consumer (residential) clothes washers and consumer clothes dryers that offer cycle times for a normal cycle of less than 30 minutes, and for front-loading residential clothes washers that offer cycle times for a normal cycle of less than 45 minutes, as identified under 42 U.S.C. 6292(a)(7) and (8). Relying on its own analysis and the comments received in response to the notice of proposed rulemaking ("NOPR"), 85 FR 49297 (Aug. 13, 2020), DOE has determined that the establishment of these new product classes would protect a consumer utility (*i.e.,* cycle time), and could spur manufacturer innovation to generate additional product offerings to fill the market gap that exists for these products.

In establishing short cycle product classes offering 30 and 45 minute cycle times for clothes washers and clothes dryers, DOE is introducing additional consumer choice to the clothes washer and clothes dryer market. DOE's actions are intended to incentivize manufacturers to provide consumers with new options when purchasing top-loading residential clothes washers and consumer clothes dryers with a normal cycle of less than 30 minutes, and front-loading residential clothes washers that offer cycle times for a normal cycle of less than 45 minutes. This activity does not prevent consumers from choosing to purchase clothes washers and dryers from the currently-existing product classes that offer longer normal cycles as well as quick or alternative cycle options. The distinction created through the establishment of these new product classes rests on the length of the normal cycle, which is the cycle that would be subject to product testing for compliance with a future energy or water conservation standard.

As stated in the NOPR, the data gathered by the Department on cycle times, which was based on a range of products and demonstrated the wide range of cycle times available among clothes washer and clothes dryer models. For residential clothes washers, DOE evaluated the cycle times of a representative sample of units within the top-loading standard-size and front-loading standard-size product classes. For top-loading standard-size units, this testing included 23 units covering 10 brands across 7 manufacturers. For the front-loading standard-size product class, DOE tested 20 units representing 14 brands across 12 manufacturers. Generally, this testing was performed using the "normal" cycle (*i.e.,* wash program), which is defined as the wash program recommended for normal, regular, or typical use for washing up to a full load of normally-soiled cotton clothing. For consumer clothes dryers, DOE evaluated the cycle times of a representative sample of units within the vented electric standard-size and vented gas product classes. For vented electric standard-size product classes, DOE tested 6 units representing 4 brands across 4 manufacturers. DOE also considered cycle time data from the ENERGY STAR product database for an additional 245 vented electric standard-size units representing 14 brands across 7 manufacturers. For the vented gas product class, DOE tested 8 units representing 4 brands across 4 manufacturers. DOE evaluated cycle time data from the ENERGY STAR product database for an additional 110 vented gas units representing 9 brands across 5 manufacturers.[1] Under 10 CFR part 430, subpart B, appendix D2 ("appendix D2"), clothes dryers with automatic cycle termination are operated using the "normal" program (or the cycle recommended by the manufacturer for drying cotton or linen clothes in the absence of a normal program) until the completion of the cycle, as indicated to the consumer.[2]

[1] When seeking ENERGY STAR qualification for a consumer clothes dryer basic model, manufacturers must report cycle time as tested under Appendix D2. ENERGY STAR product database for clothes dryers is available at *https://www.energystar.gov/productfinder/product/certified-clothes-dryers/results.* Last accessed November 24, 2020.

[2] For clothes dryers, 10 CFR part 430, subpart B, appendix D1, does not provide data that can be used to determine a "cycle time" because the drying cycle is artificially terminated. The artificially terminated cycle has a field use factor applied to calculate representative energy consumption. DOE used appendix D2 because it provides representative energy use and a corresponding cycle time as the cycle is run from start to completion without being artificially terminated. 85 FR 49297, 49303 (Aug. 13, 2020).

DOE's analysis, in total, considered the cycle times of units representing over 50 percent of residential clothes dryer basic models.[3] (*See* Section II.B for more information). 85 FR 49297, 49300–49306 (Aug. 13, 2020).

DOE's data revealed that the shortest available cycle time for standard-size top-loading clothes washers on the market was appropriately 30 minutes and that for standard-size front-loading clothes washers the shortest cycle time was approximately 45 minutes. DOE's data indicated that the shortest available cycle time for vented electric standard-size and vented gas clothes dryers with cycle time was also approximately 30 minutes. DOE believes the creation of these new product classes will incentivize manufacturers, if they so choose, to develop innovative products with short cycle times for those consumers that receive a value from the time saved washing and drying their clothing. DOE intends to determine the specific energy and water conservation standards for the new short cycle product classes in a separate rulemaking following the procedures set out in the Process Rule.[4]

II. Introduction

A. Background

On August 13, 2020, DOE published a notice of proposed rulemaking, (''NOPR''), setting out the Department's intent to establish new product classes for residential clothes washers and consumer clothes dryers, and requesting comments and data on the proposed short cycle product classes. 85 FR 49297. The recently finalized rulemaking establishing a normal short cycle product class for standard residential dishwashers (85 FR 68724 (Oct. 30, 2020)) re-affirmed the Department's recognition of cycle time as a valuable consumer utility and performance-related feature. In light of that rulemaking, the Department determined that similarities existed between the consumer use of dishwashers and residential clothes washers and consumer clothes dryers (*i.e.,* products that provide consumer utility over discrete cycles with programmed cycle times, and consumers run these cycles multiple times per week on average). DOE conducted its own analysis on clothes washer and dryer cycle times and presented its analysis in Section II of the NOPR in support of the proposed product classes. There, DOE explained that based on the length of available cycle times that it was reasonable to propose establishing separate product classes for these products to preserve a performance-related feature of both residential clothes washers and consumer clothes dryers (*i.e.,* the consumer utility of a short cycle time). 85 FR 49297, 49298 (Aug. 13, 2020).

B. DOE Testing and Analysis of Results

The testing and analysis conducted as part of the NOPR included a review of the normal cycles currently available for a range of clothes washers and clothes dryers.[5] These cycle times were measured under the DOE test procedure (*i.e.,* the ''normal'' cycles only).

DOE's proposed rule presumed that certain 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. DOE believed the current energy conservation standards may have been precluding manufacturers from introducing models to the market with substantially shorter cycle times. To facilitate the opportunity for manufacturers to innovate and develop products that would provide consumers the utility of such shorter cycle times, DOE proposed to establish separate product classes for top-loading standard-size residential clothes washers with average cycle times less than 30 minutes and front-loading standard-size residential clothes washers with average cycle times less than 45 minutes. 85 FR 49297, 49305 (Aug. 13, 2020).

Similarly, DOE's data indicated 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. Thus, assuming certain 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's standards may have discouraged manufacturers from developing such products for consumers that provide the utility of 30 minute or less cycle times. For these reasons, DOE proposed to establish separate product classes for vented electric standard-size and vented gas clothes dryers with cycle times less than 30 minutes. 85 FR 49297, 49306 (Aug. 13, 2020).

III. Discussion

Based on the evaluation of comments submitted in response to the NOPR and the data the Department compiled (*see* Section II.B of this document), DOE establishes separate product classes for top-loading residential clothes washers and consumer clothes dryers that offer cycle times for a normal cycle of less than 30 minutes, and for front-loading residential clothes washers that offer cycle times for a normal cycle of less than 45 minutes. DOE intends to conduct separate rulemakings to determine energy conservation standards for these new product classes that provide the maximum energy efficiency that is technologically feasible and economically justified, and will result in a significant conservation of energy, 42 U.S.C. 6295(o)(2)(A), as well as to establish the applicable test procedure. DOE will complete these associated rulemakings following the procedures outlined in the Process Rule.

A. Establishment of Short-Cycle Product Classes Pursuant to 42 U.S.C. 6295(q)

EPCA directs that when prescribing an energy conservation standard for a type (or class) of a covered product, DOE must specify a level of energy use or efficiency higher or lower 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 covered products within such a group:

- Consume a different kind of energy from that consumed by other covered products within such type (or class); or
- Have a capacity or other such performance-related feature which other products within such type (or class) do not have and such feature justifies a higher or lower standard from that which applies (or will apply) to other products within such type.

In making a determination concerning whether a performance-related feature justifies the establishment of a higher or lower standard, DOE must consider such factors as the utility to the consumer of such a feature, and such other factors as DOE deems appropriate. (42 U.S.C. 6295(q)(1))

EPCA authorizes DOE to establish separate product classes for residential

[3] The Technical Appendix provides additional details of the technical attributes of each of the units DOE evaluated in support of this rulemaking.

[4] Procedures for Use in New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Commercial/Industrial Equipment (''Process Rule''), 85 FR 8626 (Feb. 14, 2020); Appendix A to Subpart C of Part 430—Procedures, Interpretations and Policies for Consideration of New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Certain Commercial/Industrial Equipment.

[5] The technical appendix provides additional details of the technical attributes of each of the units evaluated.

clothes washers and consumer clothes dryers characterized by offering short normal cycles of less than 30 or 45 minutes pursuant to 42 U.S.C. 6295(q). Products with a short normal cycle offer consumers a specific utility that justifies the establishment of such product classes subject to a higher or lower standard than that currently applicable to products currently on the market. 85 FR 49297, 49298 (Aug. 13, 2020). With this final rule, DOE intends to incentivize manufacturers to provide products that best meet the specific needs of consumers with competing interests. Consumers who place a higher value on time saved while running single or multiple loads of laundry can select a washer or dryer characterized by a shorter normal cycle, while consumers who prioritize energy and water efficiency will continue to be able to purchase models characterized by a longer normal cycle. Consistent with the position taken in prior rulemakings, DOE maintains that products offering quick and alternative cycles are not the same as the products that will be available under this new product class. This is because quick and alternative cycles are designed not as the normal use cycle, but provide consumers with other wash or dry cycles for specific washing or drying needs. The creation of short normal cycle washers and dryers in this final rule opens the door for manufacturers to develop short cycle products intended specifically for normal activity. See, 85 FR 68723, 68727 (Oct. 30, 2020).

In response to the NOPR, DOE received multiple comments challenging the Department's position that cycle time was a performance-related feature that justified the establishment of new short normal cycle product classes for residential clothes washers and consumer clothes dryers.[6] These commenters focused on the Department's identification of cycle time as a performance-related feature. These commenters argued that product classes characterized by short normal cycles did not offer a consumer utility and were unnecessary based on a lack of data or evidence demonstrating the utility consumers would receive from the new product classes.

Specifically, some commenters argued that DOE failed to meet the requirements of 42 U.S.C. 6295(q) because the NOPR did not establish cycle time as a consumer utility justifying the creation of the new product classes. (CEC, No. 0038, pp. 6–7). AHAM argued that DOE failed to demonstrate that shorter cycle times were a performance related feature that provided a utility to consumers and submitted data to argue that the creation of normal cycle times shorter than those available today were unlikely to provide a significant consumer utility. AHAM continued that unless DOE could demonstrate that cycle time is a performance related feature, then it cannot rely solely on cycle time to establish the new product class. DOE would need cycle time plus something else like consumer preference or data supporting the new product class to justify the creation of the proposed product classes. AHAM distinguished the parallel DOE referenced in the NOPR between new product classes for certain clothes washers and clothes dryers and the separation of product classes for top- and front-loading commercial clothes washers by noting that the previous rulemaking rested not solely on cycle time as a performance related feature, but also on the consumer preference for the axis of loading which justified the new product class. AHAM argued that its data show that there is not a strong correlation between cycle time and consumer satisfaction, meaning consumers are not looking for products with shorter cycles and that consumers already have the option to use shorter cycles when needed as most washers and dryers offer quick cycles. (No. 0030, pp. 7–8).

Similarly, comments submitted by the Attorneys General and the Corporation Counsel of the City of New York argued that the proposal failed to meet the requirements of section 6295(q) because a reduced or shorter cycle time is not a performance related feature as the consumer utility of clothes washers and dryers is to clean and dry clothes, regardless of cycle time. While short cycles may lead to consumers receiving clean and dry clothes faster, short cycles do not provide an additional distinct utility beyond the purposes of washing and drying. (No. 0035, pp. 8–9). Commenters explained that while 42 U.S.C. 6295(q)(1)(B) does not define performance-related feature, the legislative history offers guidance on DOE's authority under the section and instructs DOE to "use [its] discretion carefully, and establish separate standards only if the feature justifies a separate standard, based upon the utility to the consumer and other appropriate criteria" because "if [DOE] established a separate standard for every appliance having a detectable difference in features, no matter how slight, . . . then hundreds of standards might result." (No. 0035, p. 9 referencing H.R. Rep. 95–1751, at 115; Joint Environmental Commenters, No. 0041, p. 4). These commenters continued that different classes should be based on the product's capacity to provide consumers with a utility beyond what is provided by the corresponding basic product class. Here, commenters contend the short cycle washer and dryer classes provide the same utility as normal washer and dryer classes—clean and dry clothing. Without a detectable difference, DOE lacks sufficient justification to establish separate energy efficiency classes and standards for these products. (No. 0035, p. 9).

The Attorneys General and the Corporation Counsel of the City of New York also argued that this rulemaking presented an inappropriate interpretation of section 6295(q) when compared with prior rulemakings. This is because DOE's prior rulemakings resulted in a new product class only when a product type offered a substantial and distinct consumer utility, which cycle time does not. These commenters looked to DOE's water heater and self-cleaning oven rulemakings to demonstrate this distinction. In its water heater rulemaking, commenters argued that DOE determined the differences between heat pump and electric resistance storage water heaters did not justify separate product classes because both provided the same customer utility: Hot water. Whereas in the self-cleaning oven rulemaking, DOE determined the self-cleaning feature

[6] Commenters challenging DOE's position that cycle time is a performance related feature included: Anonymous Anonymous, No. 0002; Cohen, No. 0009; Rubang, No. 0011; Anonymous, No. 0014; Cyra-Korsgaard, No. 0015; Walnut Valley Water District ("WVWD"), No. 0017; City of Sacramento Department of Utilities, No. 0020; Northwest Power and Conservation Council, No. 0021; Davis, No. 0022; Metropolitan North Georgia Water Planning District ("MNGWPD"), No. 0025; Spire Inc., the American Public Gas Association, the American Gas Association, and the National Propane Gas Association ("Gas Industry"), No. 0028; Alliance for Water Efficiency, et al. ("AWE, et al."), No. 0029; Association of Home Appliance Manufacturers ("AHAM"), No. 0030; Appliance Standards Awareness Project ("ASAP"), Alliance for Water Efficiency, Consumer Federation of America, National Consumer Law Center, on behalf of its low-income clients, and Natural Resources Defense Council ("ASAP et al.") No. 0033; California State Water Resources Control Board ("CA SWRCB"), No. 0034; Attorneys General Of Oregon, Colorado, Connecticut, Illinois, Maine, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, North Carolina, Vermont, Washington, And The District Of Columbia, And The Corporation Counsel Of The City Of New York ("Attorneys General and the Corporation Counsel of the City of New York"), No. 0035; California Energy Commission ("CEC"), No. 0038; Sierra Club and Earthjustice ("Joint Environmental Commenters"), No. 0041; Valley Water, No. 0042; Northwest Energy Efficiency Alliance ("NEEA"), No. 0044; and GE Appliances ("GEA"), No. 0045.

justified a separate product class because the self-cleaning function was a distinct feature that standard ovens did not provide. Commenters assert that the NOPR most closely resembles the water heater rulemaking because clothes washers and dryers, regardless of cycle length, provide the same consumer utility of clean and dry clothes, like heat pump and electric resistance water heaters provide the same utility of hot water. The proposal thus is inconsistent with prior rulemakings. (No. 0035, pp. 9–10). Commenters also note that DOE incorrectly relies on the previous residential clothes washer rulemaking because that rulemaking considered cycle time only to the extent that differential cycle times existed between front-loading and top-loading clothes washers. DOE determined that the method of loading was a feature, not the cycle time itself. (No. 0035, p. 10).

These commenters continued that DOE misstates the conclusions reached in other prior rulemakings to support the NOPR by equating a performance-related feature with mere consumer preference. The electric cooking products rulemaking did not result in a determination that oven windows were a feature justifying a product class, but concluded that windowless oven doors should not be considered as a potential design option because the windows provide consumer utility and in fact increase efficiency by reducing oven door openings. (Attorneys General and the Corporation Counsel of the City of New York, No. 0035, p. 10, referencing 63 FR 48038, 48040 (Sept. 8, 1998)). The establishment of refrigerator-freezer product classes based on freezer placement were justified by the unique utility provided by different configurations and efficiency capabilities. (No. 0035, p. 10 referencing 53 FR 48798, 48807 (Dec. 2, 1988)). These commenters continued that the NOPR is distinguishable from these prior rulemakings as they demonstrate the type of substantial consumer utility differences that necessitate a separate energy efficiency standard to maintain the utility that then justifies a separate product class. Therefore, these rulemakings demonstrate that a performance-related feature must be more substantial and qualitatively different than cycle time. (No. 0035, p. 10).

The Competitive Enterprise Institute (''CEI'') agreed with DOE's proposal that the time savings consumers would receive from the shorter cycles is a performance related feature and that this utility justifies a different efficiency level than other similar products. (No. 0031, p. 4). To support its position, CEI noted consumers are already sacrificing their time when washing and drying their clothing. CEI received feedback from consumers that (in CEI's view) demonstrates that a need does exist for new washers and dryers that operate faster. CEI commented that consumers are moving towards faster washing machines over those that offer higher efficiency ratings. This preference is demonstrated by 38 percent of consumers moving away from slower front-loading machines (70–120 minute cycles) to faster top-loading machines. (No. 0031, p. 3). CEI continued that consumers would benefit from being able to access an increased range of products to meet their specific needs and free up time for other things in their lives. (No. 0031, p. 2). The time saved resulting from short cycles is the utility and appliances that can clean or dry clothing more quickly offer a specific utility not available from those appliances that require longer cycles to accomplish the same task.

Similarly, the 60 Plus Association applauded the Department's recognition of cycle time as a performance-related feature. This commenter, arguing on behalf of its senior citizen members, believed the rulemaking will offer a significant benefit to individuals looking to make the most of their time. This commenter noted that the time saved through the use of future, short normal cycles will make a noticeable difference in the lives of its underrepresented members. (No. 0043, p. 1).

Comments from Spire Inc., the American Public Gas Association, the American Gas Association, and the National Propane Gas Association (''Gas Industry Commenters'') also agreed that appliances that can clean or dry clothing more quickly are appliances that offer a specific utility not available from appliances that require more time to accomplish the same task. These commenters continued that while this utility may not be significant for all consumers, many consumers have a strong preference for getting things done materially faster, even potentially at the expense of some increase in operating costs. (No. 0028, p. 3).

Additional support for the new clothes washer and clothes dryer product classes included some commenters recognizing the importance of consumer access to products that would offer features that address individual family needs, even if this could come with additional energy use. (Tanner, No. 0024). Another commenter suggested that the rulemaking would create greater competition between manufactures for the development of efficient appliances within the new product class and ultimately provide consumers with product options that best meet their different needs. (Anonymous, No. 0040).

As an initial matter, DOE maintains that short normal cycle product classes for clothes washers and clothes dryers will provide a distinct utility to consumers that other clothes washers and clothes dryers do not provide; *i.e.,* time saved. Some commenters may not recognize the benefit from saving small increments of time here and there over the course of a week or month and think that this rulemaking lacks value. But there are other consumers that do value this benefit and look for any time saved that can then be repurposed for other tasks. Households with greater frequency of use (*i.e.,* households that cycle multiple loads of laundry) are likelier to see the cumulative benefits of time saved from not having to wait as long for a normal cycle to complete. Time is an irreplaceable resource. This rulemaking would benefit those consumers who have chosen to place an additional value on their time. This category may include households of senior citizens, families with small children, and other categories of consumers for whom frequency of use or other factors may affect their valuation of time savings relative to other features.

DOE has taken the view in its prior rulemakings that consumer utility is an aspect of the product that is accessible to the layperson and based on user operation, rather than performing a theoretical function.[7] This interpretation has been implemented in DOE's determinations of utility through the value the particular feature brings to the consumer, rather than through analyzing more complicated design features or costs that anyone, including the consumer, manufacturer, installer, or utility may bear. DOE has determined that this approach is consistent with EPCA's requirement for considering the economic justification for adopting of any new or amended energy conservation standard. 85 FR 49297, 49298 (Aug. 13, 2020). DOE maintains,

[7] Comments from the Gas Industry Commenters also called it unreasonable for DOE to suggest features desired by consumers warrant protection only if they are ''accessible to the laypersons'' or to dismiss the need for building modifications as a matter of the associated economic cost of modification. (No. 0028, p. 4). These comments were submitted in relation to a separate rulemaking, Energy Conservation Program: Energy Conservation Standards for Residential Furnaces and Commercial Water Heaters, 84 FR 33011 (July 11, 2019), and are outside the scope of the rulemaking action addressed here.

under this approach, that cycle time is a consumer utility.

In prior rulemakings, DOE has determined that refrigerator-freezer configurations,[8] oven door windows,[9] and top loading clothes washer configurations [10] offered performance-related features that justified the creation of new product classes. DOE has also determined cycle time, in addition to axis of access, is a performance-related feature with respect to commercial clothes washers (77 FR 32308, 32319 (May 31, 2012)) and residential dishwashers (85 FR 68723 (Oct. 30, 2020). The creation of a product class characterized by offering a short normal cycle is no different than the conclusions reached previously. Like these prior rulemakings, DOE has recognized that consumers received a utility from the feature to support the establishment of the new product class under 42 U.S.C. 6295(q)(1)(B).

DOE has previously rejected the notion that the Department can determine a product attribute is a performance-related feature *only if* the feature adds a performance characteristic or utility distinct from the primary purpose of the product. To act otherwise would mean that a refrigerator-freezer's primary utility is only to store and preserve fresh food, and that consumers are not benefited from being able to access the contents through different door configurations. Because an oven's primary utility is to cook food, and food cooks in both a windowless oven and in an oven with a door window, DOE would be prohibited from recognizing the utility consumers receive from being able to see the contents cooking. Even though an oven with a door window uses more energy than an oven without a window, DOE has recognized that the window offers consumers a distinct consumer utility that goes beyond the oven's primary function of cooking food. 85 FR 68723, 68727 (Oct. 30, 2020). DOE's prior rulemakings support the determination that shorter normal cycle times are features that provide a consumer utility and justify the creation of a new product class for clothes washers and dryers.

DOE maintains that consumer preference for a particular feature indicates that the feature provides a utility to the consumer, even if that feature is related to the primary function or purpose of the product. In DOE's prior commercial clothes washer standards rulemaking, for example, DOE determined not only that the "axis of loading" constituted a feature that justified separate product classes for top-loading and front-loading clothes washers, but also the cycle time difference between the two models warranted separate product classes. 79 FR 74492, 74498 (Sept. 15, 2014). The split in preference between the models, DOE stated, indicated that a certain percentage of the market expressed a preference for (*i.e.,* derived a utility from) the faster top-loading configuration. DOE has also noted that the various refrigerator-freezer configurations provide no additional performance related utility other than consumer preference as all configurations still result in the storage of fresh food. This means that it is the location of access itself that provides a distinct consumer utility, which is unrelated to the primary purpose or function of the refrigerator. 79 FR 74492, 74499 (Sept. 15, 2014).

Additionally, comments arguing that this rulemaking more closely resembles DOE's prior hot water rulemaking are misplaced. In that rulemaking, DOE maintained the single product class for water heaters regardless of the technology utilized to heat the water. There, DOE acknowledged that it did not believe heat-pump and electric storage water heaters offered a different utility, but offered the same utility to the consumer (*i.e.,* hot water).[11] This is distinguishable from the utility consumers will receive when using clothes washers and clothes dryers with short normal cycles because these consumers will receive time savings as a result of the shorter cycles. DOE maintains that the products that can clean or dry clothing in less time offer consumers a utility not available from products that require more time to complete a comparable normal wash or dry cycle.

DOE recognizes that the comments submitted by CEI, 60 Plus Association, and individual members of the public evidence a consumer preference for shorter normal cycles. Looking again to DOE's rulemaking history, the Department maintains that establishing a short normal cycle for clothes washers and clothes dryers is no different from establishing product classes based on the axis of loading or the configuration of other covered products. DOE has also recognized the consumer value in being able to see inside an oven when cooking, as opposed to opening the oven door, and retained the window as a performance related feature. In each of these rulemakings, DOE identified a feature that provides a utility to the consumer. Comments challenging DOE's action on the basis that a feature must be accompanied by something else or offer a utility beyond the primary purpose of the product, are inconsistent with conclusions DOE reached in prior rulemakings.

To act otherwise, as these commenters suggest, would limit the Department's ability to establish product classes for features that may augment, but are not somehow separate from, the primary purpose for a product even if consumers received a recognizable utility from the feature as set out in 42 U.S.C. 6295(q). DOE's authority to establish a product class based on capacity and fuel type casts doubt on commenters' belief that features must go beyond the primary purpose of a product under 42 U.S.C. 6295(q)(1)(A).[12] As provided in EPCA, DOE may consider other criteria when exercising its discretion to identify the utility a feature provides consumers such as fuel type and capacity, which do not specifically add to the primary purpose of a product. As a result, DOE realizes it would be unreasonable to limit the authority granted in EPCA under 42 U.S.C. 6295(q) to only recognize new product classes on the basis of a feature's direct relationship to the primary purpose of the product. 85 FR 68723, 68728 (Oct. 30, 2020). Here, DOE maintains that the time consumers will save from using short normal cycles for clothes washers and clothes dryers justifies the creation of the new product classes.

DOE also received a variety of comments arguing that the establishment of the new product classes were not necessary given the availability of quick or alternative cycles available on current clothes washer and dryer models. AHAM argued that DOE failed to demonstrate that a new product class based on cycle time is necessary and that such action will have unintended consequences on laundry products, consumers, and manufacturers. (No. 0030, p. 2). Other

[8] 75 FR 59469 (Sept. 27, 2010) (creating a separate product class for refrigerators with bottom-mounted freezers).

[9] 63 FR 48038, 48041 (Sept. 8, 1998) (determined that the window in an oven door was a "feature" which eliminated from consideration the design option that would have removed the window feature).

[10] 77 FR 32308, 32319 (May 31, 2012) (creating a separate product class for compact front-loading residential clothes washers).

[11] 74 FR 65852, 65871 (Dec. 11, 2009) (No separate product class was needed as DOE did not believe heat pump water heaters provided a different utility from traditional electric resistance water heaters. Heat pump water heaters provide hot water to a residence just as a traditional electric storage water heater).

[12] 42 U.S.C. 6295(q)(1)(A) provides that DOE may establish a new product class for a type of covered product that consumes a different kind of energy (fuel or capacity) than other covered products within that same class.

commenters noted that the proposal is unnecessary because products meeting the short cycle times are already available, thereby making such actions not justified. (Joint Environmental Commenters, No. 0043, pp. 4–5; Cohen, No. 0009; Davis, No. 0022; ASAP et al., No. 0033, p. 2). GE Appliances commented that while cycle time is an important consideration, the current product classes, standards, and test procedures already allow for a short cycle, making this action unnecessary. (GEA, No. 0045, p. 2).

Many commenters also called the proposal unnecessary because DOE failed to provide any documentation or evidence of a need for shorter normal cycles and that consumers want such products. Commenters' continued that the data DOE provided actually show the availability of products that can meet the cycle times proposed, and DOE needs additional data to demonstrate necessity of the rule. (AWE, et al., No. 0029, p. 1; WVWD, No, 0017, p. 1; CA SWRCB, No. 0034, pp. 1–2; Valley Water, No. 0042, p. 1; AHAM, No. 0030, p. 3; CEC, No. 0038, p. 7; ASAP et al., No. 0033, p. 3; Rubang, No. 0011; Northwest Power and Conservation Council, No. 0021, pp. 2–3; MNGWDP, No. 0025, p. 2). Other commenters note that there is no evidence as to whether the new classes will be affordable to consumers or whether consumers will be harmed as a result of increased energy and water use. (''Anonymous''_ WC, No. 0012; Cyra-Korsgaard. No. 0015; Armstrong, No. 0004).

AHAM offered its weighted data to show the prevalence of each washer model on the market. AHAM's data indicate that there are laundry products already on the market that provide consumers with reasonable cycle times and comply with the current energy conservation standards. According to AHAM's data, top-loading and front-loading clothes washers have shipment weighted average normal cycle times of 43 and 57 minutes, and for clothes dryers, the shipment weighted average cycle time is 34 minutes. AHAM's relies on this data set to show that almost 20 percent of top-loading clothes washer shipments, about 45 percent of front-loading washer shipments, and about 75 percent of clothes dryer shipments are at or very near (within 10 minutes of) DOE's proposed product class division line. AHAM concluded that DOE's limited data sample proves that the market already has products that can meet the cycle times proposed. (AHAM, No. 0030, pp. 4–5).

These comments challenged the data and analysis provided in the NOPR as demonstrating that the new product classes are not necessary because similar products are already available. In response, DOE notes that commenters are correct that DOE's data shows the cycle time of products currently available to consumers and identifies a small number of models that have cycles close to the cycle times proposed in the NOPR. However, this information validates the view that clothes washers and dryers on the market that have a normal cycle that is less than 30 minutes or 45 minutes for top- or front-loading clothes washers are not widely available. According to AHAM's data, top-loading and front-loading clothes washers have shipment weighted average normal cycle times longer than the product class thresholds established in this final rule (43 and 57 minutes). AHAM's data for clothes dryers also show that the shipment weighted average cycle time is longer than the product class threshold established in this final rule (34 minutes). These data, which indicate that more than half of the shipments for both consumer clothes washers and consumer clothes dryers have cycle times longer than the established cycle times for the new product class thresholds, therefore support the appropriateness of these product class thresholds established by DOE. AHAM's and other similar comments noting that there are current models close to the 30 or 45 minute short cycle thresholds do not negate the need for short normal cycle products, but reveal that there is demand—and therefore, consumer preference—for products with shorter cycles, and offer a starting point for manufacturer innovation.

CEC also argued that DOE has not met its burden to establish the new product classes based on a cycle time as a performance-related feature because most clothes washers and dryers offer a short cycle already. CEC takes this to mean that DOE's proposal therefore identifies the actual customer utility as the benefit of not having to press a button to access the short cycle from the models settings. (No. 0038, pp. 6–7).

DOE notes that many appliances, not just clothes washers and dryers, are operated through selecting a specific setting or cycle. As with dishwashers, manufacturers describe in product literature the different intended uses for various products, and DOE presumes that manufacturers must intend something other than the ''normal'' cycle when describing a ''quick'' or lightly soiled-type cycle. In addition, while some commenters such as CEC associate pressing the start button as the same utility as utilizing a desired cycle feature, DOE realizes that not every consumer will use the variety of cycles on a device, or want to spend the time completing multiple cycles to adequately clean or dry their clothing. Some consumers may just want the availability of one short cycle, provided as the normal cycle, which can be used every time they wash or dry their clothing. That is what this rulemaking seeks to provide. Offering short normal wash and dry cycles as standard features on their appliances will reasonably provide a utility to those consumers seeking to cut down on the time they spend waiting for their clothing to be clean and dry.

In response to DOE's request for information in the NOPR, NEEA submitted comments arguing that market data, consumer-use data, and technology research for both clothes washers and clothes dryers suggest that short-cycle product classes as proposed in the NOPR are unnecessary. (No. 0044, pp. 2–5, 6–8).

NEEA's market data showed that a shorter cycle option is already available on the majority of bestselling clothes washers, both top- and front-loading styles. Short or fast cycles are widely available, with 79 percent of washers offering this option. NEEA noted that the wide availability of these and alternative cycles supported the conclusion that a product class based on cycle time is unnecessary. NEEA also commented that, based on high consumer demand for efficient washers, consumers are currently satisfied with the current cycle and technology options. NEEA also relied on high market penetration for ENERGY STAR-qualified washers to indicate a strong consumer demand for washers with high efficiency and satisfaction with current cycle times. Additionally, NEEA noted that consumer demand for efficient machines continues to grow based on its consumer-use data that showed consumers use fast cycles relatively infrequently, with a NEEA's RBSA Laundry Study revealing that consumers only use the fast cycle 8 percent of the time. Consumers select the Normal cycle most frequently, at about 59 percent of the time. NEAA noted that there is also good cleaning performance for many fast wash cycles available today. NEEA's laundry study also showed that while Normal is the most common cycle, consumers also select a variety of alternative wash cycles, which include Delicate (6 percent), Heavy Duty (4 percent), and others that also use more water and energy than the Normal cycle. Thus, having a fast cycle as the Normal cycle does not offer consumers a unique utility given that most consumers can

access fast cycle choices on many machines. (No. 0044, pp. 2–5).

Similar to clothes washers, NEEA's market data showed that current clothes dryer models already offer consumers fast cycles. Additionally, consumer demand for efficient clothes dryers remains high, which indicates that consumers are satisfied with the available technology and cycle times. Similar high market penetration for ENERGY STAR qualified dryers also exists and provides additional support for consumer satisfaction with cycle times and demand for high efficiency products. NEAA argued that the availability of setting options offered with today's dryers sufficiently meets the demand for fast dryer cycle times. NEEA's RBSA Laundry Study revealed that medium heat is the most common temperature selection for dryers (52 percent). Virtually all dryers have a fast (high heat) cycle option for use when a shorter cycle is needed, but high heat can cause more wear and tear on cotton fabric and is often not recommended at all for synthetic fabrics. Fabric care guidelines and consumer concern about clothing wear and tear contribute to the lower use of high heat, which is used about one-third of the time. Taken together, NEEA concluded that today's dryers sufficiently meet consumer demand for fast dryer cycle times. (NEEA, No. 44, pp. 6–8).

In response, DOE acknowledges NEEA's comment that, based on high consumer demand for efficient washers and dryers, consumers are currently satisfied with the current cycle and technology options, and that the high market penetration for ENERGY STAR qualified products indicates a strong consumer demand for washers with high efficiency and satisfaction with current cycle times. In both cases, NEEA's data prove only that consumers are purchasing the products that are available. The data has no bearing on whether consumers would purchase a clothes washer or dryer with a short, normal cycle, if such product were available. Moreover, NEEA's data demonstrate that the majority of consumers select the normal cycle for operation of their device, and choose more specific settings in a very small percentage of cycles. The high percentage selection of the normal is cycle would seem to support establishment of a short-cycle product class so that those consumers who want that utility can purchase models designed to provide that cycle as the default, *i.e.,* normal, choice.

In finalizing the short-cycle product classes in this final rule, DOE intends to spur manufacturer innovation and push for the development of short-cycle products, as the normal cycle, which will wash and dry a normal load of laundry and be subject to manufacturers testing. This is distinguishable from calling existing fast or quick cycles the new short normal cycle, as these comments seem to suggest, because those cycles are not designed to satisfy consumers' normal washing and drying needs. Based on descriptions in manufacturer literature, these existing quick cycles are for situations when a consumer wants to, for example, wash lightly soiled garments or get wrinkles out of already dry clothing. DOE's actions here seek to accomplish a very different outcome.

In its comments, NEEA argued that the proposal was unnecessary, in part, because technologies already exist to improve water extraction and reduce dryer energy consumption that could substantially improve the efficiency of washers as measured by the integrated modified energy factor (''IMEF'') rating, which is used in DOE's test procedure. NEEA further asserts that these advances to washers could also include lowering the remaining moisture content to reduce the energy needed for drying. NEEA also states that there are a number of technologies (increased spin speed; increased basket diameter; alternate basket perforation patterns; and ribbed drums) available for both front-and top-loading washers that can reduce remaining moisture without lengthening cycle time and enable faster cycle times. (No. 0044, pp. 2–5). For consumer clothes dryers, NEEA identified technologies available to reduce cycle time and improve efficiency. These technologies include alternate refrigerants and venting, modulating burners, and improved termination controls. (NEEA, No. 44, pp. 6–8).

Additionally, some commenters argued that the proposal rested on a presumption that the current standards for clothes washers and clothes dryers are preventing manufacturers from creating products with shorter cycle times. Commenters noted that such a presumption was unsupported by the evidence included in the NOPR and also lacks consideration of the impact shorter, hotter dryer cycles could have on clothing. (ASAP et al., No. 0033, p. 3; Northwest Power and Conservation Council No. 0021, p. 2; Anonymous, No. 0002).

In response, Consumers' Research argued against this comment by noting that under the current standards, cycle times for clothes washers have in fact become very long for some consumers. (No. 0037, p. 2) This commenter agreed with DOE that even though quick or alternative cycles are available, those cycles are recommended only for lightly soiled clothing meaning that a quick cycle will not clean or dry normally soiled clothing. DOE's proposal therefore provides consumers with added choice and convenience. (No. 0037, p. 2)

Countering those commenters that contented short cycles were unnecessary or lacked a justified utility, CEI noted that consumers are already forced to sacrifice their time when cleaning and drying their clothing. DOE's proposal offered consumers a benefit by increasing the range of products on the market that would allow those consumers with a need or desire for short washer or dryer cycles to purchase the product that best fit their lifestyle. The proposal therefore eliminated impediments to these choices and provided manufacturers the means of meeting consumer demand for new products. CEI based this position on the feedback it received from consumers who have expressed a need for clothes washers and dryers that operate faster with comparable performance. CEI's comments also recognized the growing consumer dissatisfaction with current cycle times that have increased in length due to water and energy use regulations that have added time needed so that detergents can penetrate clothes and remove soils as a result of decreased water and agitation. CEI also noted that while current products offer faster cycles for lightly soiled clothing, those cycles are ineffective on normally soiled garments. (No. 0031, pp. 2–3).

DOE realizes that consumers have different opinions on the current length of time needed to run a full normal cycle for washing and drying clothing. AHAM's comments indicated that consumers do value cycle time as an important feature and noted that if cycle time becomes too long, consumers will not be satisfied with their products. (No. 0030, p. 2). In the NOPR and comments received from CEI and 60 Plus Association, DOE's rulemaking has shown that some consumers already believe cycle times are in fact too long and that shorter cycles are possible to support of the necessity of the proposal. DOE seeks to use this rulemaking as an opportunity for manufacturers to respond to the consumer utility recognized in this rulemaking for short normal cycle clothes washers and clothes dryers. DOE will consider appropriate standards in a separate energy conservation standards rulemaking, analyzing the factors specified in 42 U.S.C. 6295(o).

Some commenters argued that the conditions precedent to DOE's application of the product class provision have not been satisfied in this rulemaking. Commenters assert that DOE may only create a new product class when there are products that have a capacity or other performance-related feature which other like products do not have. This feature then justifies a different standard after taking into consideration the utility the consumer receives from the feature at issue. (No. 0041, p. 4). Commenters look to support their position by arguing that the product class provision uses the present tense to describe a feature that may trigger DOE action whereas the NOPR presents the provision as offering DOE the discretion to determine that some products should have a capacity or other performance-related feature they presently lack. (Joint Environmental Commenters, No. 0041, pp. 4–5). Commenters conclude that DOE's interpretation is incorrect and inconsistent with prior rulemakings because 42 U.S.C. 6295(q) actually enables DOE to react to features that manufacturers bring to market and does not facilitate the introduction of nonexistent features into existing products. (No. 0041, p. 6 referencing 76 FR 22454, 22485 (Apr. 21, 2011)).

In response, DOE affirms that EPCA does not specify how prevalent a specific feature must be on the market (*i.e.,* stipulate that DOE can act only when there are covered products with that feature already part of an existing product class) when establishing a new product class under 42 U.S.C. 6295(q). If this were true, such products may never come onto the market because they may not comply with existing energy conservation standards and therefore be unlawful to produce. In addition, and as a point of reference, DOE is currently exploring the energy use associated with the network connectivity of covered products. Network connectivity is clearly a desirable consumer utility and is quickly becoming a common component of new models of covered products. Network connectivity, however, comes with attendant energy use. EPCA's product class provision cannot be read to prohibit DOE from establishing product classes for products that offer network mode connectivity simply because that feature is not currently common on the market.[13] Such a reading of the statute would prevent manufacturers from innovating and developing new product designs in response to consumer demand and technological developments. Likewise, for clothes washers and clothes dryers, EPCA's product class provision authorizes DOE to establish standards for new product features that provide consumer utilities, such as shorter cycle times.

Even if products with short normal cycle times for clothes washers and clothes dryers were readily available, the product class provision would still be appropriately applied in this rulemaking. DOE has previously established product classes based on existing features. Ventless clothes dryers had been on the market for at least 25 years before the Department established separate energy conservation standards because ventless clothes dryers could not comply with the energy conservation standards applicable to vented units. There, DOE reasoned that because ventless clothes dryers provided a unique utility to consumers (available for installation in areas where vents were otherwise impossible to install) that a separate product class was justified. 76 FR 22454, 22485 (Apr. 21, 2011). DOE reiterates that the impact of this rulemaking is not to require manufacturers to develop clothes washers and dryers with short normal cycle times, but rather to establish product classes based on that criterion and incentivize manufacturers to develop such products.

Comments submitted by the Joint Environmental Commenters and others argued that the Department cannot use the product class provision to avoid prescribing energy conservation standards for the new product classes. These commenters explain that DOE misapplies the new product class provision in the NOPR by attempting to exempt certain clothes washers and dryers from the applicable energy conservation standard by postponing the adoption of replacement standards. These commenters believe that DOE must read EPCA's product class provision with the requirements for conservation standards and to do otherwise ignores the limitations placed on the Department's discretion when creating a new product class. (No. 0041, pp. 6–7; WVWD, No. 0017, pp. 1–2; Northwest Power and Conservation Council, No. 0021, p. 3; Davis, No. 0022, p. 1). Some commenters also note that such a process makes it increasingly difficult for manufacturers to accurately predict the costs associated with the new product classes. (AHAM, No. 0030, p. 9).

Other commenters note that the associated impact of finalizing these product classes without accompanying standards would result in the creation of unregulated products that would then negatively impact consumers by causing product confusion, increased water and energy use, and higher utility bills. (MNGWPD, No. 0025, p. 1; AWE, et al., No. 0029, p. 1 Northwest Power and Conservation Council, No. 0021, p. 3).

Similarly, comments submitted by the Attorneys General and the Corporation Counsel of the City of New York argued that DOE has violated 42 U.S.C. 6295(q)(1) by failing to specify a level of energy use in the NOPR for the new product classes. Section 6295(q)(2) is also violated by DOE's failure to provide an explanation on the basis for which a lower or higher level was established because DOE offers no such accompanying explanation. (No. 0035, p. 6) These and other commenters argued that all clothes washers and dryers must adhere to the current energy and water use standards regardless of cycle time. (City of Sacramento Department of Utilities, No. 0020, p. 2; CEC, No. 0038, pp. 3–4). These commenters contend that DOE believes it can override the existing efficiency standards for clothes washers and dryers by stating that the proposed product classes would not be subject to energy or water conservations standards. (No. 0035, p. 8).

Consumers' Research supported a future standards rulemaking for short cycle products and stated that it would be the appropriate next step. (No. 0037, p. 2).

As stated in the NOPR, DOE intends to complete the necessary conservation standards rulemaking once the product classes for short cycle clothes washers and clothes dryers are established. 85 FR 49297, 49300 (Aug. 13, 2020). DOE has previously explained that EPCA, 42 U.S.C. 6295(q)(1)(B), does not require the Department to simultaneously establish energy conservation standards in the same rulemaking as the determination of a new product class. DOE reminds commenters that the establishment of a new product class is similar to situations where DOE has finalized a coverage determination and a covered product exists without an applicable standard until the Department completes a test procedure rulemaking for that product. *See* 42 U.S.C. 6292(b). Commenters can look to the Department's 2009 beverage vending machines ("BVM") energy conservations standard rulemaking and

[13] Similarly, EPCA's anti-backsliding provision cannot be used to prohibit the development of product classes that allow for covered products to be connected to a network simply because standards for those products were established prior to the development of network connectivity and eliminating the ability to implement this option.

the 2007 distribution transformer energy conservation standards rulemaking as examples of prior instances where DOE established a new product class without simultaneously prescribing an associated conservation standard. 81 FR 44914, 44920 (Aug. 31, 2009); 72 FR 58190, 58197 (Oct. 12, 2007).

When DOE initially considered energy conservation standards for BVMs, DOE did not consider combination vending machines as a separate equipment class, but instead considered that equipment with all other Class A and Class B BVMs. DOE later recognized that combination vending machines offered a distinct utility and concluded that those machines were a separate class of BVMs. DOE was unable to determine, at the same time as the product class determination, whether energy conservation standards for combination vending machines were economically justified and would result in significant energy savings. DOE subsequently decided to not set standards for the equipment class at that time. DOE reserved standards for combination vending machines and modified the definition of Class A and Class B BVMs to accommodate a definition for combination vending machines. 74 FR 44914, 44920 (Aug. 31, 2009). DOE's action thereby reserved a place for the development of future standards for combination vending machines that DOE then established in 2016. 81 FR 1028, 1035 (Jan. 08, 2016).

Similarly, the energy conservation standards rulemaking for distribution transformers in 2007 provides another example of this activity by the Department. There, DOE clarified that although it believed underground mining distribution transformers were within the scope of coverage, it recognized that mining transformers were subject to unique and extreme dimensional constraints that impacted their efficiency and performance capabilities, and decided to not establish energy conservation standards for underground mining transformers. In the final rule DOE established a separate equipment class for mining transformers and reserved a section with the intent to develop the analysis required to establish an appropriate energy conservation standard in the future. 72 FR 58190, 58197 (Oct. 12, 2007). DOE later reached a similar conclusion in 2013 when it decided to again not set standards for mining distribution transformers. 78 FR 23336, 23353 (Apr. 18, 2013). In both rulemakings, DOE reserved a place for the future development of the necessary standards and did not set standards at the same time as creating the separate product classes.

Here, DOE is following the same practice by first establishing new product classes for short normal cycle clothes washers and clothes dryers and reserving a place for future energy conservation standards. DOE intends to conduct the necessary rulemakings that will consider and evaluate the energy and water consumption limits for the new product classes to determine the applicable standards that provide the maximum energy efficiency that is technologically feasible and economically justified, and will result in a significant conservation of energy, 42 U.S.C. 6295(o)(2)(A). DOE will provide interested members of the public an opportunity to comment on any preliminary rulemaking documents and proposed energy conservation standards for these product classes during these future rulemaking proceedings. See, 85 FR 68723, 68733 (Oct. 30, 2020). These rulemakings will be completed following the procedures set out in the Process Rule, and will provide manufacturers with the opportunity to provide information on the costs associated with complying with any standards established by DOE.

B. Anti-Backsliding Consideration, 42 U.S.C. 6295(o)(1)

In the context of establishing new product classes, DOE acknowledges EPCA's general prohibition against prescribing amended standards that increase the maximum allowable use, or in the case of showerheads, faucets, water closets, or urinals, water use, or decreases the minimum required energy efficiency, of a covered product in any rulemaking to establish standards for a separate product class. (42 U.S.C. 6295(o); the "anti-backsliding provisions") Consistent with its prior rules, DOE maintains that the anti-backsliding prohibition is read in conjunction with the Department's product class authority in 42 U.S.C. 6295(q), and does not prohibit the establishment of product classes as proposed in this document. 84 FR 33869, 33871–33873 (July 16, 2019); 85 FR 68723, 68734 (Oct. 30, 2020). DOE applies this provision in conjunction with the authority set out in 42 U.S.C. 6295(q) to specify "a level of energy use or efficiency higher or lower than that which applies (or would apply) for such type or class . . ." if the Secretary determine that covered products within such group consume a different type of energy or have a capacity or other performance-related feature that justifies "a higher or lower standard from that which applies (or will apply) to other products within such type (or class)." EPCA explicitly acknowledges, through this provision, that product features may arise that require the designation of a product class with a standard lower than that applicable to other product classes for that covered product. 85 FR 68723, 68734 (Oct. 30, 2020).

Commenters opposing the new short normal cycle product classes for clothes washers and clothes dryers contended that the finalization of these product classes will weaken existing efficiency standards for such products, and argue that the Department's use of the product class provision cannot bypass the anti-backsliding provision's requirements.

Commenters asserted that DOE has failed to give full meaning to all of EPCA's provisions and that the NOPR contradicts section 6295(o)(1)–(2). These commenters argued that the anti-backsliding provision, which was enacted in 1992 subsequent to section 6295(q)'s enactment in 1987, should control in this situation. Commenters also looked to support their position by referencing the Second Circuit's review of EPCA's legislative history as discussed in *NRDC* v. *Abraham,* 355 F.3d 179 (2005), to conclude that DOE may not render the anti-backsliding provision inoperative through the proposal's use of section 6295(q). (No. 0035, p. 7; Joint Environmental Commenters, No. 0041, p. 3). The Joint Environmental Commenters also contended that the language of the anti-backsliding provision must be interpreted in light of the appliance program's goals of steadily increasing a covered product's energy efficiency. According to these commenters, the NOPR incorrectly reasons that the use of multiple tenses in the product class provision authorizes DOE to weaken the standard that applies to a product. DOE's interpretation reads the text of the product class provision in a vacuum, and ignores that EPCA's statutory context, history, and purposes must inform the meaning of the words used. The Joint Environmental Commenters argued the that the correct reading of EPCA provides that the anti-backsliding provision constrains the product class provision to authorize DOE's creation of a separate product class only when available versions of the covered product already possess the desired feature. Relaxing a current standard would never be justified. (No. 0041, pp. 1–3).

In support of the proposal, CEI noted that DOE has the statutory authority to designate a new class of clothes washers and dryers, allowing new standards to be promulgated within that class without regard to anti-backsliding

controls otherwise applicable to existing product classes. (No. 0031, p. 4).

In response, DOE actions in issuing this final rule are not rendering the anti-backsliding provision inoperative through the use of section 6295(q) to establish short normal cycle product classes. As stated in the NOPR, DOE recognizes that section 6295(q)'s use of the present tense, ''a higher or lower standard than that which applies,'' authorizes the Department to reduce the stringency of the standard currently applicable to the products covered under the newly established separate product class. Additional evidence supporting the Department's application of this provision to current standards is found in the reference to standards that are not yet applicable, as in standards that ''would apply'' or ''will apply''. If the product class provision were to only apply in situation where no standard had yet to be established for a covered product then there would be no need to indicate that the provision applied to future standards. There would also be no purpose to including a reference in the text of the statute to the potential for higher or lower standards, as there would be no reference to measure the potential changes against. DOE understands 42 U.S.C. 6295(q) to authorize the Department to reduce the stringency of the currently applicable standard upon making the determinations required by 6295(q). 85 FR 49297, 49306 (Aug. 13, 2020); 85 FR 68723, 68735 (Oct. 30, 2020).

Commenters challenged DOE's assertion that section 6295(q) cannot prohibit DOE from establishing standards that allow for technological advances or product features that could yield significant consumer benefits and associated reference to the 2011 ventless clothes dryer product class determination and prospective rulemaking regarding network-connected products. Commenters agreed that DOE is correct that section 6295(q) does not prohibit standards from considering technological advances but that subsection 6295(o)(1) still prohibits the weakening of prescribed energy efficiency standards for covered products. This means DOE must accommodate technological innovation within those bounds. Commenters agreed that DOE correctly referenced the 2011 ventless clothes dryers' product class rulemaking as energy efficiency standards were not lowered there because the product class was not previously subject to any standards. Alternatively, clothes washers and dryers regardless of cycle time are presently subject to the existing energy and water conservation standards. The proposal would therefore result in a lowering or elimination of standards because it offers no standards to apply to the proposed new product classes. (Attorneys General and the Corporation Counsel of the City of New York, No. 0035, p. 7; CEC, No. 0038, pp. 4–5; ASAP et al., No. 0033, p. 4).

Commenters incorrectly referred to DOE's 2011 ventless clothes dryer product class rulemaking in this context. Prior to the establishment of the product class, ventless clothes dryers were subject to the standards set for the product class as a whole. However, as these dryers could not at the time be tested using the applicable test procedure, ventless clothes dryer manufacturers subsequently sought and received waivers from test procedure requirements from the Department. 76 FR 33271 (June 8, 2011). Because DOE issued waivers for the test procedure for these dryers, it can only mean that these products were subject to DOE testing and standards compliance requirements prior to the establishment of the separate product class. Commenters are mistaken to claim that ventless clothes dryers were not subject to any standard and that the subsequent creation of standards for this product class, once established, did not result in a lowering of existing standards. DOE continues to read EPCA's provisions together to authorize the establishment of future standards for short cycle clothes washer and clothes dryer product classes at levels different from, and potentially less stringent than, the existing standards, if necessary.

Some commenters argued that because all clothes washers and clothes dryers are currently subject to energy and water conservation standards, regardless of the cycle time, that the proposal will result in an amendment or weakening of the current standards for these products in violation of EPCA's anti-backsliding provision. (Attorneys General and the Corporation Counsel of the City of New York, No. 0035, pp. 3–4, 5; CEC, No. 0038, pp. 3–4; LADWP, No. 0023, p. 1; NEEA, No. 0044, p. 8). Commenters argued that because the product classes lack accompanying standards, the rulemaking will result in an illegal backsliding for an uncertain period of time. (Valley Water, No. 0042, p. 1; WVWD, No. 0017, pp. 2–3; NEEA, No. 0044, p. 8). The new product classes will therefore contribute to the degradation of future energy and water savings as well as cause widespread resource waste to the detriment of utilities and consumers. (City of Tucson, No. 0039, p. 1; MNGWPD, No. 0025, p. 2; AWE, et al., No. 0029, pp. 2–3). Based on the investment manufacturers have already made in meeting current standards, AHAM notes that these product classes would undermine decades of improvements. (AHAM, No. 0030, p. 8).

DOE reiterates that it has yet to determine the standards that would be applicable to the new short cycle product classes for clothes washers and clothes dryers. Following the requirements of the Process Rule, DOE intends to establish standards through the standard-setting rulemaking process. Until such rulemakings are initiated, neither DOE nor the commenters can reasonably conclude whether or to what extent the potentially applicable standards for these new product classes will be lower than the standards currently applicable to the other clothes washers and clothes dryers product classes. As some commenters have noted, there are products on the market already offering normal cycle times close to the normal short cycle times that DOE has adopted for the new product classes that operate within the current conservation standards. (CEC, No. 0038, pp. 3–4). Until DOE completes its future rulemakings, it is premature to presume what standard will be applied to the new product classes and whether it will result in a lowering of existing standards as these commenters suggest.

As stated previously in this final rule, EPCA does not require the establishment of conservation standards simultaneously with the establishment of a new product class, *see* section III.A. Commenters' concerns regarding this matter are premature at this time.

Some commenters noted that DOE cannot argue that the anti-backsliding provision does not apply to clothes washer water efficiency standards while also arguing that the product class provision applies to those standards. DOE's contention that the text of EPCA's anti-backsliding provision forecloses its application to clothes washer water efficiency standards, at 85 FR 49307, leaves the Department no room to argue that the product class provision somehow applies to those standards, notwithstanding that the text of the product class provision addresses energy standards exclusively. (Joint Environmental Commenters, No. 0041, p. 8).

DOE maintains that the concerns raised by commenters regarding the overall applicability of EPCA's anti-backsliding provision to clothes washers is too broad and ignores the limitations that EPCA itself places on the scope of the anti-backsliding provision, 42 U.S.C. 6295(o)(1). DOE reminds commenters that EPCA's anti-backsliding provision

is limited in its applicability with regard to water use to four specified products, *i.e.,* showerheads, faucets, water closets, or urinals. DOE's existing energy conservation standard for clothes washers is comprised of both energy and water use components. As residential clothes washers are not one of the products listed in the text of the anti-backsliding provision with respect to water use, there is no prohibition on DOE specifying a maximum amount of water use for clothes washers that is greater than the existing standard.

Some commenters also challenged the proposed new product classes by claiming that DOE cannot argue section 42 U.S.C. 6295(o)(4) prohibits the Department from establishing standards that would eliminate certain product attributes from the market only to then claim that it is authorized to use the product class provision to reanimate features no longer available. Commenters argued that DOE cannot justify an attempt to claw back established energy conservation standards that would be contrary to the anti-backsliding provision and are unsupported by the product class provision under the guise of product unavailability. (Joint Environmental Commenters, No. 0041, p. 8).

Comments from Consumers' Research proposed that DOE's current energy efficiency standards have degraded clothes washer and dryer performance causing the disappearance of shorter, more effective cycles for these products. These commenters took this to mean that the current standards are actually in conflict with the policy of 42 U.S.C. 6295(o)(4), which prohibits the DOE from establishing standards that would result in the unavailability of any covered type (or class) of performance characteristics that were available prior to the adoption the a regulation. (No. 0037, pp. 2–3). Extended average cycle times, these commenters argued, may have caused a significant reduction in a product's utility that some consumers receive while others might voluntarily choose the longer cycle to save on their utility bill. All consumers should be able to choose between better performance and savings without losing the benefits received from shorter cycle times. (No. 0037, p. 3).

DOE is not relying on 42 U.S.C. 6295(o)(4) of EPCA to authorize the establishment of the new short, normal cycle product classes for clothes washers and clothes dryers. EPCA's product class provision provides that DOE may set standards for different product classes based on features that provide a consumer utility that is separate from other products within the same original product class. In this final rule, DOE maintains that products that can clean or dry clothing more quickly offer a specific consumer utility not available from appliances that require longer cycles to accomplish the same task. DOE asserts that the utility consumers will receive is the time saved resulting from the shorter normal wash or dry cycles. DOE reaffirms that while 42 U.S.C. 6295(o)(4) prohibits the establishment of standards that would eliminate certain product attributes from the market, Section 6295(q) of EPCA authorizes DOE to establish product classes and standards that recognize new technologies and product features which may no longer be available in the market. DOE's reading of the statute is consistent with DOE's prior acknowledgment that its determination of what constitutes a performance-related feature justifying a different standard may change depending on the technology and the consumer utility at issue, and that as a result, certain products may disappear from (or reappear in) the market entirely due to changing consumer demand. This reading is also consistent with DOE's prior statements that DOE determines this value on a case-by-case basis through its own research as well as public comments received. 80 FR 13120, 13138 (Mar. 12, 2015). In addition, once DOE makes a determination that a certain product attribute is a feature, DOE cannot later set a standard that would eliminate that feature. 85 FR 68723, 68737 (Oct. 30, 2020).

C. Other Statutory Challenges

Some commenters have argued that by categorically excluding this rulemaking from environmental review, DOE has violated the National Environmental Policy Act (''NEPA''), 42 U.S.C. 4321, *et seq.,* by determining that the new product classes would result in no environmental impacts. These commenters believed that this conclusion mischaracterizes the rulemaking, on the ground that DOE's actions would result in no efficiency standard from applying to the new product classes, and that this would cause unlimited amounts of energy and water to be used. In these commenters' view, the categorical exclusion DOE has selected is, therefore, not applicable, and commenters call for DOE to complete the NEPA analysis that they contend is necessary. (ASAP, et al., No. 0033, p. 4; Attorneys General and the Corporation Counsel of the City of New York, No. 0035, pp. 11, 12–14; Joint Environmental Commenters, No. 0041, pp. 8–9; CEC, No. 0038, p. 8–9; Public Meeting Transcript, No. 0026, pp. 13–14). The Attorneys General and the Corporation Counsel of the City of New York argued that amending existing regulations by adding new product classes not subject to any conservation standards would undoubtedly change the environmental effect of the rule, and that DOE must consider and explain how the increased energy use and pollution resulting from the proposal will impact the environment. (No. 0035, pp. 14–15) Some commenters also asserted that by applying a categorical exclusion to evade NEPA's review process, DOE has failed to provide any analysis on the potential impacts to water or energy resources that will result from finalizing the rulemaking without any accompanying efficiency standards. (Cohen, No. 0009; Valley Water, No. 0042, p. 1). Commenters requested that DOE provide more information concerning the potential environmental impacts of the new product classes. (Rubang, No. 0011).

DOE maintains that this rulemaking, once finalized, will only establish new product classes for clothes washers and clothes dryers with a short normal cycles of 30 or 45 minutes. Finalization of the rule will not cause adverse environmental impacts as commenters indicate, and the rule falls within the scope of Department activities excluded from NEPA review by the A5 Categorical Exclusion under 10 CFR part 1021, subpart D. This categorical exclusion applies to any rulemaking that interprets or amends an existing rule without changing the environmental effect of that rule. DOE maintains that establishing a new product classes for covered products will not result in a change to the environmental effect of the existing clothes washers and clothes dryers. As stated previously, DOE will engage in the rulemaking process to identify and select the applicable energy conservation standards for these new product classes once this rule is finalized. That future rulemaking will provide for the maximum improvement in energy efficiency that is technologically feasible and economically justified, and will result in a significant conservation of energy. 42 U.S.C. 6295(o)(2)(A). This action, which only establishes a product class for clothes washers and dryers with a short normal cycle of 30 or 45 minutes, therefore falls within the scope of the A5 Categorical Exclusion.

DOE also received comments challenging the rulemaking as violating EPCA and the Administrative Procedure Act (''APA''), 5 U.S.C. 551, *et seq.,* by failing to provide a satisfactory

explanation and a rational connection between the facts found and choice made that support finding sufficient justification for any requirement of 42 U.S.C. 6295(q). Specifically, these commenters argued that DOE provided no demonstration that quicker cycle times justify higher or lower standards, ignored evidence counter to DOE's position, and relied on pure speculation and assumptions that current standards are preventing manufacturers from developing shorter cycle times. (Attorneys General and the Corporation Counsel of the City of New York, No. 0035, pp. 15–17). Commenters also looked to the data provided by NEEA for clothes washers and dryers to conclude that consumers use quick cycle options relatively infrequently and instead choose to prioritize more efficient cycles over speed. (No. 0035, pp. 15–17).

The Department maintains that it has met the APA's requirements for providing a sufficient explanation of its reasoning for establishing new short cycle product classes for clothes washers and clothes dryers in the notice of proposed rulemaking, public meeting, and this final rule. DOE has responded to the information submitted through the public comment process and has concluded that the public would derive a utility from the time saved through the future availability of short normal cycle washers and dryers that are presently not available.

DOE also received comments challenging the validity of the rulemaking under the Paperwork Reduction Act, 42 U.S.C. 3501. One commenter disagreed with DOE's statement that the proposed rule did not impose new information or record keeping requirements. This commenter argued that under the correct definition of ''collection of information'', that the proposed rule, if finalized, is an instrument that constitutes a collection of information and should be subject to the procedural and substantive requirements of the Paperwork Reduction Act. Further, the commenter argued that DOE referenced the incorrect OMB control number and recommended that the Department reconsider the PRA. (60 Plus Association, No. 0043, p. 2).

DOE disagrees with these comments. The finalization of this rulemaking, which establishes product classes for residential clothes washers and consumer clothes dryers with cycle times of 30 or 45 minutes, does not establish standards or new testing requirements, nor does it impose new information or record keeping requirements. This is because the rule does not amend the reporting, recordkeeping, or certification requirements contained in the Department's currently-approved information collection process. Clearance by the Office of Management and Budget is not required under the PRA for this rulemaking.

D. Additional Comments

DOE also received a variety of additional comments expressing other concerns and support for the new product classes for residential clothes washers and consumer clothes dryers with cycle times of 30 or 45 minutes.

AHAM submitted a series of comments suggesting a number of unintended consequences of finalizing the proposed rule. AHAM remains skeptical that the finalization of the rule would actually achieve DOE's goals, especially for clothes dryers. Because manufacturers may elect to reduce spin time to establish a shorter normal wash cycle, this will cause more moisture to remain in the fabric and require longer, hotter, and more energy intense drying times. This, AHAM suggests, would make it difficult to sync DOE's dryer normal cycle time for the new product class along with the shorter cycle time for clothes washers as laundry products are sold and used as a pair. (No. 0030, p. 9; Public Meeting Transcript, No. 0026, p. 38). In response, DOE affirms that it is finalizing this rulemaking with the intent that the new product classes will motivate and encourage manufacturer innovation. Based on DOE's historic experience with the regulatory scheme, DOE has sound reason to believe that given the opportunity, manufacturers will use the technology available to them to develop products to meet the specific criteria set for new short normal cycle washers and dryers so that these products can continue to be used together and in less time.

DOE also received comments regarding the impacts of differing cycle times between clothes washers and clothes dryers that result from the use of automatic termination settings. These commenters argued that while it may be unlikely that clothes washer cycle times may not vary much from the tested cycle time, clothes dryer cycle times for automatic termination normal cycles could vary widely depending on a number of external factors. Commenters recommended that DOE must also consider the impact that higher temperature, a result of faster dryer cycles, could have on fabric care and the level of risk that consumers may be willing to accept in exchange for short cycle times. Commenters also noted that if DOE's proposal is finalized, it would possibly create disharmony between the US and Canada's standards, contrary to the goals of both the United States-Mexico- Canada Trade Agreement and the US-Canada Regulatory Cooperation Council. Commenters also note that the new product classes will increase the test burden for clothes washers and clothes dryers by requiring cycle time to be measured using Appendix D2, with no benefit to either consumers or energy conservation. (AHAM, No. 0030, pp. 8–9).

The potential unintended consequences that AHAM raises here are premature at this time and can be addressed, as appropriate, in future rulemakings concerning standards for these new product classes. DOE's actions in this rulemaking involve the establishment of new product classes, and do not result in the establishment of applicable standards or test procedures. Commenters will have ample opportunities to raise these matters in the appropriate future rulemakings, where DOE will consider costs, benefits, and many of the potential unintended consequences that AHAM described.

Additionally, AHAM noted that DOE's creation of the new product classes would cause added regulation based on the new investment that would be needed to meet the new standards once imposed. Such action, AHAM claims, would conflict with Executive Order 13771. (No. 0030, p. 8). GEA also commented that the proposal has the potential to add regulatory burdens to the industry through the costs associated with the designing, building, stocking, marketing, and selling of new models. (No. 0045, p. 3). As DOE explained in the NOPR, this rulemaking is a deregulatory action. 85 FR 49297, 49309 (Aug. 13, 2020). Finalization of this rulemaking will establish separate product classes for short cycle clothes washers and dryers and enable manufacturers to develop products that better meet consumers' needs as identified above. DOE does not require manufacturers to produce products that would meet the cycle times characterizing these product classes. It remains a manufacturer's choice whether to invest in the development of products for these new product classes.

DOE received comments requesting that the Department abandon this discretionary rulemaking action and instead focus its resources and attention on the many other delayed standards rulemakings that are required by EPCA. (CEC, No. 0038, pp. 1–2). DOE remains committed to providing opportunities to introduce products for consumers that will meet their specific needs by

engaging in this rulemaking. DOE continues to work towards meeting its other rulemaking responsibilities while advocating for consumer choice and enabling manufacturer innovation.

Some commenters challenged DOE's reliance on CEI's 2018 petition for short cycle dishwasher product class rulemaking as being misplaced in this rulemaking. (Public Meeting Transcript, No. 0026, p. 30, 32). Like challenges to the dishwasher short cycle product class, some commenters similarly called DOE's cycle times for clothes washers and clothes dryers to be arbitrarily proposed. (AHAM, No. 0030, pp. 2–3). Commenters asserted that CEI's petition does not address consumer satisfaction and utility regarding energy efficiency and conservation, environmental impacts, and affordable consumer consumption. (Rubang, No. 0011). Other commenters supported the similarities that DOE recognized between the values that both sets of products can offer consumers through short normal cycle times. (Consumers' Research, No. 0037, pp. 1–3).

DOE recognizes that there are many similarities between consumers' uses of residential dishwashers, residential clothes washers, and consumer clothes dryers respectively. Such similarities include the consumer utility over discrete cycles with programmed cycle times and the amount of time consumers spend running multiple cycles on average per week. DOE has used CEI's petition as a starting point to consider the types of improvements that may be achievable through decreased cycle times for clothes washers and dryers. DOE will continue to consider the impact for shorter normal cycles in subsequent rulemakings as required through EPCA's standards and test procedure provisions.

Some commenters claimed that the proposal would harm consumers and that DOE failed to consider such consumer impacts when issuing the proposal. Commenters claimed that the proposal would arbitrarily deny consumers access to accurate information about the energy use and operating costs associated with using their washer and dryer. (Joint Environmental Commenters. No. 0041, p. 9; City of Tucson, No. 0039, p. 1). Similarly, in the absence of accompanying conservation standards, some commenters argued that consumers will be stuck with products that significantly increase their utilities bills without providing a noticeably shorter cycle time than what was already available. In addition to increasing water and energy use, this could also negatively impact domestic manufacturers and U.S. jobs through the influx of low-cost products from foreign manufacturers. (ASAP et al., No. 0033, p. 2; Public Transcript, No. 0026, p. 14). The LADWP expressed its concern that the absence of conservation standards could have a significant impact to rebate and incentive programs currently available to utility customers. (No. 0023 p. 1). DOE is aware of these commenters' concern for the negative impacts they propose will result as a product of this rulemaking on consumers. In this rulemaking DOE is finalizing the establishment of new product classes for short normal cycle clothes washers and clothes dryers. DOE is not setting a mandate that consumers must purchase future products that meet the criteria of these product classes. In response to the concern raised by the utilities regarding existing rebates or incentives, it is within their authority to modify existing programs in light of this rulemaking, and nothing in this rule would prevent such activity if the utility decided to adopt such modifications. When this rulemaking is completed, consumers will be able to purchase the product that best meets their individual needs and interests. DOE's actions here serve as an opportunity for manufacturers to develop and provide new products that expand the choices available to consumers when selecting the best products for their needs.

Many commenters voiced their concern regarding the lack of analysis completed by the Department concerning the associated increase of water use and depletion of resources that would result from this rulemaking. (WVWD, No. 0017, p. 2; AWE, et al., No. 0029, p. 2; Save Water, No. 0006; WMWD, No. 0019, p. 1). Commenters believed that the increased water use caused by the rulemaking will negatively impact the current water demand projections many local utilities and programs depend upon for operation. (City of Tucson, No. 0039, p. 1). Some commenters noted that the proposal would conflict with state water conservation initiatives and legislation as well as cause water demands to exceed the available supply. (City of Sacramento Department of Utilities, No. 0020, p. 2). Commenters noted that under the current standard, the combined savings from various plumbing fixtures and appliances, such as clothes washers, are anticipated to reduce future municipal water demands. Reducing the water efficiency standard for clothes washers through the proposed rulemaking would likely reduce the anticipated water savings and increase future demands. (TWDB, No. 0032, pp. 1–2). DOE recognizes the importance of dependable water supply predictions and the many water availability issues that impact parts of the nation. As stated previously, this rulemaking does not serve to set water (or energy) conservation standards for clothes washers. While the various concerns expressed by the commenters may well be valid as a general matter, raising them in this rulemaking is premature and it is too soon to speculate on the impact of conservation standards that have yet to be set. EPCA prescribes that when DOE establishes new conservation standards, DOE shall consider the need for national energy and water conservation as part of determining whether a potential standard is economically justified. 42 U.S.C. 6295(o)(b)(i)(VI). DOE will consider these concerns in that future standards rulemaking.

CEC claimed that the rulemaking amounted to an energy conservation standard rulemaking and must follow the Department's Process Rule, specifically section 6. (Appendix A to subpart C of part 430). CEC argued that in order to be consistent with its own procedural requirement, DOE should withdraw the proposal and issue an early assessment for amended standards and better engage the public. (No. 0038, p. 9).

CEC is mistaken that this rulemaking equates to an energy conservation standard rulemaking. In this rulemaking DOE is establishing short normal cycle product classes for residential clothes washers and consumer clothes dryers that offer 30 or 45 minute cycles. DOE is not setting associated conservation standards or test procedures for those covered products at this time. DOE intends to complete these necessary rulemakings once the new product classes are established and will follow the procedures set out in the Process Rule as well as the requirements prescribed in EPCA. (Public Meeting Transcript, No. 0026, p. 36). Under the Process Rule, DOE has 180 days from the completion of a test procedure determination to propose associated conservation standards. Once these new product classes are finalized, DOE will turn its attention to the next step of the process by initiating the required test procedure and conservation standard rulemakings.

IV. Conclusion

DOE has concluded that it has legal authority to establish separate short-cycle product classes for residential clothes washers and consumer clothes dryers pursuant to 42 U.S.C. 6295(q). In this rulemaking, DOE has established

separate product classes for top-loading standard-size and front-loading standard-size residential clothes washers with cycle times of less than 30 and 45 minutes, respectively, and for vented electric standard-size and vented gas clothes dryers with a cycle time of less than 30 minutes. DOE will consider test procedures and energy conservation standards in separate rulemakings that will include an analysis of energy and water consumption limits in order to determine standards for each product class that provide for the maximum energy efficiency that is technologically feasible and economically justified, and will result in a significant conservation of energy. (42 U.S.C. 6295(o)(2)(A)) DOE will provide additional opportunity for comment on any proposed energy conservation standards for short-cycle residential clothes washers and consumer clothes dryers.

DOE will update the requirements for the residential clothes washer and consumer clothes dryer standards at 10 CFR 430.32(g)(4) and (h)(3), respectively. The current requirements included in these tables specify the applicable energy conservation standards. DOE will include new paragraphs following each table showing the current requirements to specify that top-loading standard-size and front-loading standard-size residential clothes washers with an average cycle time of less than 30 and 45 minutes, respectively, are not currently subject to energy or water conservation standards, and that vented electric standard-size and vented gas clothes dryers with a cycle time of less than 30 minutes are not currently subject to energy conservation standards.

V. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866 ''Regulatory Planning and Review''

This final rule is a ''significant regulatory action'' under the criteria set out in section 3(f) of Executive Order 12866, ''Regulatory Planning and Review.'' 58 FR 51735 (October 4, 1993). Accordingly, this action was subject to review by the Office of Information and Regulatory Affairs (''OIRA'') in the Office of Management and Budget (''OMB''). DOE does not anticipate that the creation of the new product classes will result in any quantifiable costs or benefits. Such costs or benefits would derive from the applicable test procedures and energy conservations standards, which the Department will prescribe in separate rulemakings.

B. Review Under Executive Orders 13771 and 13777

On January 30, 2017, the President issued Executive Order (''E.O.'') 13771, ''Reducing Regulation and Controlling Regulatory Costs.'' 82 FR 9339. E.O. 13771 stated the policy of the executive branch is to be prudent and financially responsible in the expenditure of funds, from both public and private sources. E.O. 13771 stated it is essential to manage the costs associated with the governmental imposition of private expenditures required to comply with Federal regulations. In addition, on February 24, 2017, the President issued Executive Order 13777, ''Enforcing the Regulatory Reform Agenda.'' (82 FR 12285 (March 1, 2017)). The order requires the head of each agency to designate an agency official as its Regulatory Reform Officer (RRO). Each RRO is tasked with overseeing the implementation of regulatory reform initiatives and policies to ensure that individual agencies effectively carry out regulatory reforms, consistent with applicable law. Further, E.O. 13777 requires the establishment of a regulatory task force at each agency. The regulatory task force is required to make recommendations to the agency head regarding the repeal, replacement, or modification of existing regulations, consistent with applicable law.

DOE has determined that this final rule is a deregulatory action under E.O. 13771. This rule establishes separate product classes for short-cycle residential clothes washers and consumer clothes dryers with cycle times of less than 30 or 45 minutes. DOE has designated this rulemaking as ''deregulatory'' under E.O. 13771 because it is an enabling regulation pursuant to OMB memo M–17–21. Manufacturers could design and manufacture new products in this product class to meet consumer demand. DOE will seek data to assist its determination of the appropriate standard levels for such product classes in subsequent rulemakings.

C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (''IRFA'') for any rule that by law must be proposed for public comment and final regulatory flexibility analysis (''FRFA'') for any such rule that an agency adopts as a final rule, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (Aug. 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. DOE has made these procedures and policies available on the Office of the General Counsel's website (*http://energy.gov/gc/office-general-counsel*).

DOE reviewed this rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. DOE has concluded that this rule will not have a significant impact on a substantial number of small entities. The factual basis for this determination is as follows:

The Small Business Administration (''SBA'') considers a business entity to be a small business, if, together with its affiliates, it employs less than a threshold number of workers or earns less than the average annual receipts specified in 13 CFR part 121. The threshold values set forth in these regulations use size standards and codes established by the North American Industry Classification System (''NAICS'') that are available at: *https://www.sba.gov/document/support--table-size-standard.* The threshold number for NAICS classification code 335220, major household appliance manufacturing, which includes clothes dryer and clothes washer manufacturers, is 1,500 employees. Manufacturers must certify compliance of their products to DOE prior to distributing them in commerce. Most of the manufacturers supplying residential clothes washers and consumer clothes dryers into the United States are large multinational corporations. DOE collected data from DOE's compliance certification database [14] to identify manufacturers of residential clothes washers and consumer clothes dryers. DOE then consulted publicly available data, purchased company reports from vendors such as Dun and Bradstreet, to determine whether they meet the SBA's definition of a ''small business manufacturer'' and have their manufacturing facilities located within the United States. Based on this analysis, DOE did not identify any small businesses that manufacture residential clothes washers or consumer clothes dryers. In addition, this rulemaking establishes product classes for residential clothes washers and

[14] *https://www.regulations.doe.gov/certification-data.*

consumer clothes dryers with cycle times less than 30 or 45 minutes and does not impose new requirements on small entities. Therefore, no new costs will result from the rulemaking. Appropriate standard levels will be established in subsequent rulemakings, which will include consideration of potential new costs. As a result, DOE certifies that this rule will not have a significant impact on a substantial number of small entities. DOE will transmit the certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

D. Review Under the Paperwork Reduction Act of 1995

This rulemaking, which establishes product classes for residential clothes washers and consumer clothes dryers with cycle times less than 30 or 45 minutes, but does not establish standards or new testing requirements that would be required for testing such products, imposes no new information or record keeping requirements. Accordingly, Office of Management and Budget clearance is not required under the Paperwork Reduction Act. (44 U.S.C. 3501 *et seq.*)

Manufacturers of covered products generally must certify to DOE that their products comply with any applicable energy conservation standards. To certify compliance, manufacturers must first obtain test data for their products according to the DOE test procedures, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including residential clothes washers and consumer clothes dryers. (*See generally* 10 CFR part 429). The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (''PRA''). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 35 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

E. Review Under the National Environmental Policy Act of 1969

Pursuant to the National Environmental Policy Act (''NEPA'') of 1969, DOE has analyzed this action in accordance with NEPA and DOE's NEPA implementing regulations (10 CFR part 1021). DOE has determined that this rule qualifies for categorical exclusion (''CX'') under 10 CFR part 1021, subpart D, appendix A5, because it is an interpretive rulemaking that does not change the environmental effect of the rule and meets the requirements for application of a CX. See 10 CFR 1021.410. Therefore, DOE has determined that promulgation of this rule is not a major Federal action significantly affecting the quality of the human environment within the meaning of NEPA, and does not require an environmental assessment or an environmental impact statement.

F. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (Aug. 10, 1999), imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this final rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297) No further action is required by Executive Order 13132.

G. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity, (2) write regulations to minimize litigation, and (3) provide a clear legal standard for affected conduct rather than a general standard and (4) promote simplification and burden reduction. 61 FR 4729 (Feb. 7, 1996). Section 3(b) of Executive Order 12988 specifically requires that executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any, (2) clearly specifies any effect on existing Federal law or regulation, (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction, (4) specifies the retroactive effect, if any, (5) adequately defines key terms, and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of Executive Order 12988.

H. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (''UMRA'') requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental

consultation under UMRA (62 FR 12820) (also available at *http://energy.gov/sites/prod/files/gcprod/documents/umra_97.pdf*). This final rule contains neither an intergovernmental mandate nor a mandate that may result in the expenditure of $100 million or more in any year, thus, the requirements under the Unfunded Mandates Reform Act do not apply.

I. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Public Law 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This final rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

J. Review Under Executive Order 12630

The Department has determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (March 15, 1988), that this final rule would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

K. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for Federal agencies to review most disseminations of information to the public under information quality guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed this final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

L. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OIRA at OMB, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that (1)(i) is a significant regulatory action under Executive Order 12866, or any successor order; and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits for energy supply, distribution, and use. This rule, which establishes product classes for residential clothes washers and consumer clothes dryers with cycle times less than 30 or 45 minutes, would not have a significant adverse effect on the supply, distribution, or use of energy and has not otherwise been designated by the OIRA Administrator as a significant energy action. The rule, therefore, is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects on this rule.

M. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this rule before its effective date. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final rule.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Small businesses.

Signing Authority

This document of the Department of Energy was signed on December 2, 2020, by Daniel R Simmons, 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 December 3, 2020.

Treena V. Garrett,

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

For the reasons set forth in the preamble, DOE is amending part 430 of chapter II, subchapter D, of title 10 of the Code of Federal Regulations, as set forth below:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 2. Section 430.32 is amended by revising paragraphs (g)(4) and (h)(3) to read as follows:

§ 430.32 Energy and water conservation standards and their compliance dates.

* * * * *

(g) * * *

(4)(i) Except as provided in paragraph (g)(4)(ii) of this section, clothes washers manufactured on or after January 1, 2018, shall have an Integrated Modified Energy Factor no less than, and an Integrated Water Factor no greater than:

Product class	Integrated modified energy factor (cu.ft./kWh/cycle)	Integrated water factor (gal/cycle/cu.ft.)
(A) Top-loading, Compact (less than 1.6 ft3 capacity)	1.15	12.0
(B) Top-loading, Standard (1.6 ft3 or greater capacity)	1.57	6.5
(C) Front-loading, Compact (less than 1.6 ft3 capacity)	1.13	8.3

Product class	Integrated modified energy factor (cu.ft./kWh/cycle)	Integrated water factor (gal/cycle/cu.ft.)
(D) Front-loading, Standard (1.6 ft3 or greater capacity)	1.84	4.7

(ii) Top-loading, standard clothes washers with an average cycle time of less than 30 minutes and front-loading, standard clothes washers with an average cycle time of less than 45 minutes are not currently subject to energy or water conservation standards.

(h) * * *

(3)(i) Except as provided in paragraph (h)(3)(ii) of this section, clothes dryers manufactured on or after January 1, 2015, shall have a combined energy factor no less than:

Product class	Combined energy factor (lbs/kWh)
(A) Vented Electric, Standard (4.4 ft3 or greater capacity)	3.73
(B) Vented Electric, Compact (120V) (less than 4.4 ft3 capacity)	3.61
(C) Vented Electric, Compact (240V) (less than 4.4 ft3 capacity)	3.27
(D) Vented Gas	3.30
(E) Ventless Electric, Compact (240V) (less than 4.4 ft3 capacity)	2.55
(F) Ventless Electric, Combination Washer-Dryer	2.08

(ii) Vented, electric standard clothes dryers and vented gas clothes dryers with a cycle time of less than 30 minutes are not currently subject to energy conservation standards.

* * * * *

[FR Doc. 2020–26976 Filed 12–15–20; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–3343; Product Identifier 2015–SW–078–AD; Amendment 39–21353; AD 2020–25–11]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2014–12–12, which applied to certain Airbus Helicopters Model EC120B and EC130B4 helicopters. AD 2014–12–12 required inspecting and, if necessary, replacing parts of the sliding door star support attachment assembly. This AD requires modifying the sliding door star support stringer as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference (IBR). This AD was prompted by several incidents involving helicopter left-hand side doors (both swinging and sliding) that revealed weaknesses in the locking mechanism. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective January 21, 2021.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 21, 2021.

ADDRESSES: For material incorporated by reference in this AD, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this material on the EASA website at *https://ad.easa.europa.eu.* You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call 817–222–5110. It is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2016–3343.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2016–3343; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Kathleen Arrigotti, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA; telephone 206–231–3218; email *kathleen.arrigotti@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2020–0095, dated April 29, 2020 (EASA AD 2020–0095), to correct an unsafe condition for certain Airbus Helicopters Model EC120B and EC130B4 helicopters.

The FAA issued a supplemental notice of proposed rulemaking (SNPRM) to amend 14 CFR part 39 by adding an AD to supersede AD 2014–12–12, Amendment 39–17873 (79 FR 36638, June 30, 2014) (AD 2014–12–12). AD 2014–12–12 applied to certain Airbus Helicopters Model EC120B and EC130B4 helicopters. The SNPRM published in the **Federal Register** on September 22, 2020 (85 FR 59454). The FAA preceded the SNPRM with a notice of proposed rulemaking (NPRM) that published in the **Federal Register** on October 26, 2016 (81 FR 74362). The NPRM was prompted by the determination to expand the applicability to all serial-numbered EC120B helicopters with affected sliding doors installed and require compliance with revised service information. The NPRM proposed to require inspecting each upper and lower locking pin control rod end fitting and replacing it if necessary, cleaning and dye-penetrant inspecting the star support pin for cracking and replacing it if necessary, and reinforcing the sliding door star support stringer. The SNPRM proposed to require modifying the door locking/unlocking mechanism, as specified in EASA AD 2020–0095.

The FAA is proposing this AD to address failure of the sliding door star support, which could inhibit the operation of the sliding door from the inside, delaying the evacuation of passengers during an emergency. See EASA AD 2020–0095 for additional background information.