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DEPARTMENT OF ENERGY

10 CFR Part 430

[EERE-2017-BT-STD-0014]

RIN 1904-AF58

Energy Conservation Program: Energy Conservation Standards for Residential Clothes Washers

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

ACTION: Direct final rule; confirmation of effective and compliance dates; technical correction.

SUMMARY: The U.S. Department of Energy (“DOE”) published a direct final rule to establish amended energy conservation standards for residential clothes washers in the *Federal Register* on March 15, 2024. DOE has determined that the comments received in response to the direct final rule do not provide a reasonable basis for withdrawing the direct final rule. Therefore, DOE provides this document confirming the effective and compliance dates of those standards. This document also clarifies the introductory notes to the appendices for the residential clothes washer test procedure to conform with the amended standards promulgated by direct final rule published on March 15, 2024.

DATES: The technical correction in this document is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. The effective date of July 15, 2024 for the direct final rule published on March 15, 2024 (89 FR 19026) is confirmed. Compliance with the standards established in the direct final rule will be required on March 1, 2028.

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

The docket webpage can be found at *www.regulations.gov/docket/EERE-2017-BT-STD-0014*. The docket webpage contains instructions on how to access all documents, including public comments, in the docket.

For further information on how to submit a comment or review other public comments and the docket, contact the Appliance and Equipment Standards Program staff at (202) 287-1445 or by email: *ApplianceStandardsQuestions@ee.doe.gov*.

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I. Authority

The Energy Policy and Conservation Act, Pub. L. 94-163, as amended (“EPCA”),¹ authorizes DOE to issue a direct final rule establishing an energy conservation standard for a product on receipt of a statement submitted jointly by interested persons that are fairly representative of relevant points of view (including representatives of manufacturers of covered products, States, and efficiency advocates), as determined by the Secretary of Energy (“Secretary”), that contains recommendations with respect to an energy or water conservation standard that are in accordance with the

¹ All references to EPCA in this document refer to the statute as amended through the Energy Act of 2020, Pub. L. 116-260 (Dec. 27, 2020), which reflect the last statutory amendments that impact Parts A and A-1 of EPCA.

provisions of 42 U.S.C. 6295(o) or 42 U.S.C. 6313(a)(6)(B), as applicable. (42 U.S.C. 6295(p)(4))

The direct final rule must be published simultaneously with a notice of proposed rulemaking (“NOPR”) that proposes an energy or water conservation standard that is identical to the standard established in the direct final rule, and DOE must provide a public comment period of at least 110 days on this proposal. (42 U.S.C. 6295(p)(4)(A)–(B)) Not later than 120 days after issuance of the direct final rule, DOE shall withdraw the direct final rule if: (1) DOE receives one or more adverse public comments relating to the direct final rule or any alternative joint recommendation; and (2) based on the rulemaking record relating to the direct final rule, DOE determines that such adverse public comments or alternative joint recommendation may provide a reasonable basis for withdrawing the direct final rule. (42 U.S.C. 6295(p)(4)(C)) If DOE makes such a determination, DOE must proceed with the NOPR published simultaneously with the direct final rule and publish in the *Federal Register* the reasons why the direct final rule was withdrawn. (*Id.*)

After review of comments received, DOE has determined that it did receive adverse comments on the direct final rule. However, based on the rulemaking record, the comments did not provide a reasonable basis for withdrawing the direct final rule under the provisions in 42 U.S.C. 6295(p)(4)(C). As such, DOE did not withdraw this direct final rule and the direct final rule remains effective. Although not required under EPCA, where DOE does not withdraw a direct final rule, DOE typically publishes a summary of the comments received during the 110-day comment period and its responses to those

comments. This document contains such a summary, as well as DOE’s responses to the comments.

II. Residential Clothes Washers Direct Final Rule

A. Background

In a direct final rule published on May 31, 2012 (“May 2012 Direct Final Rule”), DOE prescribed the current energy conservation standards for residential clothes washers (“RCWs”) manufactured on or after January 1, 2018. 77 FR 32308.² These standards are set forth in DOE’s regulations at 10 CFR 430.32(g)(1). The current standards are defined in terms of a minimum allowable integrated modified energy factor (“IMEF”), measured in cubic feet per kilowatt-hour per cycle (“ft³/kWh/cycle”), and maximum allowable integrated water factor (“IWF”), measured in gallons per cycle per cubic foot (“gal/cycle/ft³”), as measured according to the test procedure at 10 CFR part 430, subpart B, appendix J2 (“appendix J2”).

In a final rule published on June 1, 2022 (“June 2022 TP Final Rule”), DOE finalized a new test procedure at 10 CFR part 430, subpart B, appendix J (“appendix J”), which defines new energy efficiency metrics: an energy efficiency ratio (“EER”) and a

² DOE published a confirmation of effective date and compliance date for the direct final rule on October 1, 2012. 77 FR 59719.

water efficiency ratio (“WER”).³ 87 FR 33316, 33319. For both EER and WER, a higher value indicates more efficient performance.

On March 3, 2023, DOE published a NOPR (“March 2023 NOPR”) proposing to establish amended standards for RCWs, defined in terms of the EER and WER metrics as measured according to appendix J. 88 FR 13520.

On September 25, 2023, DOE received a joint statement (“Joint Agreement”) recommending standards for RCWs that was submitted by groups representing manufacturers, energy and environmental advocates, consumer groups, and a utility.⁴ In addition to the recommended standards for RCWs, the Joint Agreement also included separate recommendations for several other covered products.⁵ The amended standard levels recommended in the Joint Agreement for RCWs are presented in Table II.1, expressed in terms of the EER and WER metrics as measured according to the newly

³ EER is defined as the quotient of the weighted-average load size divided by the total clothes washer energy consumption per cycle, with such energy consumption expressed as the sum of (1) the machine electrical energy consumption, (2) the hot water energy consumption, (3) the energy required for removal of the remaining moisture in the wash load, and (4) the combined low-power mode energy consumption. 10 CFR part 430 subpart B, appendix J section 1. WER is defined as the quotient of the weighted-average load size divided by the total weighted per-cycle water consumption for all wash cycles in gallons. *Id.*

⁴ The signatories to the Joint Agreement include the Association of Home Appliance Manufacturers (“AHAM”), American Council for an Energy-Efficient Economy, Alliance for Water Efficiency, Appliance Standards Awareness Project, Consumer Federation of America, Consumer Reports, Earthjustice, National Consumer Law Center, Natural Resources Defense Council, Northwest Energy Efficiency Alliance, and Pacific Gas and Electric Company. Members of AHAM’s Major Appliance Division that make the affected products include: Alliance Laundry Systems, LLC; Asko Appliances AB; Beko US Inc.; Brown Stove Works, Inc.; BSH Home Appliances Corporation; Danby Products, Ltd.; Electrolux Home Products, Inc.; Elicamex S.A. de C.V.; Faber; Fotile America; GE Appliances, a Haier Company; L’Atelier Paris Haute Design LLC; LG Electronics; Liebherr USA, Co.; Midea America Corp.; Miele, Inc.; Panasonic Appliances Refrigeration Systems (PAPRSA) Corporation of America; Perlick Corporation; Samsung Electronics America, Inc.; Sharp Electronics Corporation; Smeg S.p.A; Sub-Zero Group, Inc.; The Middleby Corporation; U-Line Corporation; Viking Range, LLC; and Whirlpool Corporation.

⁵ The Joint Agreement contained recommendations for six covered products: refrigerators, refrigerator-freezers, and freezers; RCWs; clothes dryers; dishwashers; cooking products; and miscellaneous refrigeration products.

established test procedure contained in appendix J. Details of the Joint Agreement recommendations for other products are provided in the Joint Agreement posted in the docket for this rulemaking.⁶

Table II.1 Recommended Amended Energy Conservation Standards for Residential Clothes Washers

Product Class	Minimum Energy Efficiency Ratio (lb/kWh/cycle)	Minimum Water Efficiency Ratio (lb/gal/cycle)	Compliance Date
Top-Loading, Ultra-Compact (less than 1.6 ft ³ capacity)	3.79	0.29	March 1, 2028
Top-Loading, Standard-Size (1.6 ft ³ or greater capacity)	4.27	0.57	
Front-Loading, Compact (less than 1.6 ft ³ capacity)	5.02	0.71	
Front-Loading, Standard-Size (1.6 ft ³ or greater capacity)	5.52	0.77	
Semi-Automatic Clothes Washers	2.12	0.27	

After carefully considering the recommended energy conservation standards for RCWs in the Joint Agreement, DOE determined that these recommendations were in accordance with the statutory requirements of 42 U.S.C. 6295(p)(4) for the issuance of a direct final rule and published a direct final rule on March 15, 2024 (“March 2024 Direct Final Rule”). 89 FR 19026. DOE evaluated whether the Joint Agreement satisfies 42 U.S.C. 6295(o), as applicable, and found that the recommended standard levels would, among other things, result in significant energy savings and are technologically feasible and economically justified. *Id.* at 89 FR 19113–19120. Accordingly, DOE adopted the

⁶ The Joint Agreement is available in the docket at www.regulations.gov/comment/EERE-2017-BT-STD-0014-0505.

recommended efficiency levels for RCWs as the amended standard levels in the March 2024 Direct Final Rule. *Id.*

The standards adopted in the March 2024 Direct Final Rule apply to product classes listed in Table II.2 and that are manufactured in, or imported into, the United States starting on March 1, 2028. The March 2024 Direct Final Rule provides a detailed discussion of DOE’s analysis of the benefits and burdens of the amended standards pursuant to the criteria set forth in EPCA. *Id.*

Table II.2 Amended Energy Conservation Standards for Residential Clothes Washers (Compliance Starting March 1, 2028)

Product Class	Minimum Energy Efficiency Ratio (lb/kWh/cycle)	Minimum Water Efficiency Ratio (lb/gal/cycle)
Automatic Clothes Washers		
Top-Loading Ultra-Compact (less than 1.6 ft ³ capacity)	3.79	0.29
Top-Loading Standard-Size (1.6 ft ³ or greater capacity) ¹	4.27	0.57
Front-Loading Compact (less than 3.0 ft ³ capacity) ²	5.02	0.71
Front-Loading Standard-Size (3.0 ft ³ or greater capacity) ³	5.52	0.77
Semi-Automatic Clothes Washers		
	2.12	0.27

¹ The energy conservation standards in this table do not apply to top-loading standard-size clothes washers with an average cycle time less than 30 minutes.

² The energy conservation standards in this table do not apply to front-loading clothes washers with a capacity greater than or equal to 1.6 ft³ and less than 3.0 ft³ with an average cycle time of less than 45 minutes.

³ The energy conservation standards in this table do not apply to front-loading standard-size clothes washers with an average cycle time less than 45 minutes.

As required by EPCA, DOE also simultaneously published a NOPR proposing the identical standard levels contained in the March 2024 Direct Final Rule. 89 FR 18836. DOE considered whether any adverse comment received during the 110-day comment period following the publication of the March 2024 Direct Final Rule provided a reasonable basis for withdrawal of the direct final rule under the provisions in 42 U.S.C. 6295(p)(4)(C).

III. Comments on the Direct Final Rule

As discussed in section I of this document, not later than 120 days after publication of a direct final rule, DOE shall withdraw the direct final rule if: (1) DOE receives one or more adverse public comments relating to the direct final rule or any alternative joint recommendation; and (2) based on the rulemaking record relating to the direct final rule, DOE determines that such adverse public comments or alternative joint recommendation may provide a reasonable basis for withdrawing the direct final rule. (42 U.S.C. 6295(p)(4)(C)(i))

DOE received comments in response to the March 2024 Direct Final Rule from the interested parties listed in Table III.1.⁷

⁷ Table III.1 excludes one non-substantive comment received from an anonymous commenter.

Table III.1 List of Commenters with Written Submissions in Response to the March 2024 Direct Final Rule

Commenter(s)	Abbreviation	Comment No. in the Docket	Commenter Type
The Attorneys General of the States of Florida, Alabama, Arkansas, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, New Hampshire, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Virginia, and West Virginia	AGs of FL <i>et al.</i>	526	State Government Officials
The Attorney General of the State of Montana	AG of MT	529	State Government Official
Association of Home Appliance Manufacturers	AHAM	525	Trade Association
Anonymous	Anonymous	530	Individual
Appliance Standards Awareness Project, Alliance for Water Efficiency, American Council for an Energy-Efficient Economy, Consumer Federation of America, Consumer Reports, Earthjustice, National Consumer Law Center, Natural Resources Defense Council, Northwest Energy Efficiency Alliance, and Pacific Gas and Electric Company	ASAP <i>et al.</i>	527	Advocacy Organizations
New York State Energy Research and Development Authority and California Energy Commission	NYSERDA and CEC	519	State Agencies
Consumer Federation of America, Consumer Reports, Green Energy Consumers Alliance, National Consumer Law Center, and U.S. Public Interest Research Group	CFA <i>et al.</i>	528	Advocacy Organizations
Rebekah Finn	Finn	524	Individual
Martina Gómez de la Torre	Gómez de la Torre	516	Individual
Emma Leamy	Leamy	518	Individual
Representative Stephanie Bice	Rep. Bice	517	Federal Government Official
Bill Word and David Daquin	Word and Daquin	521, 522*	Individual

* Comments No. 521 and 522 are identical. DOE cites comment No. 521 in this document.

A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.⁸ The following sections discuss the substantive comments DOE received on the March 2024 Direct Final Rule as well as DOE's determination that the comments do not provide a reasonable basis for withdrawal of the direct final rule.

A. General Comments

NYSERDA and CEC reiterated their sustained support for the recommendations issued their October 5, 2023 letter.⁹ (NYSERDA and CEC, No. 519 at p. 1)

AHAM supported the March 2024 Direct Final Rule for RCWs because it establishes standards that are consistent with recommendations submitted in the Joint Agreement. (AHAM, No. 525 at p. 1) AHAM commented that it finds DOE has satisfied all EPCA criteria for issuing the March 2024 Direct Final Rule because the recommended energy conservation standards were designed by the Joint Stakeholders (including manufacturers of various sizes as well as consumer, environmental, and efficiency advocacy groups; a utility; and some States) to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified in accordance with the provisions of 42 U.S.C. 6295(o); and because DOE issued the March 2024 Direct Final Rule with a proposed rule identical to the standard established in the

⁸ The parenthetical reference provides a reference for information located in the docket of DOE's rulemaking to develop energy conservation standards for RCWs. (Docket No. EERE-2017-BT-STD-0014, which is maintained at: www.regulations.gov). The references are arranged as follows: (commenter name, comment docket ID number at page of that document).

⁹ NYSERDA and CEC letter available at www.regulations.gov/comment/EERE-2017-BT-STD-0014-0506.

March 2024 Direct Final Rule and allowed 110 days for public comment, which is consistent with EPCA requirements. (AHAM, No. 525 at pp. 7–8)

ASAP *et al.* supported the standards in the March 2024 Direct Final Rule, as they reflect the recommendation in the Joint Agreement submitted to DOE in September 2023 in conjunction with AHAM. (ASAP *et al.*, No. 527 at pp. 1–2)

CFA *et al.* strongly supported the March 2024 Direct Final Rule, which they noted is one of many completed and pending efficiency standards that will together significantly reduce consumer costs and climate pollution, as well as reduce emissions of nitrogen oxides, which cause health issues. (CFA *et al.*, No. 528 at pp. 1–2)

DOE received comments from individual commenters who expressed support for the standards promulgated in the March 2024 Direct Final Rule. (Gómez de la Torre, No. 516 at p. 1; Leamy, No. 518 at p. 1; Finn, No. 524 at p. 1; Anonymous, No. 530 at p. 1)

Rep. Bice submitted a comment in opposition to the standards adopted in the March 2024 Direct Final Rule. (Rep. Bice, No. 517 at p. 1)

Word and Daquin commented that they are harmed by the March 2024 Direct Final Rule because their choice of preferred RCW would be eliminated by the rule. Word and Daquin recommended DOE repeal the March 2024 Direct Final Rule and withdraw the proposed rule. (Word and Daquin, No. 521 at p. 10)

The AGs of FL *et al.* asserted that the March 2024 Direct Final Rule over-regulates American households and requested that DOE reconsider it. (AGs of FL *et al.*, No. 526 at p. 1) The AG of MT expressed agreement with the AGs of FL *et al.*'s comments. (AG of MT, No. 529 at p. 1)

As discussed in more detail below, DOE has determined that these comments do not provide a reasonable basis to withdraw the March 2024 Direct Final Rule.

B. Authority to Regulate Water Use

DOE received comments regarding DOE's statutory authority to regulate the water use of RCWs.

Word and Daquin commented that DOE has gone beyond its statutory authority in increasing water efficiency standards of certain consumer appliances without lawful authority. Word and Daquin asserted that DOE lacks the authority to increase the stringency of water use standards for products other than showerheads, faucets, water closets, and urinals. (Word and Daquin, No. 521 at p. 1)

Word and Daquin also commented that based on the history of EPCA and the recent ruling of the Fifth Circuit Court of Appeals, DOE does not have the authority to regulate the water use of RCWs. Word and Daquin commented that the Fifth Circuit Court of Appeals recognized that "No part of [EPCA] indicates Congress gave DOE power to regulate water use for energy-using appliances." *Louisiana v. United States Dep't of Energy*, 90 F.4th 461, 471 (5th Cir. 2024). Word and Daquin also noted that

according to the Fifth Circuit, “EPCA does not appear to contemplate overlap between the products subject to ‘energy’ regulation and those subject to ‘water’ regulation,” noting that this is because the statute authorized DOE to regulate “energy use, or, [...] water use,” and “[t]he word ‘or’ is almost always disjunctive.” *Id.* at 470–471 (quoting *Encino Motorcars, LLC v. Navarro*, 584 U.S. 79, 80 (2018)). Word and Daquin asserted that the March 2024 Direct Final rule, in requiring a minimum water efficiency ratio for clothes washers beyond that required by statute, is irreconcilable with the opinion of the Fifth Circuit Court of Appeals. (*Id.* at pp. 1–5)

The AG of MT disputed DOE’s interpretation of its statutory authority and asserted that DOE does not have authority to act contrary to the plain text of EPCA. (AG of MT, No. 529 at pp. 6–7)

As discussed in the March 2024 Direct Final Rule, EPCA prescribed energy conservation standards with both energy and water use requirements for RCWs. 89 FR 19026, 19032. In establishing energy conservation standards with both energy and water use performance standards for RCWs, Congress also directed DOE to “determin[e] whether to amend” those standards. (42 U.S.C. 6295(g)(9)(B)) Congress's directive, in section 6295(g)(9)(B), to consider whether “to amend the standards in effect for RCWs” refers to “the standards” established in the immediately preceding paragraph, 6295(g)(9)(A), where Congress established energy conservation standards with *both* energy and water use performance standards for RCWs. Indeed, the energy and water use performance standards for RCWs (both top-loading and front-loading) are each contained within a single subparagraph. *See id.* Accordingly, DOE’s authority, under

6295(g)(9)(B), includes consideration of amended energy and water use performance standards for RCWs.

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

C. Anti-Backsliding

EPCA, as codified, contains what is known as an "anti-backsliding" provision, which prevents the Secretary from prescribing any amended standard that either increases the maximum allowable energy use or decreases the minimum required energy efficiency of a covered product. (42 U.S.C. 6295(o)(1))

The AG of MT commented that the fact the Joint Agreement is contingent upon other parts being implemented conflicts with the anti-backsliding provision of EPCA. (AG of MT, No. 529 at pp. 1–2)

DOE addressed this issue in the March 2024 Direct Final Rule. As discussed there, the Joint Agreement was contingent upon DOE initiating rulemaking processes to adopt all of the recommended standards. In other words, DOE could not pick and choose which recommendations in the Joint Agreement to implement. *See* 89 FR 19026, 19036.

As described, DOE's adoption of the recommended standards conforms with the anti-backsliding provision in 42 U.S.C. 6295(o)(1).

The AG of MT stated that DOE must consider energy efficiency over the entire product lifecycle. The AG of MT agreed with DOE's statement that conscientious energy use is more complicated than increasing efficiency alone, and the AG of MT referenced documents with quotes from DOE officials testifying to this sentiment. The AG of MT commented that DOE's use of a single lifespan in its analysis for this rulemaking was in error, and given its statements about the energy consumed in raw materials, manufacturing, *etc.*, its efficiency standards may violate anti-backsliding prohibitions in EPCA when shorter lifespans are considered, especially if the full fuel cycle ("FFC") costs of short lifespans are accounted for. (AG of MT, No. 529 at pp. 3–4)

As described in the March 2024 Direct Final Rule, DOE did not use a single lifespan in its analysis for the RCWs rulemaking. Instead, DOE assigned a range of lifespan from 1 to 30 years, based on the Weibull lifetime distribution. DOE further notes that the lifetime distribution used in the March 2024 Direct Final Rule is based on actual lifetime values in the field, which were developed from historical shipments data and surveys. 89 FR 19026, 19060. In addition, DOE is unaware of data that suggests a different lifetime associated with the technology options considered in the March 2024 Direct Final Rule, and no such data was provided by stakeholders. *Id.*

As discussed previously, DOE may not prescribe an amended standard that increases the maximum allowable energy use or decreases the energy efficiency of a

covered product. Further, EPCA defines the term “energy use” to mean the quantity of energy directly consumed by a consumer product at point of use, determined in accordance with test procedures under 42 U.S.C. 6293. (42 U.S.C. 6291(4)) EPCA similarly defines “energy efficiency” to mean the ratio of the useful output of services from a consumer product to the energy use [as that term is defined] of such product, determined in accordance with test procedures under 42 U.S.C. 6293. (42 U.S.C. 6291(5)) Neither the energy use nor the energy efficiency of a product, as those terms are defined in EPCA, is dependent upon the lifespan of the product. As a result, product lifespan has no effect on whether an amended standard violates the anti-backsliding provision in 42 U.S.C. 6295(o)(1).

As product lifespan does not affect energy use or energy efficiency as defined in EPCA, DOE has determined that the comment provided by the AG of MT does not provide a reasonable basis for withdrawal of the March 2024 Direct Final Rule.

D. Economic Justification

DOE must follow specific statutory criteria for prescribing new or amended standards for covered products, including RCWs. Any new or amended standard for a covered product must be designed to achieve the maximum improvement in energy efficiency that the Secretary determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) In deciding whether a proposed standard is economically justified, DOE must determine whether the benefits of the standard exceed its burdens. (42 U.S.C. 6295(o)(2)(B)(i)) DOE must make this determination after

receiving comments on the proposed standard, and by considering, to the greatest extent practicable, the following seven statutory factors:

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

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

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

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

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

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

(7) Other factors the Secretary considers relevant.

(42 U.S.C. 6295(o)(2)(B)(i)(I)-(VII))

DOE received several comments on its determination of economic justification under the statutory criteria.

Rep. Bice asserted that increased standards will lead to increased production costs for manufacturers, which will subsequently lead to increased costs to consumers. Rep. Bice added that the adopted standards will limit consumer choice, drive up prices, and impose onerous regulations on American manufacturers, many of whom are small businesses. (Rep. Bice, No. 517 at p. 1)

The AGs of FL *et al.* commented that while they acknowledge that DOE has reduced the stringency as compared to the previously proposed standards, the March 2024 Direct Final Rule does not weigh heavily enough the appliance cost increase that the rule will cause and that will be borne by American consumers. (AGs of FL *et al.*, No. 526 at p. 1)

DOE considered the impacts to manufacturers, including the potential increase in manufacturing costs, in the manufacturing impact analysis in the March 2024 Direct Final Rule. 89 FR 19026, 19071–19077, 19092–19098. At the adopted standard levels, DOE’s data demonstrate no lessening of consumer choice, product utility, or performance would occur. DOE estimates that approximately 49 percent of annual shipments currently meet the adopted standard levels. *Id.* at 89 FR 19119. In the March 2024 Direct Final Rule, the life-cycle cost (“LCC”) analysis calculated the distribution of impacts across a nationally representative sample of US households. As demonstrated by the LCC analysis, at the adopted standard, the average LCC savings are positive for all product

classes and the fraction of consumers experiencing a net LCC cost is about 12 percent. *Id.* Therefore, the March 2024 Direct Final Rule did consider the economic impact of the standard on the manufacturers and on the consumers of the products subject to such standard (42 U.S.C. 4296(o)(2)(B)(i)(I)), and DOE has determined that the comments provided by the AGs of FL *et al.* and Rep. Bice do not provide a reasonable basis for withdrawal of the March 2024 Direct Final Rule.

AHAM commented that the recommended standards are economically justified as required by 42 U.S.C. 6295(o)(2)(B)(i)(I) and will not result in lessening of utility, reliability, performance or availability of RCWs considered under 42 U.S.C. 6295(o)(2)(B)(i)(IV). AHAM commented that under the standards adopted in the March 2024 Direct Final Rule, only 2 percent of consumers would experience a net cost. AHAM commented that the standards adopted in the March 2024 Direct Final Rule also decrease the number of low-income consumers that could experience a net cost. In addition, AHAM noted that manufacturer costs to comply with the final standard are less under the March 2024 Direct Final Rule than under the previously proposed standards. (AHAM, No. 525 at p. 6)

ASAP *et al.* commented that the amended standards will particularly benefit low-income consumers, who spend three times more of their income on energy costs compared to non-low-income households. ASAP *et al.* commented that the standards will also benefit renters, whose landlords might not otherwise purchase energy-saving RCWs. (ASAP *et al.*, No. 527 at p. 2)

CFA *et al.* commented that the standards adopted in the March 2024 Direct Final Rule will reduce energy use by about 10 percent relative to the least-efficient RCW sold today while also cutting water waste, and for a household replacing an inefficient top-loading RCW, the new standards will provide annual utility bill savings of \$23 on average. CFA *et al.* further noted that the average PBP for low-income households for top-loading and front-loading RCWs are 3.5 years and 0.7 years, respectively. (CFA *et al.*, No. 528 at p. 1)

The AG of MT stated that DOE's reliance on the Energy Information Administration's ("EIA's") *Annual Energy Outlook 2023* ("*AEO2023*") for pricing trends is faulty due to federal rulemakings being issued that will force existing generating capacity offline, spike electricity demand, and decrease fossil fuel supply, as illustrated with several documents attached to the comment. (AG of MT, No. 529 at p. 5)

DOE contends that *AEO2023* remains the best available source for projections of future energy price trends based on adopted energy policies. DOE also performed sensitivity analyses using alternate *AEO2023* growth scenarios with low and high energy prices relative to the reference scenario in the March 2024 Direct Final Rule to assess the impact of alternative energy price projections. 89 FR 19026, 19059. The results of these scenarios are available in appendix 10D of the March 2024 Direct Final Rule Technical Support Document ("TSD") and show that consumers of residential clothes washers would still experience positive cumulative consumer net present value ("NPV") even when considering lower and higher energy prices.

Therefore, the March 2024 Direct Final Rule did take into account energy price variability in its analysis, and DOE has determined that the comment provided by the AG of MT does not provide a reasonable basis for withdrawal of the March 2024 Direct Final Rule.

The AG of MT stated that DOE acknowledges but disregards consumer preference and assumes consumers are ignorant. The AG of MT attached studies demonstrating consumer preference for product lifetime over energy consumption, and the AG of MT commented that these longer-life appliances may use less energy over the entire life cycle and be a lower cost to the consumer. (AG of MT, No. 529 at p. 2)

DOE did not disregard consumer preference but rather noted in the March 2024 Direct Final Rule that the economics literature provides a wide-ranging discussion of how consumers trade off up-front costs and energy savings in the absence of government intervention. 89 FR 19026, 19113. Much of this literature attempts to explain why consumers appear to undervalue energy efficiency improvements, as the AG of MT alleged in their comment. There is evidence that consumers undervalue future energy savings as a result of (1) a lack of information; (2) a lack of sufficient salience of the long-term or aggregate benefits; (3) a lack of sufficient savings to warrant delaying or altering purchases; (4) excessive focus on the short term, in the form of inconsistent weighting of future energy cost savings relative to available returns on other investments; (5) computational or other difficulties associated with the evaluation of relevant trade-offs; and (6) a divergence in incentives (for example, between renters and owners, or builders and purchasers). *Id.* at 89 FR 19114 Having less-than-perfect foresight and a

high degree of uncertainty about the future, consumers may trade off these types of investments at a higher-than-expected rate between current consumption and uncertain future energy cost savings. *Id.*

Potential changes in the benefits and costs associated with a standard due to changes in consumer purchase decisions were included in the analysis for the March 2024 Direct Final Rule in two ways. *Id.* First, if consumers forgo the purchase of a product in the standards case, as estimated based on price elasticity related to empirical data on appliances, this decreases sales for product manufacturers, and the impact on manufacturers attributed to lost revenue is included in the manufacturer impact analysis. *Id.* Second, DOE accounts for energy savings attributable only to products actually used by consumers in the standards case; if a standard decreases the number of products purchased by consumers, this decreases the potential energy savings from an energy conservation standard.

Further, the AG of MT stated that the reliability of products affected by the rulemaking will decrease due to complexity increases, which the commenters asserted is supported by engineering facts illustrated in a document attached to their comment, yet DOE does not address this issue. The AG of MT also commented that complexity increases will lead to less economic viability of repair, which is not reflected in DOE's assumption that the rulemaking will have no impact on lifespan. The AG of MT commented that DOE disregards the fact that reliability can be increased by lightening the electrical, mechanical, thermal, and other conditions of operation of the components, which tends to decrease energy efficiency but results in less repair downtime and longer

times before replacement and, therefore, decreased costs, as illustrated in attached documents. (AG of MT, No. 529 at pp. 3–5)

AHAM commented that the March 2024 Direct Final Rule addresses AHAM's key concerns with the March 2023 NOPR. AHAM added that the technology options DOE identified for meeting the standard levels in the March 2024 Direct Final Rule are established technologies used in the market today and do not negatively impact product reliability. (AHAM, No. 525 at p. 7)

ASAP *et al.* commented that they did not expect the standards in the March 2024 Direct Final Rule to have any impact on product reliability because the amended standards can be met with simple design changes that have already been incorporated in many models on the market today. ASAP *et al.* presented a figure of historical data from EIA's Residential Energy Consumption Survey ("RECS") showing that the distribution of RCW age remained largely unchanged between 2005 and 2020 as RCW efficiency improved. (ASAP *et al.*, No. 527 at pp. 4–5)

In contrast to the comment from the AG of MT and as noted in the March 2024 Direct Final Rule, DOE did take into consideration the cost of repair and included higher repair costs for more efficient products when supported by available data. *See* 89 FR 19026, 19059. Hence, notwithstanding theoretical conjecture that higher-efficiency products may have poor reliability based on simplified textbook models, no real-world evidence or data related to the technologies used at the adopted standard levels can be found clearly supporting such a correlation. The AG of MT did not specify how the

attached documents on network node analysis and reliability theory correspond to the technologies used at the adopted standard levels for RCWs. In the absence of data specific to the technologies used in RCWs, DOE has no practical basis to model the theoretical concern from the AG of MT at the adopted standard levels.

DOE further notes that the lifetime distribution used in the March 2024 Direct Final Rule is based on actual lifetime values in the field, which were developed from historical shipments data and surveys. DOE did not find that the average lifetime for RCWs has changed. 89 FR 19026, 19060. DOE is unaware of data that suggests a different lifetime associated with the technology options considered in the March 2024 Direct Final Rule, and no such data was provided by stakeholders. In response to the March 2024 Direct Final Rule, AHAM commented that the adopted standard will not impact the reliability of products, and hence lifetime of the product, at the adopted level, and it further stated that the standard levels are achievable by technology readily available on the market. (AHAM, No. 525 at p. 6) As there is no data to suggest different lifetime distributions for products at the adopted standards level, the comment from the AG of MT does not provide a reasonable basis for withdrawal of the March 2024 Direct Final Rule.

As discussed in the March 2024 Direct Final Rule, DOE did take into account product reliability, lifetimes, and cost of repair when considering the LCC of more efficient products when supported by available data. *See* 89 FR 19026, 19060. Therefore, the March 2024 Direct Final Rule did take into account consumer purchase decisions in

its analysis, and DOE has determined that the comment provided by the AG of MT does not provide a reasonable basis for withdrawal of the March 2024 Direct Final Rule.

The AG of MT stated their belief that greenhouse gas (“GHG”) emissions and climate change impacts should not be part of EPCA rulemakings, but given their inclusion, DOE must consider them throughout the entire life cycle of the product, including manufacturing and potential reductions in lifespan due to increased complexity. The AG of MT commented that the March 2024 Direct Final Rule failed to adequately address these full life cycle impacts. (AG of MT, No. 529 at p. 6)

As previously stated in section III.C of this document, the comment from the AG of MT points to a statement made to the U.S. Senate Subcommittee on Energy to indicate that 40 to 60 percent of the carbon footprint for many consumer products can be attributed to the supply chain.¹⁰ However, the McKinsey report, which is the primary source for the statement made to the U.S. Subcommittee on Energy, is only referring to the manufacturing company’s energy and carbon footprint that can reside upstream in its supply chain and does not include the energy and emissions associated with the usage phase of the appliance life cycle, which represents more than 90 percent of the total for large appliances.¹¹ As such, the energy and carbon footprint associated with supply chain likely accounts for approximately 4 to 6 percent of the overall carbon footprint of a product. Furthermore, there is no data suggesting that the supply chain carbon footprint

¹⁰ See www.energy.senate.gov/services/files/3D26FA56-F102-9E9F-BEA4-52BB0085B19A.

¹¹ Gonzalez, A., A. Chase, and N. Horowitz. 2012. “What We Know and Don't Know about Embodied Energy and Greenhouse Gases for Electronics, Appliances, and Light Bulbs.” Energy Solutions and Natural Resources Defense Council. ACEEE Summer Study on Energy Efficiency in Buildings.

would be different between baseline units and units that meet the adopted standard. In the March 2024 Direct Final Rule, DOE accounted for the environmental and public health benefits associated with the more efficient use of energy, including those connected to global climate change, as they are important to take into account when considering the need for national energy conservation under EPCA. (*See* 42 U.S.C. 6295(o)(2)(B)(i)(IV)) 89 FR 19026, 19110–19113. This analysis focused on the estimated reduced emissions expected to result during the lifetime of RCWs shipped during the projection period. *Id*

The AG of MT stated that the Interagency Working Group’s (“IWG’s”) SC-GHG based on global impacts is inconsistent with EPCA’s requirements for standards to consider economic implications to U.S. consumers. The AG of MT claimed that DOE erroneously appears to assume that all the benefits accrue to U.S. citizens, despite using global values. The AG of MT cited the case of *Louisiana v. Biden* to demonstrate questions related to the accuracy of the IWG’s SC-GHG estimates. (AG of MT, No. 529 at p. 6)

DOE reiterates its view that the environmental and public health benefits associated with more efficient use of energy, including those connected to global climate change, are important to take into account when considering the need for national energy conservation. (*See* 42 U.S.C. 6295(o)(2)(B)(i)(IV)) In addition, Executive Order 13563, which was reaffirmed on January 21, 2021, stated that each agency must, among other things, “select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity).” Regarding the use of

global SC-GHG values, many climate impacts that affect the welfare of U.S. citizens and residents are better reflected by global measures of SC-GHG. In addition, assessing the benefits of U.S. GHG mitigation activities requires consideration of how those actions may affect mitigation activities by other countries, as those international mitigation actions will provide a benefit to U.S. citizens and residents by mitigating climate impacts that affect U.S. citizens and residents.

The AG of MT stated the monetized GHG benefits largely accrue centuries in the future, well beyond the rulemaking analysis period. The AG of MT also stated that DOE improperly mixed discount rates in its cost-benefit analysis. (AG of MT, No. 529 at p. 6)

DOE's March 2024 Direct Final Rule analysis considers the costs and benefits associated with 30 years of shipments of a covered product. Because a portion of products shipped within this 30-year period continue to operate beyond 30 years, DOE accounts for energy cost savings and reductions in emissions until all products shipped within the 30-year period are retired. 89 FR 19026, 19073. In the case of carbon dioxide emissions, which remain in the atmosphere and contribute to climate change for many decades, the benefits of reductions in emissions likewise occur over a lengthy period; to not include such benefits would be inappropriate. *Id.*

With regards to discount rates used, the IWG found that the use of the social rate of return on capital (7 percent under current Office of Management and Budget Circular A-4 guidance) to discount the future benefits of reducing GHG emissions inappropriately underestimates the impacts of climate change for the purposes of estimating the SC-

GHG. Consistent with the findings of the National Academies and the economic literature, the IWG continued to conclude that the consumption rate of interest is the theoretically appropriate discount rate in an intergenerational context and recommended that discount rate uncertainty and relevant aspects of intergenerational ethical considerations be accounted for in selecting future discount rates. Regarding mixing discount rates, DOE consulted the National Academies' 2017 recommendations on how SC-GHG estimates can "be combined in Regulatory Impact Analyses ("RIAs") with other cost and benefits estimates that may use different discount rates." The National Academies reviewed several options, including "presenting all discount rate combinations of other costs and benefits with [SC-GHG] estimates." 89 FR 19026, 19080.¹²

E. Unavailability of Performance Characteristics

EPCA specifies the Secretary may not prescribe an amended or new standard if interested persons have established by a preponderance of the evidence that the standard is likely to result in the unavailability in the United States in any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and

¹² Following the issuance of the March 2024 Direct Final Rule, DOE issued a rulemaking document in an unrelated matter in which it preliminarily determined that new, updated SC-GHG estimates promulgated in 2023 by EPA (2023 SC-GHG estimates) represent a significant improvement in estimating SC-GHG. *See* 89 FR 59692, 59700–59701. DOE preliminarily determined that the updated 2023 SC-GHG estimates reflect the best available scientific and analytical evidence and methodologies, are accordingly the most appropriate for DOE analyses, and best facilitate sound decision-making by substantially improving the transparency of the estimates and representations of uncertainty inherent in such estimates. *Id.* DOE welcomed comment on that preliminary determination. *Id.*

Because it issued the March 2024 Direct Final Rule prior to making that preliminary determination, DOE estimated the climate benefits of the standards adopted in this rule using the IWG's SC-GHG estimates. As noted in the text, DOE's decision to adopt the March 2024 Direct Final Rule's standards did not depend on the cost of greenhouse gasses; nor would the decision change based on a revised estimate of the cost of greenhouse gasses.

volumes that are substantially the same as those generally available in the United States. (42 U.S.C. 6295(o)(4))

The AGs of FL *et al.* stated that the March 2024 Direct Final Rule does not account for the lower performance of RCWs that AHAM identified through members' independent testing of RCWs at the new standard level.¹³ (AGs of FL *et al.*, No. 526 at p. 3) The AGs of FL *et al.* asserted that the standards in the March 2024 Direct Final Rule will leave consumers struggling with washers that take longer to clean clothes. (AGs of FL *et al.*, No. 526 at p. 1)

Rep. Bice asserted that the adopted standards will limit consumer choice. (Rep. Bice, No. 517 at p. 1)

ASAP *et al.* commented that the amended standards will improve washing performance for top-loading RCWs and will not impact other performance attributes. ASAP *et al.* added that RCWs that already meet the new standards provide improved washing performance relative to less-efficient models, as demonstrated by Consumer Reports studies. (ASAP *et al.*, No. 527 at pp. 2–3)

ASAP *et al.* also commented that the standards in the March 2024 Direct Final Rule can be met across the entire capacity range of top-loading RCWs, so indicating that the standards will not preclude the availability of smaller-capacity RCWs. (*Id.* at p. 4)

¹³ DOE notes that the AHAM members' testing referred to by the AGs of FL *et al.* in this statement reflected testing at the standard levels proposed in the March 2023 NOPR (*i.e.*, not the "new standard level" adopted in the March 2024 Direct Final Rule).

ASAP *et al.* noted that the amended standards will not require an increase in cycle time. ASAP *et al.* further commented that there is no evidence that the frequency of running multiple RCW cycles has increased over time or will increase in the future as a result of the amended standards. (*Id.* at pp. 3–4)

AHAM commented that it supported the energy conservation standards in the March 2024 Direct Final Rule because DOE’s data demonstrate, and industry experience confirms that RCWs at the amended standard level can maintain good cleaning performance and that the amended standards do not preclude the ability to provide high wash temperatures. AHAM further commented that there is no significant difference in cycle time between RCWs in its data set that are less efficient than the amended standards and those that just meet the standard levels. Thus, AHAM commented that it supported the energy conservation standards adopted in the March 2024 Direct Final Rule. (AHAM, No. 525 at p. 3)

AHAM commented that the energy conservation standards adopted in the March 2024 Direct Final Rule will not result in significant lessening of utility, reliability, performance, or availability of the covered products as prohibited under the so-called “safe harbor” exception of 42 U.S.C. § 6295(o)(2)(B)(IV). (*Id.* at p. 6)

AHAM further noted that the energy conservation standards adopted in the March 2024 Direct Final Rule are equivalent to current ENERGY STAR levels for many product classes, and that there are a wide range of products meeting the adopted standards currently available on the market. AHAM therefore does not anticipate that the

energy conservation standards recommended in the Joint Agreement and established in the March 2024 Direct Final Rule will negatively affect features or performance, including cycle time. (*Id.* at p. 5)

NYSERDA and CEC reiterated their support for the recommendations in the Joint Agreement and echoed the clarification regarding “short cycle” products made in the February 15, 2024 letter to DOE by ASAP and AHAM. This clarification specified that the recommendations in the Joint Agreement did not address “short cycle” products for clothes washers, clothes dryers, and dishwashers as so-called “short cycle” product classes did not exist at the time the recommendations were submitted to DOE and do not exist at this time.¹⁴ This letter also highlighted that the signatories to the Joint Agreement do not anticipate that amended standards will negatively affect features or performance, including cycle time. (NYSERDA and CEC, No. 519 at p. 1)

DOE determined that the March 2024 Direct Final Rule would not result in the unavailability of products that are substantially the same as those currently available in the United States. 89 FR 19026, 19108–19109. Therefore, DOE has determined that the comments provided by Rep. Bice and the AGs of FL *et al.* do not provide a reasonable basis for withdrawal of the March 2024 Direct Final Rule.

¹⁴ ASAP and AHAM letter available at www.regulations.gov/comment/EERE-2017-BT-STD-0014-0509.

F. Stakeholder Representation

Under 42 U.S.C. 6295(p)(4), interested persons that are fairly representative of relevant points of view (including representatives of manufacturers of covered products, States, and efficiency advocates), as determined by DOE, may submit a joint recommendation to DOE for new or amended energy conservation standards.

The AGs of FL *et al.* questioned the expertise and relevancy of several advocacy groups who contributed to the Joint Agreement (*i.e.*, the Alliance for Water Efficiency, Earthjustice, the Northwest Energy Efficiency Alliance, the Natural Resource Defense Council, and the National Consumer Law Center). The AGs of FL *et al.* asserted that none of the advocacy groups has expertise in setting energy efficiency standards for RCWs. (AGs of FL *et al.*, No. 526 at pp. 4–5)

The AGs of FL *et al.* commented that there were several other groups that commented on the March 2023 NOPR but did not appear in the joint statement. The AGs of FL *et al.* stated that the joint agreement did not include the National Apartment Association (“NAA”) and the National Multifamily Housing Council (“NMHC”). NAA and NMHC previously raised concerns about the effects of the rulemaking on mass-appliance purchases, which will disproportionately affect low-income individuals. (AGs of FL *et al.*, No. 526 at pp. 5–6)

The AGs of FL *et al.* commented that while Massachusetts, New York, and California supported the standards adopted in the March 2024 Direct Final Rule, 21 States cautioned DOE about the March 2024 Direct Final Rule’s effects on consumer

welfare; the AGs of FL *et al.* asserted that EPCA requires DOE to receive the concurrence of States across the ideological spectrum in order to proceed with a direct final rule rather than acknowledge only the few opinions in favor without receiving the support of a majority of States. The AGs of FL *et al.* commented that many States also previously raised legal concerns with DOE’s previously proposed rule, which they stated were not resolved in the March 2024 Direct Final Rule. The AGs of FL *et al.* commented that States have a direct interest in protecting consumers and are also directly affected by the rule because many State entities purchase clothes washers. (AGs of FL *et al.*, No. 526 at p. 6)

The AG of MT agreed with the AGs of FL *et al.*’s concerns over the participants in the Joint Agreement underlying the March 2024 Direct Final Rule, along with their concerns that the group does not comply with EPCA. (AG of MT, No. 529 at p. 1)

The AGs of FL *et al.* stated one concern was that DOE engaged in “administrative arm-twisting” and indicated that AHAM’s change of approach from opposing to supporting the energy efficiency standards in question reflects a subtle example of the effect of DOE’s arm-twisting on AHAM. (AGs of FL *et al.*, No. 526 at p. 4)

AHAM commented that the stakeholders who submitted the Joint Agreement are representative of a wide range of expert and relevant points of view—including manufacturers of various sizes representing nearly 100 percent of the market for consumer clothes dryers; consumer, environmental, and efficiency advocacy groups; a

utility; and several States that participated in the negotiation discussions and filed comments in support of the agreement. AHAM concluded that the March 2024 Direct Final Rule benefits both the manufacturers and consumers that these organizations represent. (AHAM, No. 525 at p. 5)

In response to the comments regarding whether the Joint Agreement was submitted by persons fairly representative of relevant points of view, DOE reiterates that 42 U.S.C. 6295(p)(4) states that if the criteria in 42 U.S.C. 6295(o) are met, the Secretary may issue a final rule that establishes an energy conservation standard “[o]n receipt of a statement that is submitted jointly by interested persons that are fairly representative of relevant points of view (including representatives of manufacturers of covered products, States, and efficiency advocates), as determined by the Secretary.” (42 U.S.C. 6295(p))

As stated in the March 2024 Direct Final Rule, DOE determined that this requirement was met. 89 FR 11434, 19038. The Joint Agreement included a trade association, AHAM, which represents 12 manufacturers of the subject covered products—RCWs. *Id.* The Joint Agreement also included environmental and energy-efficiency advocacy organizations, consumer advocacy organizations, and a gas and electric utility company. *Id.* Additionally, DOE received a letter in support of the Joint Agreement from the States of New York, California, and Massachusetts (*see* comment No. 506). *Id.* DOE also received a letter in support of the Joint Agreement from the gas and electric utility, San Diego Gas and Electric, and the electric utility, Southern California Edison (*see* comment No. 507). *Id.* Representatives from each of the relevant points of view described in 42 U.S.C. 6295(p)(4) supported the Joint Agreement.

DOE has ample authority to accept a joint statement in these circumstances. EPCA does not require that the Joint Agreement be representative of *every* point of view. Nor does it require that a statement be submitted by *all* interested persons. Rather, it requires a statement from a sufficient number and diversity of “interested persons” such that the statement is “fairly representative of relevant points of view.” The Joint Agreement presented here is such a statement, as the Secretary determined.

Contrary to the commenters’ suggestion, EPCA does not include any requirement that “relevant points of view” must include ideologically opposed points of view. Rather, EPCA ensures a diversity of opinions and interests by requiring that parties that provide a joint agreement must be fairly representative of relevant points of view (including representatives of manufacturers of covered products, States, and efficiency advocates), as determined by the Secretary. (42 U.S.C. 6295(p)(4)(A))

Moreover, regardless of whether amended energy conservation standards are recommended as part of a joint agreement or proposed by DOE, the standards have to satisfy the same criteria in 42 U.S.C. 6295(o). Thus, once DOE has determined that a joint agreement was submitted by interested persons that are fairly representative of relevant points of view, DOE then determines whether the joint agreement satisfies the relevant statutory criteria. As a result, in evaluating whether comments provide a reasonable basis for withdrawing a direct final rule, it is the substance of the comments, not the number of stakeholders that submit statements in favor of, or opposed to, the joint agreement, that determines whether a rule should be withdrawn.

DOE also finds the contention that the Joint Agreement parties are not competent to present a statement for the purposes of section 6295(p) meritless. Contrary to the characterizations by the AGs of FL *et al.*, the parties to the Joint Agreement have an established historical record of participation in DOE rulemakings and have submitted detailed comments in the past that demonstrate a thorough understanding of the technical, legal, and economic aspects of appliance standards rulemakings, including factors affecting specific groups such as low-income households.

In a follow-up letter from the parties to the Joint Agreement, each organization provided a brief description of its background: American Council for an Energy-Efficient Economy is a nonprofit research organization and its independent analysis advances investments, programs, and behaviors that use energy more effectively and help build an equitable clean energy future. Alliance for Water Efficiency is a nonprofit dedicated to efficiency and sustainable use of water that provides a forum for collaboration around policy, information sharing, research, education, and stakeholder engagement. ASAP organizes and leads a broad-based coalition effort that works to advance new appliance, equipment, and lighting standards that cut emissions that contribute to climate change and other environmental and public health harms, save water, and reduce economic and environmental burdens for low- and moderate-income households. AHAM represents more than 150 member companies that manufacture 90 percent of the major portable and floor care appliances shipped for sale in the United States. CFA is an association of more than 250 non-profit consumer and cooperative groups that advances the consumer interest through research, advocacy, and education. Consumer Reports is a mission-driven, independent, nonprofit member organization that empowers and informs consumers,

incentivizes corporations to act responsibly, and helps policymakers prioritize the rights and interests of consumers in order to shape a truly consumer-driven marketplace.

Earthjustice is a nonprofit public interest environmental law organization advocating to advance clean energy and combat climate change. National Consumer Law Center supports consumer justice and economic security for low-income and other disadvantaged people in the United States through its expertise in policy analysis and advocacy, publications, litigation, expert witness services, and training. National Resources Defense Council is an international nonprofit environmental organization with expertise from lawyers, scientists, and other environmental specialists. Northwest Energy Efficiency Alliance is a collaboration of 140 utilities and efficiency organizations working together to advance energy efficiency in the Northwest on behalf of more than 13 million consumers. Pacific Gas and Electric Company represents one of the largest combined gas and electric utilities in the Western United States, serving over 16 million customers across northern and central California.¹⁵

Finally, DOE notes that it had no role in requesting that the parties to the Joint Agreement submit the Joint Agreement or in negotiating the terms of the Joint Agreement. As noted in the Joint Agreement itself, the parties negotiated and accepted the agreement based on the totality of the agreement. DOE's participation was limited to evaluating the joint submission under the criteria set forth in 42 U.S.C. 6295(p).

¹⁵ This document is available in the docket: www.regulations.gov/comment/EERE-2017-BT-STD-0014-0531.

Therefore, DOE reaffirms its determination that the Joint Agreement was submitted by interested persons that are fairly representative of relevant points of view.

G. Responses to Previous Stakeholder Comments

The AGs of FL *et al.* commented that there were many comments made by AHAM, Whirlpool, and GE Appliances in previous rounds of the rulemaking that the AGs of FL *et al.* found were not adequately addressed in the March 2024 Direct Final Rule. For example, the AGs of FL *et al.* stated that the March 2024 Direct Final Rule does not address Whirlpool's concern that DOE did not conduct a North American integrated supply-chain analysis. The AGs of FL *et al.* commented that the March 2024 Direct Final Rule neglects to address AHAM's previous concern that RCWs will not be able to maintain certain features and functionalities and households at or near the poverty line would be negatively affected by having to purchase new RCWs. The AGs of FL *et al.* commented that although AHAM later authored a joint agreement in favor of the March 2024 Direct Final Rule, DOE did not adequately address the concerns listed in AHAM's earlier comment and therefore does not assuage concerns that the new energy efficiency standards will raise prices for RCWs with disproportionate harm to low-income households. (AGs of FL *et al.*, No. 526 at pp. 2–4)

Regarding the comments from the AGs of FL *et al.* that DOE did not respond in the March 2024 Direct Final Rule to the comments submitted by signatories to the Joint Agreement and other stakeholders in response to the March 2023 NOPR, DOE notes that the commenters misunderstand DOE's direct final rule authority under EPCA. As discussed in the March 2024 Direct Final Rule, DOE was already conducting a

rulemaking to consider amending the standards for RCWs when the Joint Agreement was submitted. 89 FR 19026, 19036. After receiving the Joint Agreement, DOE initiated a separate rulemaking action and subsequently issued the March 2024 Direct Final Rule after determining that the recommendations contained in the Joint Agreement were compliant with 42 U.S.C. 6295(o). *Id.* The March 2024 Direct Final Rule is a separate rulemaking, conducted under a different statutory authority from DOE's prior rulemaking in the March 2023 NOPR, and DOE has no obligation to consider comments submitted in response to that prior rulemaking in a different rulemaking. Further, both the efficiency levels and compliance periods proposed in the March 2023 NOPR are different from those adopted in the March 2024 Direct Final Rule.

Even though DOE was not required to consider comments from the March 2023 NOPR, DOE did in fact consider relevant comments, data, and information obtained through the March 2023 NOPR. This included the issues that the AGs of FL *et al.* asserted DOE ignored in the March 2024 Direct Final Rule.

In response to concerns about manufacturer supply chain, DOE noted in the March 2024 Direct Final Rule that six of the nine OEMs with top-loading standard-size products offer models that meet the adopted standard level, while for the front-loading standard size RCWs, approximately 92 percent of shipments already meet the adopted standard level. 89 FR 19026, 19093. Given that a significant portion of the market already meets or exceeds the adopted standard, it is very unlikely that the adopted standard will impact the RCW product supply chain.

Additionally, in the March 2024 Direct Final Rule, DOE specifically addressed the ability of RCWs to maintain certain features and functionalities. 89 FR 19026, 19100. For example, DOE determined that the adopted standards would not require substantive reduction in hot water temperature on the hottest temperature selection in the Normal cycle. The adopted standards would not preclude the ability to provide wash temperatures above 85 degrees Fahrenheit, would not preclude the ability to provide total cleaning scores for top-loading units equally as high as the highest scores currently achieved by units at lower efficiency levels, and would not preclude the ability to provide mechanical action score comparable to cores for units at lower efficiency levels, *Id.* at 89 FR 19102–19103.

AHAM commented that DOE satisfactorily responded to AHAM’s comments and concerns regarding clothes washer performance and safety concerns, baseline level definition, product class definitions, the economic value of water, consideration of low-income consumers, consideration of well and septic system users, test cloth availability, and harmonization of compliance dates for other laundry products. AHAM stated that the compliance timeline reduces the cumulative regulatory burden of this rulemaking and those for other major appliances. AHAM further commented that the energy conservation standards adopted in the March 2024 Direct Final Rule maintain important consumer features and utilities. AHAM commented that it agrees with DOE that the standard levels in the March 2024 Direct Final Rule can maintain good cleaning performance and do not preclude the ability to provide high wash temperatures. (AHAM, No. 525 at pp. 3–8)

ASAP *et al.* also commented that DOE's testing found that the standards finalized in the March 2024 Direct Final Rule can be achieved with wash temperatures and “wear and tear” scores comparable to or better than those of lower-efficiency units. (ASAP *et al.*, No. 527 at p. 3)

In the March 2024 Direct Final Rule, DOE considered the impact on low-income households by performing a LCC subgroup analysis for low-income households. 89 FR 19026, 19067–19071. Notably, consistent with the Joint Agreement, in the March 2024 Direct Final Rule DOE adopted a lower standard level for top-loading and front-loading standard-size RCWs than the level proposed in the March 2023 NOPR. DOE estimated that the adopted standard level would result in 12 percent of low-income households experiencing a net cost due to the standard, compared with 14 percent at the proposed level in the March 2023 NOPR.

H. Formal Rulemaking

The AGs of FL *et al.* recommended that before enacting these stringent new standards for RCWs, DOE return to formal rulemaking or, at a minimum, to proceed with informal notice-and-comment rulemaking to allow States and other relevant parties to participate in rulemaking processes that affect nearly every household appliance and also ensure a minimal level of political accountability by giving visibility to internal agency deliberations. The AGs of FL *et al.* further commented that the lack of a formal process does not allow people the opportunity to comment on rules that touch the lives of nearly all Americans. (AGs of FL *et al.*, No. 526 at pp. 1, 6–8) The AG of MT similarly recommended DOE halt the rulemaking. (AG of MT, No. 529 at p. 7)

The AG of MT expressed concern about pretext and circumvention of the Administrative Procedure Act (“APA”), regarding DOE’s conduct in this rulemaking and in recent litigations. (AG of MT, No. 529 at pp. 1–2)

AHAM stated that interested parties have had ample opportunity to comment through multiple stages of rulemaking. AHAM noted that, in fact, the March 2024 Direct Final Rule process provided an extra 110 days for interested parties to review DOE’s final rule and submit comments—which met EPCA requirements. (AHAM, No. 525 at p. 5)

In response, DOE notes that Congress granted DOE the authority to issue energy conservation standards as direct final rules subject to certain conditions and procedural requirements. As discussed in the March 2024 Direct Final Rule, DOE determined that the Joint Agreement was submitted jointly by interested persons that are fairly representative of relevant points of view and the adopted energy conservation standards as recommended in the Joint Agreement would result in significant energy savings and are technologically feasible and economically justified as required under 42 U.S.C. 6295(o) and provided supporting analysis. 89 FR 19026, 19037–19038.

Additionally, DOE notes it followed the procedures in 42 U.S.C. 6295(p)(4) to publish a direct final rule in the *Federal Register* simultaneously with a NOPR proposing identical standards and allowed 110 days for public comment. *See* 89 FR 19026.

Regarding the comment about formal rulemaking, DOE has met all of its statutory requirements under its direct rule authority, which does not require formal rulemaking.¹⁶

Finally, regarding the comments about the APA, EPCA mandates the substance and process by which DOE establishes energy conservation standards and develops direct final rules. While the APA provides DOE direction in areas in which EPCA is silent, EPCA is a comprehensive statutory mechanism for the development, implementation, and enforcement of energy conservation standards.

I. Conforming Updates to Test Procedure Introductory Notes

The test procedures at appendices J and appendix J2 contain introductory notes that specify the dates of applicability for each test procedure. Among other details, these introductory notes currently specify the following:

- For RCWs, manufacturers must use the results of testing under appendix J2 to determine compliance with the relevant standards at 10 CFR 430.32(g)(4) as they appeared in January 1, 2022 edition of 10 CFR parts 200–499.

¹⁶ DOE notes that outside of its direct rulemaking authority, DOE utilizes informal or legislative rulemaking (*i.e.*, notice and comment rulemaking under the Administrative Procedure Act, 5 U.S.C. 553) when it promulgates rules under EPCA, not formal rulemaking.

- For RCWs, manufacturers must use the results of testing under appendix J to determine compliance with any amended standards provided in 10 CFR 430.32(g) that are published after January 1, 2022.

The March 2024 Direct Final Rule reorganized 10 CFR 430.32(g) by renumbering the currently applicable standards at 10 CFR 430.32(g)(4) to 430.32(g)(1) and adding the amended standards promulgated by the March 2024 Direct Final Rule at 430.32(g)(2).

In this document, DOE updates the introductory notes to both appendix J and appendix J2 to reference 10 CFR 430.32(g)(1) with regard to the currently applicable standards for RCWs and 10 CFR 430.32(g)(2) with regard to the amended standards promulgated by the March 2024 Direct Final Rule.

IV. Impact of Any Lessening of Competition

EPCA directs DOE to consider any lessening of competition that is likely to result from new or amended standards. (42 U.S.C. 6295(p)(4)(A)(i) and (C)(i)(II); 42 U.S.C. 6295(o)(2)(B)(i)(V)) It also directs the Attorney General of the United States (“Attorney General”) to determine the impact, if any, of any lessening of competition likely to result from a proposed standard and to transmit such determination to the Secretary within 60 days of the publication of a proposed rule, together with an analysis of the nature and extent of the impact. (42 U.S.C. 6295(o)(2)(B)(i)(V) and (B)(ii)) To assist the Attorney General in making this determination, DOE provided the Department of Justice (“DOJ”) with copies of the March 2024 Direct Final Rule, the corresponding NOPR, and the

March 2024 Direct Final Rule TSD for review. DOE has published DOJ's comments at the end of this document.

In its letter responding to DOE, DOJ concluded that, based on its review, the direct final rule standards for RCWs are unlikely to have a significant adverse impact on competition.

V. Conclusion

In summary, based on the previous discussion, DOE has determined that the comments received in response to the direct final rule for amended energy conservation standards for RCWs do not provide a reasonable basis for withdrawal of the direct final rule. As a result, the energy conservation standards set forth in the direct final rule became effective on July 15, 2024. Compliance with these standards is required on and after March 1, 2028.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Intergovernmental relations, Reporting and recordkeeping requirements, and Small businesses.

Signing Authority

This document of the Department of Energy was signed on October 10, 2024, by Jeffrey Marootian, Principal Deputy Assistant Secretary for Energy Efficiency and

Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the *Federal Register*.

Signed in Washington, DC, on October 10, 2024.

X Jeffrey M.
Marootian



Digitally signed by Jeffrey M.
Marootian
Date: 2024.10.10 16:46:32 -0400'

Jeffrey Marootian
Principal Deputy Assistant Secretary for
Energy Efficiency and Renewable Energy
U.S. Department of Energy

For the reasons set forth in the preamble, DOE amends part 430 of chapter II, subchapter D, of title 10 of the Code of Federal Regulations, to read 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. Revising the introductory Note to appendix J to subpart B of part 430 to read as follows:

Appendix J to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Automatic and Semi-automatic Clothes Washers

NOTE: Manufacturers must use the results of testing under Appendix J2 to this subpart to determine compliance with the residential clothes washer standards provided at § 430.32(g)(1) and the commercial clothes washer standards provided at § 431.156(b).

Manufacturers must use the results of testing under this appendix to determine compliance with the residential clothes washer standards provided at § 430.32(g)(2) and for any amended commercial clothes washer standards provided at § 431.156 that are published after January 1, 2022.

Any representations related to energy or water consumption of residential or commercial clothes washers must be made in accordance with the appropriate appendix that applies (*i.e.*, this appendix or Appendix J2 to this subpart) when determining compliance with the relevant standard. Manufacturers may also use this appendix to

certify compliance with the residential clothes washer standards provided at § 430.32(g)(2) or any amended standards for commercial clothes washers prior to the applicable compliance date for those standards.

* * * * *

3. Revising the introductory Note to appendix J2 to subpart B of part 430 to read as follows:

Appendix J2 to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Automatic and Semi-automatic Clothes Washers

NOTE: Manufacturers must use the results of testing under this appendix to determine compliance with the residential clothes washer standards provided at § 430.32(g)(1) and the commercial clothes washer standards provided at § 431.156(b).

Manufacturers must use the results of testing under Appendix J to this subpart to determine compliance with the residential clothes washer standards provided at § 430.32(g)(2) and for any amended commercial clothes washer standards provided at § 431.156 that are published after January 1, 2022.

Any representations related to energy or water consumption of residential or commercial clothes washers must be made in accordance with the appropriate appendix that applies (*i.e.*, Appendix J to this subpart or this appendix) when determining compliance with the relevant standard.

* * * * *

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix A

May 16, 2024

Ami Grace-Tardy
Assistant General Counsel for
Legislation, Regulation and Energy Efficiency
U.S. Department of Energy
Washington, DC 20585
Ami.Grace-Tardy@hq.doe.gov

Re: Residential Clothes Washers Energy Conservation Standards
DOE Docket No. EERE-2017-BT-STD-0014

Dear Assistant General Counsel Grace-Tardy:

I am responding to your March 18, 2024 letter seeking the views of the Attorney General about the potential impact on competition of proposed energy conservation standards for residential clothes washers.

Your request was submitted under Section 325(o)(2)(B)(i)(V) of the Energy Policy and Conservation Act, as amended (ECPA), 42 U.S.C. 6295(o)(2)(B)(i)(V), which requires the Attorney General to make a determination of the impact of any lessening of competition that is likely to result from the imposition of proposed energy conservation standards. The Attorney General's responsibility for responding to requests from other departments about the effect of a program on competition has been delegated to the Assistant Attorney General for the Antitrust Division in 28 CFR § 0.40(g). The Assistant Attorney General for the Antitrust Division has authorized me, as the Policy Director for the Antitrust Division, to provide the Antitrust Division's views regarding the potential impact on competition of proposed energy conservation standards on his behalf.

In conducting its analysis, the Antitrust Division examines whether a proposed standard may lessen competition, for example, by substantially limiting consumer choice, by placing certain manufacturers at an unjustified competitive disadvantage, or by inducing avoidable inefficiencies in production or distribution of particular products. A lessening of competition could result in higher prices to manufacturers and consumers.

We have reviewed the proposed standards contained in the Notice of proposed rulemaking (89 FR 18836), Direct Final Rule (89 FR 19026), and the related Technical Support Documents. We have also reviewed public comments and information provided by industry participants.

Based on this review, our conclusion is that the proposed energy conservation standards for residential clothes washers are unlikely to have a significant adverse impact on competition.

Sincerely,

/s/

David G.B. Lawrence
Policy Director