DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

[Docket No. EE–RM/TP–03–100]

RIN 1904–AB43

Energy Conservation Program for Consumer Products: Test Procedure for Clothes Washers

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

ACTION: Direct final rule.

SUMMARY: The Department of Energy (Department or DOE) today promulgates an amendment to the test procedure for measuring the energy consumption of clothes washers. The amendment changes one of the spin cycles required for testing the cloth used in the extraction phase of the test procedure by replacing the lowest spin cycle of 50 gravitation (g) force with a spin cycle of 100g. The 50g spin cycle produced inconsistent and unreliable test results. This amendment also adds as a testing requirement the use of an additional statistical analysis to qualify the interactive effect between different lots of the test cloth and spin speeds to improve consistency with the baseline data.

DATES: This direct final rule is effective on January 1, 2004, the same day that new energy efficiency standards for clothes washers become effective, unless significant adverse comments are received by December 1, 2003. If significant adverse comments are received, a timely withdrawal of this rule will be published in the **Federal Register**.

ADDRESSES: The Department will accept comments, data, and information regarding this direct final rule no later than the date provided in the **DATES** section. Please submit comments, data and information electronically to the following Internet address: *clotheswashertestclothtp@ee.doe.gov*. Electronic comments must be submitted in WordPerfect, Microsoft Word, PDF, or text (ASCII) format file and avoid the use of special characters or any form of encryption. Comments in electronic format should be identified by the docket number EE–RM/TP–03–100, and wherever possible carry the electronic signature of the author. Absent an electronic signature, comments submitted electronically must be followed and authenticated by submitting the signed original paper document. No telefacsimiles (telefaxes) will be accepted.

Written (paper) comments may be submitted to: Ms. Brenda Edwards-Jones, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, Test Procedures for Clothes Washers, Docket Number: EE–RM/TP–03–100, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. Please submit one signed copy—no telefacsimiles.

You may read copies of the public comments received in the resource room of the appliance office of the Building Technologies Program, room 1J–018 of the Forrestal Building at the U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards-Jones at the above telephone number for additional information regarding visiting the resource room. **Please note:** The Department's Freedom of Information Reading Room (room 1E–190 in the Forrestal Building) is no longer servicing rulemakings.

FOR FURTHER INFORMATION CONTACT: Barbara Twigg or Bryan Berringer, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–9611, e-mail: *Barbara.Twigg@ee.doe.gov*, or *Bryan.Berringer@ee.doe.gov,* respectively; or Francine Pinto, Esq., or Thomas DePriest, Esq., U.S. Department of Energy, Office of General Counsel, GC–72, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9507, e-mail: *Francine.Pinto@hq.doe.gov,* or *Thomas.DePriest@hq.doe.gov,* respectively.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Authority

Title III of the Energy Policy and Conservation Act (EPCA) established the Energy Conservation Program for Consumer Products Other Than Automobiles (Program). (42 U.S.C. 6291 *et seq*.) The products currently subject to this Program (''covered products'') include residential clothes washers, the subject of today's direct final rule. (42 U.S.C. 6292(a)(7))

Under the Act, the Program consists of three parts: Testing, labeling, and the Federal energy conservation standards. The Department, in consultation with the National Institute of Standards and Technology (NIST), may amend or prescribe test procedures as appropriate for each of the covered products. (42 U.S.C. 6293) The purpose of the test procedures is to measure energy efficiency, energy use, or estimated annual operating cost of a covered product during a representative average use cycle or period of use. The test procedures must not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3))

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

the new test procedure shall constitute the amended energy conservation standard for the applicable covered products. (42 U.S.C. 6293(e)(2))

Effective 180 days after DOE prescribes or establishes an amended or new test procedure for a covered product, no manufacturer, distributor, retailer, or private labeler may make any representation with respect to the energy use, efficiency, or cost of energy consumed by the product, unless the product has been tested in accordance with such amended or new DOE test procedure and the representation fairly discloses the results of that testing. (42 U.S.C. 6293(c)(2)) This restriction on representations will take effect 180 days after the January 1, 2004, effective date of this amended test procedure. A manufacturer, distributor, retailer, or private labeler may begin using the new test procedure to make representations with respect to the energy use, efficiency, or cost of energy consumed by the product beginning with the January 1, 2004, effective date of this rule.

B. Background

The U.S. government established the first federal test procedures for clothes washers in 1977. In the 1990's, concurrent with the development of new energy conservation standards for clothes washers, the Department of Energy began revising the clothes washer test procedure. The existing test procedure did not cover a number of innovative clothes washer technologies such as high spin speed and adaptive water fill control, and DOE published several proposals to address those innovations including one on December 22, 1993, (58 FR 67710) and another on March 23, 1995 (60 FR 15330). In its comments on the March 23, 1995, proposed rule, the Association of Home Appliance Manufacturers (AHAM) requested that DOE adopt an additional new test procedure that would capture current consumer habits that showed a reduction in the use of hot water and energy. AHAM proposed that DOE incorporate this test as part of the process of revising the clothes washer energy conservation standards, and that the test go into effect concurrently with the issuance of new standards.

On April 22, 1996, the Department issued a supplemental Notice of Proposed Rulemaking proposing such a new test procedure, appendix J1, as well as certain additional revisions to the currently applicable test procedure in appendix J to subpart B of 10 CFR part 430. (61 FR 17589). The supplemental notice requested comments on whether DOE should adopt the AHAM-recommended test procedure with certain changes. The test procedure final rule published on August 27, 1997, adopted the AHAM recommendation. 62 FR 45484. Appendix J, the current test procedure, will expire on December 31, 2003. 66 FR 3313, 3330 (January 12, 2001).Appendix J1 is now informational but will become mandatory and replace appendix J when the energy conservation standards adopted on January 12, 2001, take effect on January 1, 2004.

A key difference between the appendix J and the appendix J1 test procedures is the basic energy efficiency descriptor. Appendix J specifies an energy efficiency descriptor called the energy factor (EF). The appendix J1 test procedure replaces the EF with an energy efficiency descriptor called the modified energy factor (MEF). In contrast with the previous EF descriptor which only calculated the energy use of the clothes washer itself, the MEF descriptor accounts for the remaining moisture content (RMC) of clothes leaving the clothes washer. In order to calculate the RMC, appendix J1 requires manufacturers to use a particular lot of standardized test cloth to simulate a washer load of clothes. Other substantive differences between the test procedures include using different water temperatures for testing and using test cloth loads for all classes of clothes washers in appendix J1, but not in appendix J.

As the Department proceeded with the standards rulemaking for clothes washers, DOE conducted tests on a number of clothes washers using the appendix J1 test procedure and shared the results with the manufacturers of the tested units. The manufacturers then indicated that some of the values for the RMC were higher than they would have expected from earlier test data. The Department investigated possible causes for the new test results being inconsistent with the values produced using the original lot of test cloth and summarized its findings in the DOE report, Development of a Standardized Energy Test Cloth for Measuring Remaining Moisture Content in a Residential Clothes Washer, May 2000. (Docket No. EE–RM–94–403, DOE, No. 200) To understand the effects of operating variables and cloth specifications, DOE decided to conduct additional laboratory tests to determine the RMC. To insure that the use of a specific manufacturer's product (clothes washer) would not influence or bias the test results in any way, the Department developed a test using an extractor to remove moisture content, instead of using a clothes washer. An extractor is a centrifuge—basically a rotating basket that has a controllable speed to produce a variety of centrifugal forces. The centrifuge test used a variety of speeds to impose different centripetal accelerations on the test load. These accelerations are reported in terms of gravitation forces (g forces). DOE also soaked the cloth in a tub at a controlled temperature to approximate the agitated soak cycle provided by a typical washer. Thus, the additional laboratory tests DOE conducted closely resembled those specified in the clothes washer test procedure.

The extractor-based test examined RMC values at different g forces so that new batches of test cloth could be compared to the RMC values of a standard reference test cloth. This comparison provided the basis for developing a correction methodology whereby the test results using any new lot of cloth could be ''corrected'' back to the test values of the base reference lot of cloth. The Department derived the correction factor from measuring the deviation between a new production batch of test cloth and a standard reference test cloth. This deviation is measured as the root mean square (RMS) between the set of measured RMC values and the set of standard RMC values. If this absolute deviation is below 2 percent, then correction factors are unnecessary in MEF tests using that batch of cloth. If the absolute RMS difference between the cloth RMC values and standard RMC values is above 2 percent, then correction factors are necessary when using the cloth to test the MEF of a clothes washer. (10 CFR part 430, subpart B, appendix J1, section 2.6.5)

The correction factors currently are derived by fitting the data points into a straight line (a linear least squares fit) based on the set of RMC values for the new production lot compared to the baseline RMC values for data taken at 50, 200, and 350 spin g's, with warm (100 °F) and cold (60 °F) rinse water, and with spin times of 4 minutes and 15 minutes. The fit criteria for an acceptable new lot of test cloth is an RMS error term <2%. (10 CFR part 430, subpart B, appendix J1, section 2.6.6)

Using data from clothes washer manufacturers, the Department selected the range of test conditions (50–350 g's, warm and cold, 4 and 15 minutes) to bracket the actual conditions under which manufactured residential clothes washers operate and will be tested according to the appendix J1 test procedure. The 50–350 g range bounds the lower and upper levels of spin speeds in a typical clothes washer. The use of both warm and cold water

temperatures serves to identify any changes in test results of the test cloth due to water temperature variation. The use of 4 and 15 minute spin times bounds the various spin cycle times in a typical clothes washer. Thus, by requiring the averaging of this combination of test cycles, the test procedure created a representative profile of the spin and extraction behavior of the test cloth. (10 CFR part 430, subpart B, appendix J1, sections 2.6.5.3.6 and 2.6.6.1)

When the Department published the energy conservation standards final rule for clothes washers on January 12, 2001, the rule included revisions to the 1997 test procedure based on DOE's May 2000 report dealing with the energy test cloth, RMC, extractor testing, and the correction factors. The Department believed that the system of using the correction factors would enable those conducting future tests to use new lots of test cloth in a manner consistent with the base test cloth, and produce reliable RMC values. In addition, the Department incorporated in their entirety AHAM's comments and the Joint Stakeholders Comment requesting minor editorial changes to help clarify both appendices J and J1. (Docket No. EE–RM–94–403, AHAM, Nos. 197 and 199, and Joint Comment, No. 204)

Although the revised appendix J1 was published as part of the 2001 final rule for clothes washers, appendix J1 was available for informational use only until the new clothes washer standards would take effect on January 1, 2004. Initial experimental tests using the new procedure to certify lots of test cloth using the correction factors worked well until several new lots again appeared to have unusually high RMC at the 50g test level. Correction factors notwithstanding, several manufacturers noticed that the corrected RMC values for these newer lots of test cloth were still significantly different from the RMC values determined from earlier lots of test cloth that had been tested in the same clothes washer. When the Department learned that these later lots of test cloth were producing 10 percent higher RMC values than the test cloth reference base, DOE conducted tests to explore the new inconsistency issue which the correction factor system in appendix J1 did not seem to have fixed. Test results confirmed that the RMC value at 50g shifted the correction curve so that the corrected RMC values at 100g, the typical spin g level of many vertical axis washers, were inconsistent with corrected RMC results using earlier lots of test cloth. Retests of both early and later lots of test cloth confirmed a basic lack of repeatability of 50g spin tests.

Ongoing RMC tests in the extractor, however, indicated that spin g levels of 100g's or more continued to produce repeatable results with good lot-to-lot consistency of the RMC compared to the g-curve shape. Only the 50g spin tests were producing the inconsistency and repeatability problems.

The Department had originally selected the 50g spin level as the lower end with which to bracket the spin speeds of clothes washers for computing the average RMC value. The other spin levels were 200g, 350g, and 500g, if a washer could achieve that high a spin speed. In discussions with clothes washer manufacturers regarding the repeatability problems with the 50g spin level, the Department learned that clothes washers use 50g spins only in delicate cycles and as an optional slow spin that is available in a limited number of models. Because it was not a commonly used spin cycle, DOE, AHAM and the clothes washer manufacturers agreed that it would be better to use the more dependable 100g spin speed as the lower end of the range of spin speeds. A linear least squares fit test cloth correction procedure based on 100g and greater RMC test data will result in more reliable correction factors for the vast majority of clothes washer models in production.

In a letter to DOE dated April 2, 2003, AHAM requested that the Department implement this change in the test procedure. (AHAM No. 1 at 1) Because the 50g anomalies discussed above were unexpected, AHAM also recommended in the letter that a statistical procedure be adopted to recognize any other unexpected anomaly that might occur in future lots of energy test cloths. This statistical test will identify deviations in RMC as compared with g-curve shape beyond the magnitude where the linear least squares fit correction factor is appropriate. In statistical terms, these anomalies are referred to as a ''lot-to-lot interactive effect''—a lot-to-lot difference in characteristics that produces a different relationship of RMC to g, spin time, and/or final rinse temperature.

A ''lot-to-lot interactive effect'' statistical test that could be used to screen out lots whose RMC as compared with g-behavior is inconsistent with the baseline lot is a standard statistical procedure called ''analysis of variance'' or ''ANOVA.'' As applied to new lots of energy test cloth, the ANOVA statistical test will detect the extent of the deviation of the shape of the RMC compared to the g-curve of a given lot from the shape of the RMC compared to the g-curve of the baseline lot. It would have detected the peculiarity of the RMC values at 50g in the later lots running very high relative to the RMC values at 100, 200, or 350g, compared to the baseline lot. Tests of new lots of cloth using the100g (instead of 50g), 200g, and 350g extractor test points have thus far all satisfied the ANOVA test criteria for an acceptable lot. The Department expects that the ANOVA test will detect any unanticipated RMC compared to g-curve shape deviation in future lots.

II. Discussion

In this direct final rule, the Department is correcting the typographical error in Table 2.6.5 of appendix J1 (10 CFR part 430, subpart B, appendix J1, section 2.6.5), modifying the procedure for developing the correction factors for new production lots of energy test cloth used in the test procedure for clothes washers, and introducing a second statistical test to validate new lots of energy test cloth.

A. Correction of the Typographical Error in Table 2.6.5 of Appendix J1

In this direct final rule, the Department is correcting the typographical error in Table 2.6.5 of appendix J1, by changing 14 minutes to 4 minutes. (66 FR at 3331–33; 10 CFR part 430, subpart B, appendix J1, section 2.6.5) Section 2.6.5.3.6 of appendix J1 specifies spin times of 4 and 15 minutes (66 FR at 3332) and the May 2000 report documents that these are the intended spin times selected to bracket the range of spin times commonly used in production clothes washers. All extractor testing to derive correction factors has been carried out with 15 minute and 4 minute spin times at both cold and warm soak temperatures.

B. Determination of Correction Factors for New Lots of Energy Test Cloth

In this direct final rule, the Department is modifying the procedure for developing the correction factors for new production lots of energy test cloth by replacing the extractor test points at 50g with 100g test points. The linear least squares fit to the baseline set of RMC's is otherwise unchanged. The Department has confirmed through tests of new lots of test cloth in the extractor and analysis of previous data that RMC, g forces, spin time, and temperature at spin g levels at 100g's or more, continue to produce repeatable results with good lot-to-lot consistency of the RMC compared to g-curve shape. The 50g test point, which DOE had selected to provide an all-inclusive range of spin g levels, can be deleted with minimal

effect because spin g levels below 100g are used only in delicate cycles (not tested in the appendix J1 test procedure) and as an optional slow spin that is available in a limited number of models. The Department agrees that a linear least squares fit test cloth correction procedure based on 100g and greater RMC test data would result in a more reliable correction curve for the vast majority of clothes washer models in production. Using 100, 200, 350, and 500g as test points would still bracket the range of spin speeds in most clothes washers and provide a comprehensive and representative test for establishing the correction curves for new batches of test cloth. In light of these circumstances and the problems with use of the 50g test points, discussed above, the Department believes it is appropriate to modify the clothes washer test procedure in appendix J1 by replacing these test points with 100g test points.

C. Statistical Test To Validate New Lots of Energy Test Cloth

In this direct final rule, the Department is adopting a standard statistical procedure called ''analysis of variance'' or ''ANOVA'' as the lot-to-lot interactive-effect statistical test for screening out lots of test cloth whose RMC compared to g behavior is inconsistent with the baseline lot. The ANOVA statistical test detects the extent of the deviation of the shape of the RMC compared to the g-curve of a given lot of the test cloth from the shape of the RMC compared to the g-curve of the baseline lot. It would have detected the peculiarity of the 50g RMC values in the later lots running very high relative to the 100g, 200g, or 350g RMC values, compared to the baseline lot. With the 100g (instead of 50g), 200g, and 350g extractor test points, all of the lots that DOE has tested so far satisfy the ANOVA test criteria for an acceptable lot. The Department believes that the test will catch any unanticipated RMC compared to g-curve shape deviation in future lots.

The ANOVA test adds a second method for determining the ''acceptability'' of a new lot of test cloth that a manufacturer will use in conjunction with the criterion currently prescribed in appendix J1 for making this determination. That criterion is that the RMS error term (of the least squares fit used to determine the correction factors for a new lot of test cloth) must be <2%. The RMS error term measures the ''goodness of fit'' of the derived linear relationship between the baseline set of RMC values and corresponding RMC values for the new lot obtained at each test condition. That is, it is intended to characterize the ''closeness'' or ''lack of scatter'' of the 12 data points to the ''best-fit'' (least squares) line that is subsequently used to calibrate (''correct'') the new-lot RMC value to the RMC value of the baseline lot.

Although the later lots discussed above met the criterion of an RMS of <2%, other difficulties subsequently emerged when using these lots for actual machine testing. Most notably, RMC measurements behaved erratically at the low (50g) spin speed conditions. Although linearly related to corresponding baseline RMC measurements, the RMC measurements of later lots (over an observed range of 30% to 70%) were inconsistent with baseline values in a more subtle way. Additional testing of the later lots (and other test lots as well) strongly supports the assertion that RMC values—recently obtained when conducting extractor tests at 50g spin speed conditions with any lot—are inconsistent with RMC results that were obtained at 50g of the original baseline lot.

Whatever the reason(s), recent extractor tests have yielded higher RMC measurements at all test conditions than those previously obtained for the baseline. If the measurements for a new lot of test cloth are consistently higher over the entire range of test conditions, the correction curve (as originally configured) and the test criterion (RMS <2%) would be sufficient to establish the acceptance—or rejection—of a new test lot. However, with the benefit of hindsight, the Department now knows that the difference between recent extractor tests and the baseline is not the same at all test conditions; in fact, the difference is most pronounced in the four time/temperature tests conducted at the 50g spin speed. In statistical terms, this inherent inconsistency is referred to as an ''interactive effect'' between test lots and spin speeds. The ANOVA is a commonly used statistical procedure for detecting interactive effects, if and when they exist. As applied to new lots of energy test cloths, this statistical test will detect the extent of the deviation of the RMC compared to the g-curve shape of a given lot from the RMC compared to the g-curve shape of the baseline lot. This could be either a gross difference in the overall slope or the peculiarity that has been observed in the later lots of the RMC values at 50g running very high relative to the RMC values at 100g, 200g, or 350g, compared to the baseline lot. The ''P-value'' (a theoretically-based probability) that ANOVA produces is interpreted as evidence of a real, repeatable interactive effect between lots and spin speeds. The lower the P-value, the stronger the evidence of an interaction. A value less than 0.10 is sufficient to conclude that there is a problematic interaction, and the lot of test cloth being tested should not be used to measure RMC.

The Department evaluated an analysis of all cloth lot samples tested thus far. Analytical results and conclusions support the use of 100g test data rather than 50g data. It is interesting to note that there is no evidence of an interactive effect for earlier lots of test cloth, justifying the use of the correction curves based on the 50g to 350g range for those lots. Starting with later lots, interactive effects attributable to 50g test data are clearly evident. However, over the 100g-to-350g range, there is no evidence of an interactive effect with any of these lots. The Department believes that the P-value from the ANOVA test is an appropriate test for acceptance of new lots of test cloth.

D. Effect of Changes on Measured Efficiencies

In any rulemaking to amend a test procedure, section 323(e) of EPCA requires the Department to determine whether the amended test procedure would alter the measured energy efficiency of any covered product. (42 U.S.C. 6293(e)) If the amendment does alter measured efficiency, the Secretary must amend the applicable energy conservation standard so that products that minimally comply with the standard prior to the test procedure amendment will continue to comply. (42 U.S.C. 6293(e)(2)) These provisions prevent changes in a test procedure that would cause a product that complied with applicable Federal energy conservation standards using the previous test procedure from being forced into non-compliance as a result of using the new test procedure.

Today's rule amends the test procedure for clothes washers, appendix J1, which is designed to measure performance under new energy conservation standards that will take effect on January 1, 2004. Appendix J1 is not mandatory until then. Today's rule will produce insignificant changes in the measured efficiency of a limited number of models of clothes washers. These changes are important, however, because they will assure that measured efficiencies conform more closely to the results that would occur if a reference test cloth were used in every test. Use of the reference test cloth produces results that most accurately measure a clothes washer's performance under the energy conservation standards that will go into effect on January 1, 2004.

The Department has no information to indicate that there are clothes washers that ''minimally comply'' with existing energy conservation standards using the existing test procedure, and that would fall out of compliance with the standard once the newly modified test procedure is used. Therefore, DOE is not required by EPCA section 323(e)(2) to make any changes to energy conservation standards. The Department has therefore determined that although today's amended test procedure will alter the measured efficiency or measured energy use of some clothes washer models, it is not necessary to test models with the new test procedure to consider or make any modifications to energy conservation standards.

The Department also notes that even if today's amendments do change the energy efficiency rating of any model and would cause it not to comply with the current energy conservation standards, the standard for that model is becoming more stringent on January 1, 2004, in any event. As a result, the new energy conservation standards, which already have been finalized through notice and comment rulemaking, will supersede the current standards and render irrelevant the model's ability or inability to comply with the current standard. Thus, a change resulting from today's amendments to the test procedure would simply mean that the product in question does not meet the new efficiency standard that will become effective on January 1. The Department has no information to indicate that there are clothes washers that will fail to comply with the new standards solely as a result of today's amendments to the test procedure.

III. Discussion of Direct Final Rulemaking

The Department is publishing this direct final rule without having published a Notice of Proposed Rulemaking because DOE views this amendment as noncontroversial and anticipates no significant adverse comments. However, in the event that the Department receives significant adverse comments, DOE has prepared a Notice of Proposed Rulemaking (NOPR) proposing the same amendment. The Department is publishing this NOPR as a separate document in this issue of today's **Federal Register**. The direct final rule will be effective January 1, 2004, unless DOE receives significant adverse comments by December 1, 2003. If DOE receives significant adverse comments, it will withdraw the revisions before their effective date. In case of the withdrawal of this direct final rule, DOE will announce the withdrawal in the **Federal Register**. DOE will then address all public comments in a separate final rule based on the proposed rule that DOE is publishing today. DOE will not implement a second comment period on this action. Any parties interested in commenting on this rule should do so at this time.

IV. Procedural Requirements

A. Review Under the National Environmental Policy Act of 1969

In this rule, the Department promulgates a minor change to the test procedure for measuring the energy consumption of clothes washers. The Department has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (NEPA). (42 U.S.C. 4321 *et seq.*) The rule is covered by Categorical Exclusion A5, for rulemakings that interpret or amend an existing rule without changing the environmental effect, as set forth in the Department's NEPA regulations in appendix A to subpart D, 10 CFR part 1021. This rule will not affect the quality or distribution of energy usage and, therefore, will not result in any environmental impacts. Accordingly, neither an environmental impact statement nor an environmental assessment is required.

B. Review Under Executive Order 12866, ''Regulatory Planning and Review''

Today's rule is not a ''significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review.'' (58 FR 51735, October 4, 1993) Accordingly, today's action is not subject to review under the Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget.

C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–612, requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. A regulatory flexibility analysis examines the impact of the rule on small entities and considers alternative ways of reducing negative impacts. 5 U.S.C. 605. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 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 its procedures and policies available on the Office of General Counsel's Web site: *http://www.gc.doe.gov.*

Today's rule prescribes minor amendments to the test procedures that will be used to test compliance with energy conservation standards and labeling. Because the rule affects only test procedures and not the minimum energy efficiency standard levels for clothes washer models, the Department believes that it will not have a significant economic impact. Instead, it will provide common testing methods for all clothes washer manufacturers or private labelers, and will improve the accuracy of information provided to consumers. Because this rule makes only minor revisions to the new test procedure scheduled to go into effect with the new clothes washer standard on January 1, 2004, it is not expected that this rule will have a significant (if any) economic impact on manufacturers performing the test procedure.

The overall size of the clothes washer manufacturing industry also negates the necessity for a regulatory flexibility analysis. The Small Business Administration (SBA) considers an entity to be a small business if, together with its affiliates, it employs fewer than a threshold number of workers specified in 13 CFR part 121 according to the North American Industry Classification System (NAICS) codes. The threshold number for NAICS classification 335224 for household laundry equipment manufacturers, which includes clothes washers, is 1000 employees. Of the five firms in the clothes washer industry that account for nearly 99 percent of clothes washer sales, the Department has determined that none would be considered ''small'' by the above definition. Using this SBA size standard, the Department is aware of only one small entity among clothes washer manufacturers or private labelers. Because the clothes washer models of that manufacturer already exceed the new standard which takes effect on January 1, 2004, it is not expected that the test procedure revision in this rule will have any adverse impact. Therefore, DOE certifies that today's rule will not have a ''significant economic impact on a substantial number of small entities,'' and the preparation of a regulatory flexibility analysis is not warranted.

D. Review Under Executive Order 12630

DOE has determined pursuant to Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' (53 FR 8859, March 18, 1988) that this regulation would not result in any takings which might require compensation under the Fifth Amendment to the United States Constitution.

E. Review Under Executive Order 13132, ''Federalism''

Executive Order 13132, ''Federalism,'' (64 FR 43255, August 4, 1999) requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the Federal Government and the States, or in the distribution of power and responsibilities among various levels of Government. If there are substantial direct effects, then this Executive Order requires preparation of a Federalism assessment to be used in all decisions involved in promulgating and implementing a policy action.

The rule published today would not regulate or otherwise affect the States. Accordingly, DOE has determined that preparation of a Federalism assessment is unnecessary.

F. Review Under the Paperwork Reduction Act

No new information or record keeping requirements are imposed by this rulemaking. Accordingly, no OMB clearance is required under the Paperwork Reduction Act. (44 U.S.C. 3501 *et seq.*)

G. Review Under Executive Order 12988, ''Civil Justice Reform''

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' (61 FR 4729, February 7, 1996) imposes on Executive 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 promote simplification and burden reduction. With regard to the review required by sections 3(a) and 3(b) of Executive Order 12988, it 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 sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE reviewed today's rule under the standards of section 3 of the Executive Order and determined that, to the extent permitted by law, the proposed regulations meet the relevant standards.

H. Review Under the Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act'') requires that the Department prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. The budgetary impact statement must include: (i) Identification of the Federal law under which the rule is promulgated; (ii) a qualitative and quantitative assessment of anticipated costs and benefits of the Federal mandate and an analysis of the extent to which such costs to state, local, and tribal governments may be paid with Federal financial assistance; (iii) if feasible, estimates of the future compliance costs and of any disproportionate budgetary effects the mandate has on particular regions, communities, non-Federal units of government, or sectors of the economy; (iv) if feasible, estimates of the effect on the national economy; and (v) a description of the Department's prior consultation with elected representatives of state, local, and tribal governments and a summary and evaluation of the comments and concerns presented.

The Department has determined that the action today does not include a Federal mandate that may result in estimated costs of $100 million or more to State, local or to tribal governments in the aggregate or to the private sector. Therefore, the requirements of Sections 203 and 204 of the Unfunded Mandates Act do not apply to this action.

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

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. No. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule or policy that may affect family well-being. Today's 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 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 the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, 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 the promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) 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 on energy supply, distribution, and use.

Today's rule will not have a significant adverse effect on the supply, distribution, or the use of energy, and, therefore, is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

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

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has

reviewed today's notice under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

L. Review Under the Small Business Regulatory Enforcement Fairness Act

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of today's rule prior to 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. 801(2).

M. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of today's direct final rule.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Energy conservation, Household appliances.

Issued in Washington, DC, on October 27, 2003.

David K. Garman,

Assistant Secretary, Energy Efficiency and Renewable Energy.

■ For the reasons set forth in the preamble, the Department amends Part 430 of Chapter II of Title 10, Code of Federal Regulations, to read as follows:

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. Appendix J1 to subpart B of part 430, as amended at 66 FR 3330 to become effective January 1, 2004, is further amended in section 2 by revising:

■ a. Table 2.6.5.

■ b. Section 2.6.5.3.6.

■ c. Table 2.6.6.1.

■ d. Section 2.6.6.2.

The revisions read as follows:

Appendix J1 to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Automatic and Semi-Automatic Clothes Washers.

* * * * *

2. * * *

2.6. * * *

2.6.5. * * *

TABLE 2.6.5.—MATRIX OF EXTRACTOR RMC TEST CONDITIONS

''g Force''	Warm soak		Cold soak	
	15 min. spin	4 min. spin	15 min. spin	4 min. spin
100	.....	.....	.....	.....
200	.....	.....	.....	.....
350	.....	.....	.....	.....
500	.....	.....	.....	.....

* * * * *

2.6.5.3.6 The RMC of the test load shall be measured at three (3) g levels: 100g; 200g; and 350g, using two different spin times at each g level: 4 minutes; and 15 minutes. If a clothes washer design can achieve spin speeds in the 500g range then the RMC of the test load shall be measured at four (4) g levels: 100g; 200g; 350g; and 500g, using two different spin times at each g level: 4 minutes; and 15 minutes.

* * * * *

2.6.6. * * *

2.6.6.1. * * *

TABLE 2.6.6.1.—STANDARD RMC VALUES (RMC STANDARD)

''g Force''	RMC %			
	Warm soak		Cold soak	
	15 min. spin	4 min. spin	15 min. spin	4 min. spin
100	45.9	49.9	49.7	52.8
200	35.7	40.4	37.9	43.1
350	29.6	33.1	30.7	35.8
500	24.2	28.7	25.5	30.0

2.6.6.2. Perform an analysis of variance test using two factors, spin speed and lot, to check the interaction of speed and lot. Use the values from Table 2.6.5 and Table 2.6.6.1 in the calculation. The ''P'' value in the variance analysis shall be greater than or equal to 0.1. If the ''P'' value is less than 0.1 the test cloth is unacceptable. ''P'' is a theoretically based probability of interaction based on an analysis of variance.

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