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[6450-01-P]

**DEPARTMENT OF ENERGY**

**10 CFR Parts 429 and 431**

**[Docket No. EERE-2013-BT-TP-0002]**

**RIN: 1904-AC93**

**Energy Conservation Program: Test Procedures for Commercial Clothes Washers**

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

**ACTION:** Final rule.

**SUMMARY:** On February 11, 2014, the U.S. Department of Energy (DOE) issued a notice of proposed rulemaking (NOPR) to amend the test procedures for commercial clothes washers (CCWs). That proposed rulemaking serves as the basis for today's action. DOE is issuing a final rule making a technical correction to the certification reporting requirements for CCWs established under the Energy Policy and Conservation Act (EPCA), adopting a new test procedure to be used to determine compliance with any revised energy conservation standards for CCWs, and clarifying the dates for which the current and new test procedures must be used to determine compliance with existing energy conservation standards and any future revised energy conservation standards for CCWs.

**DATES:** The effective date of this rule is **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

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

The docket for this rulemaking can be found at:

<http://www.regulations.gov/#!docketDetail;D=EERE-2013-BT-TP-0002>. The regulations.gov web page will contain simple instructions on how to access all documents, including public comments, in the docket.

For further information on how to review the docket, contact Ms. Brenda Edwards at (202) 586-2945 or by email: [Brenda.Edwards@ee.doe.gov](mailto:Brenda.Edwards@ee.doe.gov).

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### **I. Authority and Background**

Title III of the Energy Policy and Conservation Act of 1975 (42 U.S.C. 6291, *et seq.*; “EPCA”), Pub. L. 94-163, sets forth a variety of provisions designed to improve energy efficiency.<sup>1</sup> Part C of title III, which for editorial reasons was re-designated as Part A-1 upon incorporation into the U.S. Code (42 U.S.C. 6311–17, as codified), establishes the “Energy

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<sup>1</sup> All references to EPCA in this document refer to the statute as amended through the American Energy Manufacturing Technical Corrections Act (AEMTCA), Pub. L. 112-210 (Dec. 18, 2012).

Conservation Program for Certain Industrial Equipment.” The program includes CCWs, the subject of today’s notice. (42 U.S.C. 6311(1)(H))

Under EPCA, the energy conservation program consists essentially of four parts: (1) testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. The testing requirements consist of test procedures that manufacturers of covered equipment must use as the basis for (1) certifying to DOE that their equipment complies with the applicable energy conservation standards adopted under EPCA, and (2) making representations about the efficiency of those equipment (42 U.S.C. 6295(s); 6314(d) and 6316(a)) Similarly, DOE must use these test procedures to determine whether the equipment complies with any relevant standards promulgated under EPCA. (42 U.S.C. 6295(s) and 6316(a))

The Energy Policy Act of 2005 (EPACT) amended EPCA by adding CCWs as one of the covered equipment types under Part A-1, among other changes. (42 U.S.C. 6311(1)(H)) EPACT established the definition and the first energy conservation standards for CCWs. (42 U.S.C. 6311(21) and 6313(e)(1))

EPACT also directed DOE to conduct two rulemakings to determine whether the established standards for CCWs should be amended. (42 U.S.C. 6313(e)(2)) DOE published its first final rule amending CCW standards on January 8, 2010 (“January 2010 final rule”), which applies to CCWs manufactured on or after January 8, 2013. 75 FR 1122. EPACT required the second final rule to be published by January 1, 2015. (42 U.S.C. 6313(e)(2)(B)(i)) Any amended standards would apply to CCWs manufactured three years after the date on which the final amended standard would be published. (42 U.S.C. 6313(e)(2)(B)(ii)) DOE is currently

conducting its second standards rulemaking to satisfy this requirement and published a NOPR on March 4, 2014 (hereafter, the “March 2014 standards NOPR”).<sup>2</sup> 79 FR 12303.

The CCW standards established by the January 2010 final rule are based on the MEF and WF metrics as measured using DOE’s clothes washer test procedure at 10 Code of Federal Regulations (CFR) part 430, subpart B, appendix J1 (“appendix J1”). On March 7, 2012, DOE published a final rule (hereafter, the “March 2012 final rule”) establishing a new clothes washer test procedure at 10 CFR part 430, subpart B, appendix J2 (“appendix J2”). 77 FR 13888. Due to the substantive amendments in appendix J2, the calculated values of MEF and WF in appendix J2 are not equivalent to the calculated values of MEF and WF in appendix J1. Beginning March 7, 2015, manufacturers of residential clothes washers will be required to use appendix J2 to demonstrate compliance with new standards that also become effective on that date. This final rule adopts appendix J2 for CCWs such that manufacturers of commercial clothes washers will be required to use appendix J2 to demonstrate compliance with any future amended standards adopted as part of the current CCW standards rulemaking.

On February 11, 2014, DOE published a NOPR to revise its test procedures and certification reporting requirements for CCWs (hereafter, the “February 2014 NOPR”). 79 FR 8112. DOE proposed amending the certification requirements for CCWs to allow the use of either appendix J1 or appendix J2, in conjunction with conversion equations, to demonstrate compliance with the current energy conservation standards established by the January 2010 final rule. 75 FR 1122; 79 FR 8112, 8113-14. The proposal included the numerical equations for

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<sup>2</sup> Docket number EERE-2012-BT-STD-0020. For more information, see DOE’s CCW rulemaking webpage at [http://www1.eere.energy.gov/buildings/appliance\\_standards/product.aspx/productid/46](http://www1.eere.energy.gov/buildings/appliance_standards/product.aspx/productid/46).

translating MEF and WF values as measured using appendix J2 into equivalent appendix J1 values. CCW manufacturers using appendix J2 would be required to use the conversion equations to translate the measured efficiency metrics into equivalent appendix J1 values. The use of appendix J2 would be required to demonstrate compliance with any amended energy conservation standards for CCWs to be published in a final rule by January 1, 2015, and the conversion equations would no longer be used at that time.

Today's rule does not adopt the February 2014 NOPR proposal to include numerical equations for translating MEF and WF values as measured using appendix J2 into equivalent appendix J1 values until a final rule amending energy conservation standards is published. Today's rule clarifies that CCW manufacturers must use appendix J1 to demonstrate compliance with the current energy conservation standards. In addition, DOE is adopting appendix J2 for CCWs such that CCW manufacturers must use appendix J2 to demonstrate compliance with any future amended energy conservation standards (to be published in a final rule by January 1, 2015). Today's rule fulfills DOE's obligation to periodically review its test procedures under 42 U.S.C. 6314(a)(1)(A). DOE anticipates that its next evaluation of this test procedure will occur in a manner consistent with the timeline set out in this provision.

## **II.Summary of the Final Rule**

Manufacturers of CCWs must use appendix J1 to demonstrate compliance with the current standards established by the January 2010 final rule. However, manufacturers of CCWs must use appendix J2 to demonstrate compliance with any amended energy conservation standards that would be published in a final rule by January 1, 2015.

In addition, this final rule amends 10 CFR 431.152 to provide definitions for the appendix J1 and appendix J2 energy and water metrics: (1) IWF, defined as the integrated water factor value calculated using appendix J2; (2) MEF, defined as the modified energy factor value calculated using appendix J1; (3)  $MEF_{J2}$ , defined as the modified energy factor value calculated using appendix J2; and (4) WF, defined as the water factor value calculated using appendix J1.

DOE also amends the test procedures for CCWs at 10 CFR 431.154 to specify that appendix J1 must be used to determine compliance with existing energy conservation standards and appendix J2 must be used to determine compliance with any future revised energy conservation standards for CCWs.

This final rule also corrects a technical error in the certification and reporting requirements for CCWs at 10 CFR 429.46 by listing the water factor as one of the measures of energy or water consumption for which consumers would favor a lower value.

### **III. Discussion**

#### **A. Early Use of Appendix J2 for Current Energy Conservation Standards**

As discussed above, DOE proposed in the February 2014 NOPR to provide equations for translating MEF and WF values as measured using appendix J2 into their equivalent values as measured using appendix J1. This would enable manufacturers to use appendix J2 to demonstrate compliance with the current energy conservation standards, which are based on appendix J1.



The Association of Home Appliance Manufacturers (AHAM), Whirlpool Corporation (Whirlpool), and Alliance Laundry Systems (ALS) strongly oppose DOE's proposal to permit early compliance with Appendix J2, through the use of the proposed translation equations, three years before it becomes mandatory for CCWs. (AHAM, No. 2 at pp. 2-3; Whirlpool, No. 3 at p. 1; ALS, No. 4 at p. 1)<sup>3,4,5</sup> AHAM stated that although it had sought early compliance with regard to residential refrigerator/freezers and residential clothes washers, it did so with the limited purpose of easing the burden associated with manufacturers transitioning their full product lines to comply with amended standards on one date. Accordingly, AHAM stated that it strongly supported, and continues to support, DOE's guidance permitting early compliance with new or amended test procedures for satisfying applicable new or amended standards.<sup>6</sup> (AHAM, No. 2 at p. 2)

AHAM added that it believes that permitting manufacturers to demonstrate early compliance with an applicable standard using two different test procedures is contrary to the intent of the EPCA, as amended. AHAM stated that the major value of test procedures, labeling, and the restrictions on energy-related representations inconsistent with the required test procedure is to provide consumers with accurate, credible, and comparative energy information.

AHAM believes that value would be undermined if manufacturers are authorized to provide

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<sup>3</sup> A notation in this form provides a reference for information that is in the docket for DOE's test procedure rulemaking for CCWs (Docket No. EERE-2013-BT-TP-0002), which is maintained at [www.regulations.gov](http://www.regulations.gov). This notation indicates that AHAM's statement preceding the reference can be found in document number 4 in the docket, and appears at page 1 of that document.

<sup>4</sup> Whirlpool Corporation submitted a written comment stating that it worked closely with AHAM in the development of AHAM's submitted comments, and that Whirlpool strongly supports the positions taken by AHAM. Throughout this final rule, reference to AHAM's written comments should be considered reflective of Whirlpool's position as well.

<sup>5</sup> ALS submitted a written comment stating that it supports AHAM's public comments for this NOPR. Throughout this final rule, reference to AHAM's comments should be considered reflective of ALS' position as well.

<sup>6</sup> DOE guidance, "When may an amended test procedure be used to test, rate and certify products prior to the compliance date for new standards?" available at: [http://www1.eere.energy.gov/guidance/detail\\_search.aspx?IDQuestion=658&pid=2&spid=1](http://www1.eere.energy.gov/guidance/detail_search.aspx?IDQuestion=658&pid=2&spid=1).

energy information under more than one test procedure, particularly if the energy descriptor stays the same. (AHAM, No. 2 at p. 2)

AHAM stated that its concerns are most acute when the amended test procedure impacts measured energy, in which case, a manufacturer could choose the test procedure that will permit CCWs to meet the standard and make more advantageous energy-related claims. AHAM believes that this concern does not disappear if DOE requires a translation equation or “crosswalk” from one standard to another because such a translation equation, at best, provides an estimate of a CCW’s measured energy use, but it cannot accurately represent the measured energy of every CCW. AHAM noted that the translation equations represent an average approximation, but that approximation is only based on the test results from a subset of models on the market. According to AHAM, EPCA does not contemplate the use of approximate values to make energy-related representations. (AHAM, No. 2 at p. 2)

Finally, AHAM stated it believes that DOE’s permitted use of different test procedures to demonstrate compliance with standards presents challenges for verification. Because third parties could also test with either test procedure, and a translation equation only provides an approximation, third parties may get different results than the manufacturers if the third parties use a different procedure. AHAM stated that should DOE proceed, over AHAM’s strong objection, to permit early compliance with appendix J2 through the use of translation equations, AHAM requests that DOE specify that third party testing and verification testing must be done using the same test procedure that was used for certification purposes. (AHAM, No. 2 at p. 3)

ALS also strongly objected to allowing the early use of appendix J2 before it will become mandatory in 2018. (ALS, No. 4 at p. 1) ALS also stated that it strongly objects to the use of translation equations developed by DOE, which are based on testing of limited numbers of existing models, but may not have included all existing compliant models. ALS believes that EPCA does not allow using translation equations, which may not guarantee that all existing certified models, which were certified based on tests to appendix J1, would remain in compliance to the minimum standard when judged by testing to appendix J2 and employing the translation equations. (ALS, No. 4 at p. 1)

DOE did not receive any comments objecting to the translation equations as proposed, aside from the issue of whether to permit the use of appendix J2 in conjunction with the translation equations to determine compliance with the current standards, as described in the previous section.

In consideration of the comments received, DOE has determined it will not adopt the translation equations. Today's final rule requires that manufacturers of CCWs use appendix J1 to demonstrate compliance with the current standards established by the January 2010 final rule. The use of appendix J2 will be required to demonstrate compliance with any amended energy conservation standards to be published in a final rule by January 1, 2015.

Today's final rule also amends 10 CFR 431.152 to provide clarifying definitions for the energy and water descriptors for CCWs to better differentiate between the two test procedures. Consistent with the current CCW standards, the amendments define MEF and WF as the

modified energy factor and water factor values, respectively, calculated using appendix J1. To accommodate any future amended standards for CCWs, the amendments define  $MEF_{J2}$  and IWF as the modified energy factor and integrated water factor values, respectively, calculated using appendix J2.<sup>7</sup> Since the calculated value of modified energy factor in appendix J2 is not equivalent to the calculated value of modified energy factor in appendix J1, adding the “J2” subscript to the appendix J2 MEF descriptor will avoid any potential ambiguity that would result from using the same energy descriptor for both test procedures.

#### B. Drying Energy Calculation

Section 4.3 of appendix J2 provides the calculation of per-cycle energy consumption for removal of moisture from the test load (*i.e.*, the drying energy), which is one of the energy components used to calculate MEF. The drying energy is calculated as the product of: (1) the weighted average load size; (2) the remaining moisture content minus 4%; (3) the dryer usage factor of 0.91; and (4) the nominal energy required for a clothes dryer to remove moisture from clothing, defined as 0.5 kWh/lb.

In the February 2014 NOPR, DOE responded to comments received from interested parties as part of the concurrent energy conservation standards rulemaking for CCWs. 79 FR 8112, 8116-18. Southern Company had requested that DOE incorporate a variable DEF, and the National Resources Defense Council (NRDC) and the Appliance Standards Awareness Project (ASAP) suggested that DOE should account for the percentage of market features such as dryer moisture sensors or timer-activated termination controls in commercial clothes dryers. 79 FR 8112, 8117. In response, DOE explained in the February 2014 NOPR that the calculation of

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<sup>7</sup> In the March 2014 standards NOPR, DOE proposed amended standards for CCWs based on the MEF and IWF metrics as measured using appendix J2.

drying energy in the clothes washer test procedure is only intended to provide a nominal estimate of associated drying energy that can be used to distinguish among clothes washer models that provide varying degrees of remaining moisture in the clothing load, which provides a consistent basis of comparison across all types of clothes washers. Id. In addition, DOE stated that it did not have consumer usage data that would indicate how consumer usage of commercial clothes dryers might differ from residential clothes dryers. Id. DOE also did not have data indicating the prevalence of features in commercial clothes dryers, such as moisture sensors, that would affect the drying times. Id. Such data would be required to support any changes in the test procedure calculations. Therefore, DOE did not propose any changes to the drying energy calculation.

In its comments submitted in response to the February 2014 NOPR, AHAM agrees that the calculation of drying energy in the clothes washer test procedure is intended to provide a nominal estimate of associated drying energy that can be used to distinguish clothes washer models by degree of remaining moisture in the clothing load, which provides a consistent basis on which to compare clothes washers. AHAM also confirms that consumer usage data is not available to indicate how consumer usage of commercial clothes dryers might differ from residential clothes dryers, or the prevalence of features in commercial clothes dryers, such as moisture sensors, that would affect the drying times. AHAM agrees that such data would be required in order for DOE to amend the test procedure and therefore supports DOE's decision not to amend the test procedure in the absence of such data. (AHAM, No. 2 at p. 3)

ALS supports DOE's response that the drying energy calculation is intended to be a nominal estimate of drying energy. ALS also supports DOE's response that data does not exist

on the prevalence of moisture sensors or other features on commercial clothes dryers, which would be needed to support the test procedure change. (ALS, No. 4 at pp. 1-2)

DOE received no additional comments in support of amending the dryer energy calculation for CCWs. Today's final rule does not include any changes to the drying energy calculation for CCWs.

### C. Water Heating Calculation

Section 4.1.3 of appendix J2 provides the calculation of total weighted per-cycle hot water energy consumption (i.e., the water heating energy), which is one of the energy components used to calculate MEF. The water heating energy calculations assume a 100% efficient electric water heater that provides a water heating value of 0.00240 kWh/gal/°F. Section 4.1.4 of the test procedure also provides a conversion for gas water heating, assuming a gas water heater efficiency of 75%. However, the gas water heating calculation is not used in any calculations within the DOE test procedure; rather, it is only used with the Federal Trade Commission's EnergyGuide label for calculating the estimated yearly cost of a clothes washer when used with a natural gas water heater. (16 CFR 305, Appendix L).

As part of the concurrent energy conservation standards rulemaking for CCWs, Southern Company had suggested that the assumed water heater efficiencies should be updated as the weighted efficiency of installed water heaters changes over time, as electric heat pump water heaters and gas condensing water heaters gain market share. DOE responded in the February 2014 NOPR that, much like the drying energy calculation described in the previous section of

this notice, the calculation of water heating energy in the clothes washer test procedure is only intended to provide a nominal estimate of water heating energy that can be used to distinguish among clothes washer models that use different amounts of hot water, which provides a consistent basis of comparison across all types of clothes washers. Therefore, DOE did not propose any changes to the water heating calculation for CCWs in the February 2014 NOPR. 79 FR 8112, 8117-18.

ALS supports DOE's response that the calculation for water heating is intended to provide a nominal estimate of water heating energy. ALS noted that the existing test procedure uses electric water heating for the water heating calculation, even though other types of water heating (including gas, solar, and steam water heating) are in use throughout the United States. (ALS, No. 4 at p. 2) AHAM agrees with DOE's decision not to amend the water heating calculation and its reasoning for making that determination. (AHAM, No. 2 at p. 3)

DOE received no comments in support of amending the water heating calculation for CCWs. Today's final rule does not include any changes to the water heating calculation for CCWs.

#### D. Temperature Use Factors

Table 4.1.1 of appendix J2 provides the Temperature Use Factors (TUFs), which represent the percentage of wash cycles performed by end-users at each available wash/rinse temperature. For a clothes washer with cold, warm, and hot wash cycles (all with cold rinse),

which DOE testing indicates is the most common combination found on CCWs, the TUFs are assigned as follows: cold wash 37%; warm wash 49%; and hot wash 14%.

As part of the concurrent energy conservation standards rulemaking for CCWs, NRDC and ASAP had suggested that the cold temperature usage factor of 37% should be corroborated for the commercial environment. DOE responded that it did not have consumer usage data indicating the prevalence of cold wash cycles performed on CCWs. Such data would be required to consider any changes in the test procedure calculations. Therefore, DOE did not propose any changes to the TUFs. 79 FR 8112, 8118.

ALS supports DOE's response that DOE does not have usage data indicating the prevalence of cold wash cycles being used on CCWs. (ALS, No. 4 at p. 2) AHAM supports DOE's decision not to amend the TUFs in the absence of such necessary data. (AHAM No. 2 at p. 4)

DOE received no comments in support of amending the TUFs for CCWs. Today's final rule does not include any changes to the TUFs for CCWs.

#### E. Technical Correction to 10 Code of Federal Regulations 429.46

Currently, 10 CFR 429.46(a)(2)(ii) includes "water factor" in the list of measures of energy or water consumption for which consumers would favor a higher value. However, a higher water factor value indicates higher (i.e., less favorable) water consumption. Therefore, water factor should be listed in part 429.46(a)(2)(i) as one of the measures of energy or water



consumption for which consumers would favor a lower value. Today's final rule corrects this technical error.

#### **IV.Procedural Issues and Regulatory Review**

##### **A. Review Under Executive Order 12866**

The Office of Management and Budget (OMB) has determined that test procedure rulemakings do not constitute “significant regulatory actions” under section 3(f) of Executive Order 12866, Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993). Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) in OMB.

##### **B. Review under the Regulatory Flexibility Act**

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires preparation of an final regulatory flexibility analysis (FFRA) 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. 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 DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's website: <http://energy.gov/gc/office-general-counsel>.

DOE reviewed today's final rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. DOE has concluded that the

rule would not have a significant impact on a substantial number of small entities. The factual basis for this certification is as follows:

The Small Business Administration (SBA) considers a business entity to be a small business, if, together with its affiliates, it employs less than a threshold number of workers specified in 13 CFR part 121. These size standards and codes are established by the 2007 North American Industry Classification System (NAICS). The threshold number for NAICS classification code 333312—which applies to commercial laundry, dry cleaning, and pressing machine manufacturers—is 500 employees. Searches of the SBA website<sup>8</sup> to identify CCW manufacturers within this NAICS classification number did not identify any small businesses that manufacture CCWs. Additionally, DOE checked its own publicly available Compliance Certification Database<sup>9</sup> to identify manufacturers of CCWs and also did not identify any manufacturers of CCWs that employ less than 500 people. In addition, today’s final rule does not implement any physical changes to the test methods; it merely clarifies compliance dates and corrects a reporting requirement.

For these reasons, DOE concludes and certifies that today’s final rule will not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking. DOE has transmitted the certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the SBA for review under 5 U.S.C. 605(b).

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<sup>8</sup> A searchable database of certified small businesses is available online at: [http://dsbs.sba.gov/dsbs/search/dsp\\_dsbs.cfm](http://dsbs.sba.gov/dsbs/search/dsp_dsbs.cfm).

<sup>9</sup> DOE’s Compliance Certification Database is available online at: <http://www.regulations.doe.gov/certification-data>.

### C. Review Under the Paperwork Reduction Act of 1995

Manufacturers of CCWs must certify to DOE that their equipment complies with any applicable energy conservation standards. In certifying compliance, manufacturers must test their equipment according to the DOE test procedures for CCWs, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including CCWs. 76 FR 12422 (March 7, 2011). The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been approved by OMB under OMB control number 1910-1400. Public reporting burden for the certification is estimated to average 20 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

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

### D. Review Under the National Environmental Policy Act of 1969

In this final rule, DOE amends its test procedure for CCWs. DOE 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 (42 U.S.C. 4321 et seq.) and DOE's implementing regulations at 10 CFR part 1021. Specifically, this rule amends an existing rule without affecting the amount, quality or distribution of energy usage, and, therefore, will not result in any

environmental impacts. Thus, this rulemaking is covered by Categorical Exclusion A5 under 10 CFR part 1021, subpart D, which applies to any rulemaking that interprets or amends an existing rule without changing the environmental effect of that rule. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

#### E. Review Under Executive Order 13132

Executive Order 13132, “Federalism,” 64 FR 43255 (August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE examined this final rule and determined that it will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the equipment that is the subject of today’s final rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)) No further action is required by Executive Order 13132.

#### F. Review Under Executive Order 12988

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

#### G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Pub. L. No. 104-4, sec. 201 (codified at 2 U.S.C. 1531) For a regulatory action resulting in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year (adjusted

annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed “significant intergovernmental mandate,” and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820; also available at <http://energy.gov/gc/office-general-counsel>. DOE examined today’s final rule according to UMRA and its statement of policy and determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure of \$100 million or more in any year, so these requirements do not apply.

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

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105-277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. Today’s final rule will 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.

#### I. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, “Governmental Actions and Interference with Constitutionally Protected Property Rights” 53 FR 8859 (March 18, 1988),

that this regulation will not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for 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 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed today's final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. 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 OMB, a Statement of Energy Effects for any significant energy action. A "significant energy action" is defined as any action by an agency that promulgated or is expected to lead to 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 significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use if the regulation is implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

Today's regulatory action is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95-91; 42 U.S.C. 7101), DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. (15 U.S.C. 788; FEAA) Section 32 essentially provides in relevant part that, where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (FTC) concerning the impact of the commercial or industry standards on competition. DOE is not requiring the use of any commercial standards in this rulemaking, so these requirements do not apply.

M. Congressional Notification

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



## **V. Approval of the Office of the Secretary**

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

### **List of Subjects**

#### **10 CFR Part 429**

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Reporting and record-keeping requirements.

#### **10 CFR Part 431**

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances.

Issued in Washington, DC, on November 24, 2014



Kathleen B. Hogan  
Deputy Assistant Secretary for Energy Efficiency  
Energy Efficiency and Renewable Energy

For the reasons stated in the preamble, DOE is proposing to amend parts 429 and 431 of Chapter II of Title 10, Code of Federal Regulations as set forth below:

**PART 429 -- CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR  
CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT**

1. The authority citation for part 429 continues to read as follows:

**Authority:** 42 U.S.C. 6291–6317.

2. Section 429.46 is amended by:

- a. Revising paragraphs (a)(2)(i), (a)(2)(ii), and (b)(2) as follows:

**§ 429.46 Commercial clothes washers.**

(a) \* \* \*

(2) \* \* \*

(i) Any represented value of the water factor or other measure of energy or water consumption of a basic model for which consumers would favor lower values shall be greater than or equal to the higher of:

\* \* \* \* \*

(ii) Any represented value of the modified energy factor or other measure of energy or water consumption of a basic model for which consumers would favor higher values shall be greater than or equal to the higher of:

\* \* \* \* \*

(b) \* \* \*

(2) Pursuant to §429.12(b)(13), a certification report shall include the following public product-specific information:

(i) If testing was conducted using Appendix J1 to subpart B of 10 CFR Part 430: The modified energy factor (MEF) in cubic feet per kilowatt hour per cycle (cu ft/kWh/cycle); and the water factor (WF) in gallons per cubic feet per cycle (gal/cu ft/cycle);

(ii) If testing was conducted using Appendix J2 to subpart B of 10 CFR Part 430: The modified energy factor (MEF<sub>J2</sub>) in cu ft/kWh/cycle and the integrated water factor (IWF) in gal/cu ft/cycle.

## **PART 431 - ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT**

3. The authority citation for part 431 continues to read as follows:

**Authority:** 42 U.S.C. 6311-6317

4. Section 431.152 is amended by adding in alphabetical order the definitions for IWF, MEF, MEF<sub>J2</sub>, and WF.

### **§ 431.152 Definitions concerning commercial clothes washers.**

IWF means integrated water factor, in gallons per cubic feet per cycle (gal/cu ft/cycle), as determined in section 4.2.13 of Appendix J2 to subpart B of 10 CFR Part 430.

MEF means modified energy factor, in cubic feet per kilowatt hour per cycle (cu ft/kWh/cycle), as determined in section 4.4 of Appendix J1 to subpart B of 10 CFR Part 430.

MEF<sub>J2</sub> means modified energy factor, in cu ft/kWh/cycle, as determined in section 4.5 of Appendix J2 to subpart B of 10 CFR Part 430.

WF means water factor, in gal/cu ft/cycle, as determined in section 4.2.3 of Appendix J1 to subpart B of 10 CFR Part 430.

5. Section 431.154 is amended as follows:

**§ 431.154 Test procedures.**

The test procedures for clothes washers in Appendix J1 to subpart B of part 430 of this title must be used to test commercial clothes washers to determine compliance with the energy conservation standards at 10 CFR 431.156(b). The test procedures for clothes washers in Appendix J2 to subpart B of part 430 of this title must be used to determine compliance with any amended standards based on Appendix J2 efficiency metrics published after [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].