



[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: Notice of proposed rulemaking.

SUMMARY: The U.S. Department of Energy (DOE) proposes to revise its test procedures and certification reporting requirements for commercial clothes washers established under the Energy Policy and Conservation Act. The proposed amendments provide numerical equations for translating modified energy factor and water factor values as measured using DOE's new clothes washer test procedure into their equivalent values as measured using the current test procedure. The proposed amendments also clarify the dates for which the current and new test procedures can be used to determine compliance with existing energy conservation standards and any future revised energy conservation standards for commercial clothes washers.

DATES: DOE will accept comments, data, and information regarding this notice of proposed rulemaking (NOPR) no later than **[INSERT DATE 75 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. See section V, "Public Participation," for details. DOE will hold a public meeting on this proposed test procedure if one is requested by

[INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Any comments submitted must identify the NOPR for Test Procedures for Commercial Clothes Washers, and provide docket number EERE-2013–BT–TP–0002 and/or regulatory information number (RIN) number 1904-AC93. Comments may be submitted using any of the following methods:

1. Federal eRulemaking Portal: www.regulations.gov. Follow the instructions for submitting comments.
2. E-mail: CCW2013TP0002@ee.doe.gov Include the docket number and/or RIN in the subject line of the message.
3. Mail: Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE-2J, 1000 Independence Avenue, SW., Washington, DC, 20585-0121. If possible, please submit all items on a CD. It is not necessary to include printed copies.
4. Hand Delivery/Courier: Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L’Enfant Plaza, SW., Suite 600, Washington, DC, 20024. Telephone: (202) 586-2945. If possible, please submit all items on a CD. It is not necessary to include printed copies.

For detailed instructions on submitting comments and additional information on the rulemaking process, see section V of this document (Public Participation).

Docket: The docket, which includes Federal Register notices, 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.

For further information on how to submit a comment, review other public comments and the docket, or participate in the public meeting, contact Ms. Brenda Edwards at (202) 586-2945 or by email: Brenda.Edwards@ee.doe.gov.

FOR FURTHER INFORMATION CONTACT:

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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. (All references to EPCA refer to the statute as amended through the American Energy Manufacturing Technical Corrections Act, Pub. L. 112-210 (Dec. 18, 2012)). 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. 6311–6317, as codified), establishes the “Energy Conservation Program for Certain Industrial Equipment.” The program includes commercial clothes washers, the subject of today’s proposed rulemaking. (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 products must use as the basis for (1) certifying to DOE that their products comply with the applicable energy conservation standards adopted under EPCA, and (2) making representations about the efficiency of those products. Similarly, DOE must use these test procedures to determine whether the products comply with any relevant standards promulgated under EPCA.

The Energy Policy Act of 2005 (EPACT) established the first energy conservation standards for commercial clothes washers. (42 U.S.C. 6313(e)(1)) EPACT directed DOE to conduct two rulemakings to determine whether the established standards should be amended. DOE published its first final rule amending commercial clothes washer standards on January 8, 2010 (“January 2010 final rule”), which applies to commercial clothes washers manufactured on or after January 8, 2013. EPACT required the second final rule to be published by January 1, 2015. Any amended standards would apply to commercial clothes washers manufactured three years after the date on which the final amended standard is published. (42 U.S.C. 6313(e)(2)(B)) DOE is currently conducting its second standards rulemaking to satisfy this requirement.¹

The commercial clothes washer standards established by the January 2010 final rule are based on energy and water metrics as measured using the DOE test procedure for both residential and commercial clothes washers at 10 CFR part 430, subpart B, appendix J1 (“appendix J1”). On March 7, 2012, DOE published a final rule amending its test procedures for clothes washers (“March 2012 final rule”). (77 FR 13888) The March 2012 final rule included minor

¹ Docket number EERE-2012-BT-STD-0020. For more information, see DOE’s commercial clothes washer rulemaking webpage at http://www1.eere.energy.gov/buildings/appliance_standards/product.aspx/productid/46.

amendments to appendix J1 and also established a new test procedure at 10 CFR part 430, subpart B, appendix J2 (“appendix J2”). Beginning March 7, 2015, manufacturers of residential clothes washers will be required to use appendix J2 to demonstrate compliance with standards. Beginning March 7, 2015, manufacturers of commercial clothes washers may use either appendix J1 or appendix J2 to demonstrate compliance with the current standards established by the January 2010 final rule. Manufacturers using appendix J2 would be required to use the conversion equations proposed in this NOPR 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 to be published in a final rule by January 1, 2015, and the conversion equations would no longer be used at that time.

In today’s proposed rule, DOE proposes to amend its test procedure and certification reporting requirements for commercial clothes washers as described in section II. Under 42 U.S.C. 6314, EPCA sets forth the criteria and procedures DOE must follow when prescribing or amending test procedures for covered products. EPCA provides in relevant part that any test procedures prescribed or amended under this section shall be reasonably designed to produce test results which measure energy efficiency, energy use or estimated annual operating cost of a covered product during a representative average use cycle or period of use and shall not be unduly burdensome to conduct. (42 U.S.C. 6314(a)(2))

In addition, if DOE determines that a test procedure amendment is warranted, it must publish proposed test procedures and offer the public an opportunity to present oral and written comments on them. (42 U.S.C. 6314(b)(2))

II. Summary of the Notice of Proposed Rulemaking

In this NOPR, DOE proposes amending its test procedure and certification reporting requirements for commercial clothes washers by adding equations for translating modified energy factor (MEF) and water factor (WF) values as measured using appendix J2 into their equivalent values as measured using appendix J1. This translation would be required for manufacturers that make representations of energy efficiency (including representations in certification reports) based on testing conducted in accordance with appendix J2 before the effective date of any amended standards to be published in a final rule by January 1, 2015.

DOE also proposes to amend the definitions for commercial clothes washers in 10 CFR 430.152 to clarify the nomenclature used to differentiate the energy and water efficiency metrics in appendix J1 and appendix J2, as applicable to commercial clothes washers.

Finally, DOE also responds to comments from interested parties regarding the commercial clothes washer test procedure that DOE received in response to the framework document and public meeting for the energy conservation standards rulemaking for commercial clothes washers.²

III. Discussion

As described in section I, the March 2012 final rule established a new test procedure at appendix J2, which is required to be used for residential clothes washers beginning March 7,

² The framework document for the energy conservation standards rulemaking for commercial clothes washers is available at DOE's rulemaking webpage: http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx/ruleid/56. All rulemaking documents, including comments from interested parties, are also available at www.regulations.gov, under Docket # EERE-2012-BT-STD-0020.

2015, to demonstrate compliance with amended energy conservation standards for residential clothes washers. Beginning March 7, 2015, manufacturers of commercial clothes washers may also use appendix J2 to demonstrate compliance with current energy conservation standards for commercial clothes washers.

Both appendix J1 and appendix J2 contain provisions for calculating MEF and WF. In today's rule, DOE proposes to provide numerical equations for translating the MEF and WF values calculated using appendix J2 into their equivalent appendix J1 values. Manufacturers would be required to use these equations when testing pursuant to the appendix J2 test procedure to demonstrate compliance with the current commercial clothes washer standards, which are based on MEF and WF values as measured using appendix J1. DOE also proposes new designations for the appendix J2 metrics: (1) MEF_{J2} , defined as the modified energy factor value calculated in section 4.5 of appendix J2, and (2) WF_{J2} , defined as the water factor value calculated in section 4.2.12 of appendix J2. These new metric designations would be codified at 10 CFR 431.152. The translation equations would be codified within the certification requirements at 10 CFR 429.46(b). DOE also proposes to amend section 429.46 to clarify that beginning March 7, 2015, manufacturers may use either appendix J1 or, alternatively, appendix J2 in conjunction with the proposed translation equations, to demonstrate compliance with existing energy conservation standards for commercial clothes washers. Appendix J2 would be required to demonstrate compliance with any amended standards based on appendix J2 efficiency metrics, and the conversion equations would not be used at that time.

The proposed equations for translating MEF and WF values measured under appendix J2 to equivalent appendix J1 values were obtained as described in the discussion that follows.

A. Top-Loading Translation Equations

DOE tested a representative sample of top-loading commercial clothes washers currently on the market to determine the MEF and WF equations. Data from DOE's tests are shown in Figure 1 and Figure 2 below. DOE's test sample included baseline models that minimally comply with the existing standards as well as higher-efficiency models that span the available range of efficiencies on the market. Due to the relatively small number of models currently available on the market, DOE supplemented its test sample with models manufactured before the amended standards became effective on January 8, 2013.³ DOE observed that the MEF translations for top-loading commercial clothes washers are closely correlated with the type of water fill control system.⁴ Therefore, DOE proposes separate MEF equations for each water fill control system type. DOE proposes a single WF equation for all top-loading commercial clothes washers because DOE has not observed any significant difference in WF translation between

³ For top-loading commercial clothes washers, differences between MEF and MEF_{J2} for the same model are largely due to differences in the capacity measurement in section 3.1 of both appendices and the equation in section 4.3 of both appendices for calculating per-cycle energy consumption for removal of moisture from the test load (i.e., the "drying energy"). DOE has tested products manufactured both before and after January 8, 2013 and observed that, for a given model, the differences in capacity and drying energy according to appendix J1 and appendix J2 are independent of the unit's efficiency level. Therefore, for each product type, a single linear translation curve can be used that includes models manufactured both before and after the compliance date of the recently amended standards.

⁴ This correlation is largely due to the revised formula in section 4.3 of appendix J2 for calculating the drying energy. In appendix J1, the drying energy calculation includes a load size adjustment factor of 0.52 for all clothes washer types; whereas, in appendix J2, the drying energy calculation is based on the load usage factors listed in Table 4.1.3 of appendix J2, which differ according to the type of water fill control system available on the clothes washer. The amended drying energy calculation in appendix J2 provides greater consistency with the calculations for determining machine electrical energy and hot water heating energy. For a full description of this amendment, see the residential clothes washer test procedure final rule published in the Federal Register on March 7, 2012. 77 FR 13888, 13914.

manual and automatic⁵ water fill control system types. Figure 1 and Figure 2 show the MEF and WF translation curves, respectively. The proposed equations are as follows, where MEF_{J2} and WF_{J2} are the values of modified energy factor and water factor, respectively, obtained using appendix J2:

- i) MEF for top-loading commercial clothes washers with manual water fill:

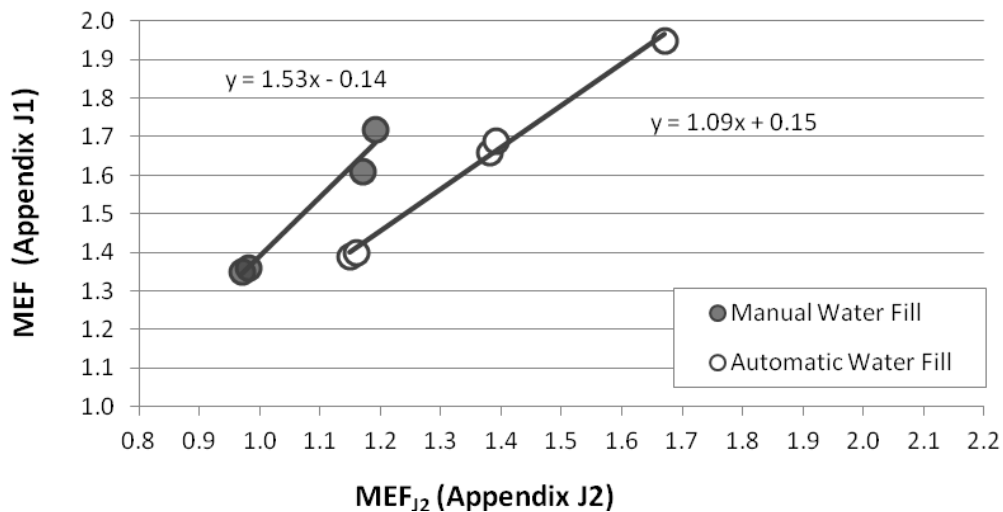
$$MEF = (MEF_{J2} \times 1.53) - 0.14$$

- ii) MEF for top-loading commercial clothes washers with automatic water fill:

$$MEF = (MEF_{J2} \times 1.09) + 0.15$$

- iii) WF for all top-loading commercial clothes washers:

$$WF = (WF_{J2} \times 0.81) + 1.33$$



⁵ The term “automatic” water fill used here refers to water fill control systems that determine the water fill level without requiring user intervention or actions. This includes “adaptive” water fill control systems and “fixed” water fill control systems, available on some commercial clothes washers, that provide a fixed water level for all load sizes and no water fill selector or water fill control settings available to the user. Clothes washers with fixed water fill control systems are tested in the same manner as clothes washers with adaptive water fill control systems.

Figure 1: MEF Translation Curves for Top-Loading Commercial Clothes Washers

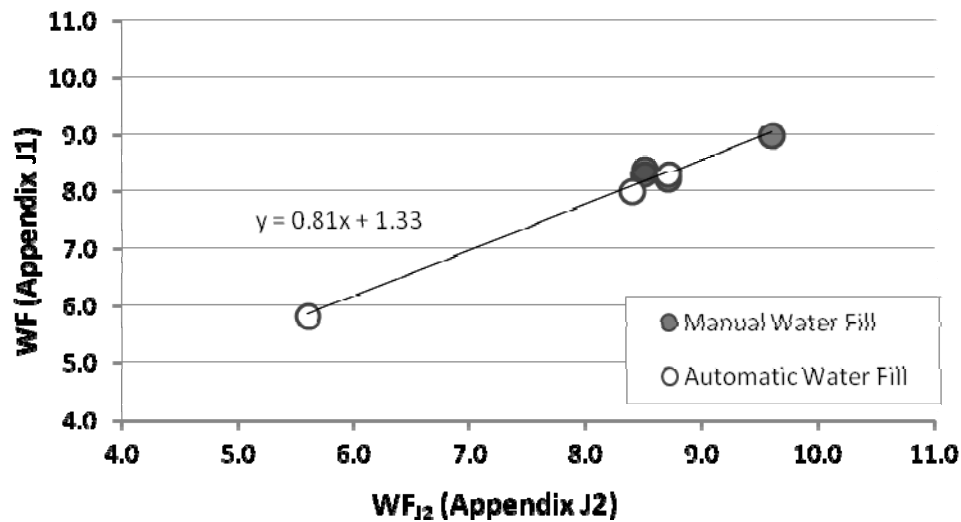


Figure 2: WF Translation Curve for Top-Loading Commercial Clothes Washers

B. Front-Loading Translation Equations

DOE tested a representative sample of front-loading commercial clothes washers currently on the market to determine the MEF and WF equations. Data from DOE's tests are shown in Figure 3 and Figure 4 below. DOE's test sample included baseline models that minimally comply with the existing standard as well as higher-efficiency models that span the available range of efficiencies on the market. As with the top-loading commercial clothes washers, due to the relatively small number of models currently available on the market, DOE supplemented its front-loading test sample with models manufactured before the amended standards became effective on January 8, 2013. DOE proposes a single equation for both MEF and WF for all front-loading commercial clothes washers because all front-loading commercial clothes washers on the market use automatic water fill controls. Figure 3 and Figure 4 show the MEF and WF translation curves, respectively. The crosswalk equations are as follows:

i) $MEF = (MEF_{J2} \times 1.13) + 0.14$

ii) $WF = WF_{J2}$

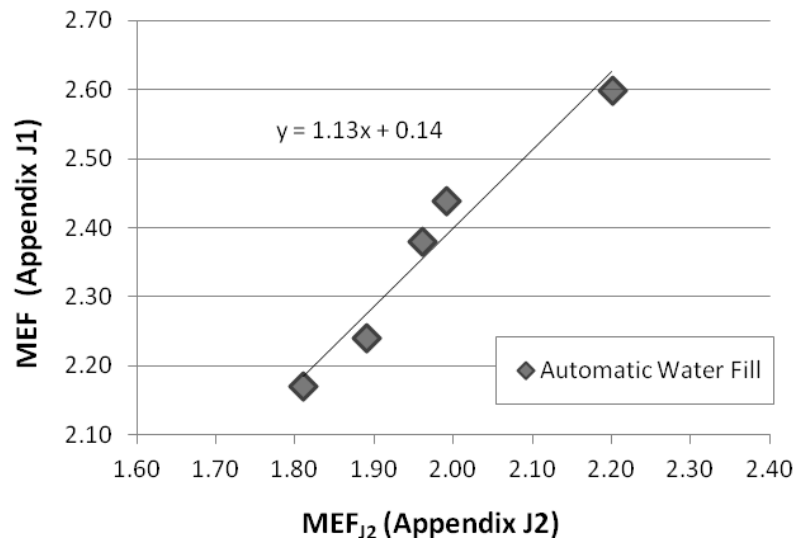


Figure 3: MEF Translation Curve for Front-Loading Commercial Clothes Washers

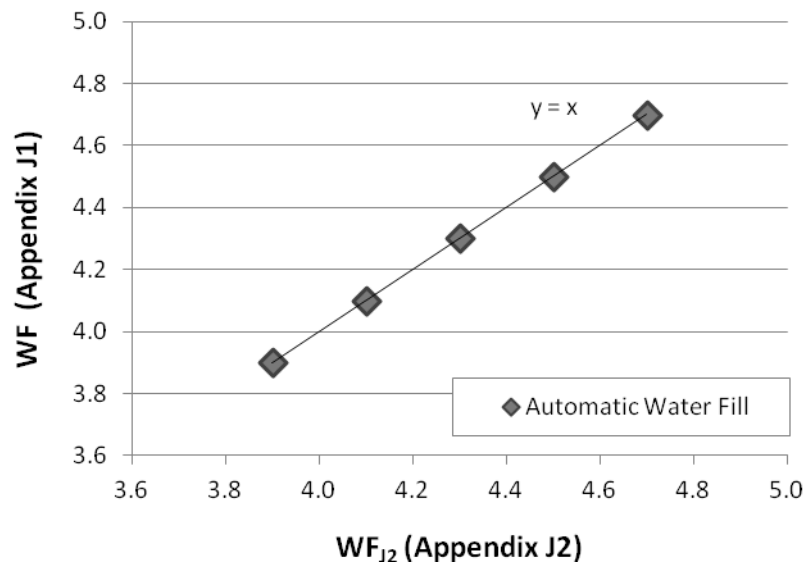


Figure 4: WF Translation Curve for Front-Loading Commercial Clothes Washers

C. Responses to Comments Received from Standards Rulemaking

In response to the framework document and public meeting for the energy conservation standards rulemaking for commercial clothes washers, DOE received comments from interested parties regarding the test procedure. DOE responds to those comments in the discussion that follows.

1. Use of Appendix J2 and Translation Equations

The Association of Home Appliance Manufacturers (AHAM) proposed that DOE not require the use of appendix J2 for compliance with commercial clothes washer standards until such time as DOE requires compliance with amended standards. AHAM stated that it understands the stated reasoning for requiring manufacturers to transition to appendix J2 in March 2015 but questioned whether it is necessary to require that transition prior to amended standards for commercial clothes washers. (AHAM, No. 6 at p. 2)⁶

Alliance Laundry Systems (ALS) supports allowing the continued use of appendix J1 from March 7, 2015, until the effective date of any amended 2018 standards. ALS asserted that that any existing basic model currently in production must still be valid after any test procedure change. (ALS, Public Meeting Transcript, No. 12 at pp. 25-26; ALS, No. 16 at p. 1).

⁶ A notation in this form provides a reference for information that is in the docket for DOE's rulemaking to develop energy conservation standards for commercial clothes washers (Docket No. EERE-2012-BT-STD-0020), which is maintained at www.regulations.gov. This notation indicates that AHAM's statement preceding the reference can be found in document number 6 in the docket, and appears at page 2 of that document.

Pacific Gas and Electric Company, Southern California Gas Company, and San Diego Gas and Electric Company (collectively, the “California Utilities”) support DOE’s proposal to develop correction factors that would become effective for current standards on March 7, 2015, when the new appendix J2 test procedure takes effect, because the new test procedure is different than the previous appendix J1 test procedure. (California Utilities, No. 8 at pp. 1-2)

DOE has established both appendix J1 and appendix J2 as test procedures for clothes washers. Manufacturers of residential clothes washers must use appendix J2 to demonstrate compliance with the amended standards for residential clothes washers, which were developed using appendix J2, on March 7, 2015. Consistent with EPCA requirements at 42 U.S.C. 6314(a)(8), DOE proposes to allow manufacturers of commercial clothes washers to use either appendix J1 or, alternatively, appendix J2 in conjunction with the proposed translation equations, to demonstrate compliance with existing energy conservation standards, which are based on appendix J1. The use of appendix J2 would be required to demonstrate compliance with any amended standards for commercial clothes washers to be published in a final rule by January 1, 2015, which would be based on appendix J2 metrics.

2. Separate Provisions for Commercial Clothes Washers

The Appliance Standards Awareness Project (ASAP) suggested that the residential clothes washer test procedure could contain a separate section containing procedures applicable only to commercial clothes washers. (ASAP, Public Meeting Transcript, No. 12 at p. 37)

The Northwest Energy Efficiency Alliance (NEEA) commented that DOE should consider further investigation and possible modification of the test procedure to accurately reflect commercial clothes washer typical usage patterns. NEEA stated that commercial clothes washers are often used in a different manner than residential clothes washers; for example, commercial clothes washers are often subject to larger load sizes and are not generally used to wash small loads due to fixed costs to wash a load. NEEA believes that by reflecting accurate appliance usage in the test procedure, the standards would achieve greater energy savings in the field. (NEEA, No. 10 at p. 2)

DOE received more specific comments on these issues, and responds to them in the paragraphs that follow.

a. 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 DEF, the nominal energy required for a clothes dryer to remove moisture from clothing, defined as 0.5 kWh/lb.

Southern Company commented that the test procedure should incorporate a variable DEF, stating that the energy used for drying clothes in a dryer is not an automated process, and is

highly dependent on consumer behavior. Southern Company believes that the current DEF factor of 0.5 kWh/lb appears to assume perfect operation and efficiency of drying, and suggests that DOE should determine reasonable values for the clothes dryer energy for both residential and commercial clothes dryers, which are likely to be different, and then use a weighted average value for variable DEF and any other relevant energy factors. (Southern Company, No. 9 at pp.1-2). Furthermore, Southern Company commented that the Electric Power Research Institute has performed metering of residential clothes washers and dryers in real-life situations, and preliminary findings indicate very little dryer energy savings from reduced moisture content in the clothes washers. (Southern Company, Public Meeting Transcript, No. 12 at p. 24) Southern Company suggests that DOE make assumptions about the percentage in the market of features such as dryer moisture sensors and incorporate those into the test procedure. (Southern Company, Public Meeting Transcript, No. 12 at p. 36)

The National Resources Defense Council and Appliance Standards Awareness Project (NRDC and ASAP) jointly commented that DOE should consider the prevalence of timer-activated termination controls in commercial dryers. The commenters stated that the energy savings in commercial clothes washers achieved by reducing the remaining moisture content of clothing at the end of the wash cycle is largely dependent on moisture-sensing termination controls in commercial dryers. NRDC and ASAP cited a 2009 report on residential clothes dryers that found that termination control strategies can vary in effectiveness and that actual dryer energy varied by 20-30 percent for the same load, largely because energy use at the end of cycle is not being captured in the current dryer test procedure. (NRDC and ASAP, No. 11 at p. 2) NRDC also commented that it is more common for commercial dryers to be operated on a time-

dry basis rather than a moisture sensing basis. NRDC believes DOE should collect data on the existing stock of dryers in the commercial setting, and the availability of a sensor dry feature in today's stock of commercial dryers. (NRDC, Public Meeting Transcript, No. 12 at pp. 26-27)

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 among clothes washer models that provide varying degrees of remaining moisture in the clothing load, to provide a consistent basis of comparison applied across all types of clothes washers. In addition, DOE does not have consumer usage data that would indicate how consumer usage of commercial clothes dryers might differ from residential clothes dryers. DOE also does not have data indicating the prevalence of features in commercial clothes dryers such as moisture sensors that would affect the drying times. Such data would be required to support any changes in the test procedure calculations.

b. 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 the calculation of MEF or WF.

Southern Company commented that these water heater efficiencies are reasonable assumptions, but 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. Southern Company further noted that these assumptions are reasonable because water heater energy usage is not dependent on consumer behavior, but is an automatic process. (Southern Company, No. 9 at pp. 1-2)

DOE recognizes that the household water heater market includes a wide variety of water heater types at different efficiency levels and using different fuel sources. DOE notes, however, that the calculation of water heating energy in the clothes washer test procedure is intended to provide a nominal estimate of associated water heating energy that can be used to distinguish among clothes washer models that use different amounts of hot water to provide a consistent basis of comparison applied across all types of clothes washers.

c. Temperature Use Factors

Table 4.1.1 of appendix J2 provides the Temperature Use Factors (TUF), 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 commercial clothes washers, the TUFs are assigned as follows: cold wash 37%; warm wash 49%; and hot wash 14%.

NRDC and ASAP commented that the cold temperature usage factor of 37% should be corroborated for the commercial environment. (NRDC and ASAP, No. 11 at p. 2)

DOE does not have consumer usage data indicating the prevalence of cold wash cycles performed on commercial clothes washers. Such data would be required to consider any changes in the test procedure calculations.

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 the Office of Management and Budget.

B. Review under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires preparation of an initial regulatory flexibility analysis (IFRA) 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 proposed 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 website⁷ to identify commercial clothes washer manufacturers within these NAICS codes did not identify any small businesses that manufacture commercial clothes washers. Additionally, DOE checked its own publicly available Compliance Certification Database⁸ to identify manufacturers of commercial clothes washers. During its research, DOE did not identify any manufacturer of commercial clothes washers that qualify as small businesses as specified by the SBA employee limits. In addition, the rule proposes only the use of equations for translating modified energy factor and water factor values as measured using DOE's new clothes washer test procedure into their equivalent values as measured using the current test procedure. No change to the test method is proposed.

⁷ A searchable database of certified small businesses is available online at: http://dsbs.sba.gov/dsbs/search/dsp_dsbs.cfm.

⁸ DOE's Compliance Certification Database is available online at: <http://www.regulations.doe.gov/certification-data>.

For these reasons, DOE concludes and certifies that today's proposed rule, if adopted, would 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 will transmit 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).

C. Review Under the Paperwork Reduction Act of 1995

Manufacturers of commercial clothes washers must certify to DOE that their products comply with any applicable energy conservation standards. In certifying compliance, manufacturers must test their products according to the DOE test procedures for commercial clothes washers, 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 commercial clothes washers. (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 proposed rule, DOE proposes test procedure amendments that it expects will be used to develop and implement future energy conservation standards for commercial clothes washers. 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 proposed rule would amend the existing test procedures without affecting the amount, quality or distribution of energy usage, and, therefore, would 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 has examined this proposed rule and has determined that it would 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 products that are the subject of today's proposed 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, the proposed 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 proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed “significant intergovernmental mandate,” and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect 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 proposed 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. This 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.

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 would 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 proposed 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 proposed 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 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 regulatory action to amend the test procedure for measuring the energy efficiency of commercial clothes washers 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.

V. Public Participation

Submission of Comments

DOE will accept comments, data, and information regarding this proposed rule no later than the date provided in the DATES section at the beginning of this proposed rule. Interested parties may submit comments using any of the methods described in the ADDRESSES section at the beginning of this proposed rule.

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

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

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

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

Submitting comments via email, hand delivery, or mail. Comments and documents submitted via email, hand delivery, or mail also will be posted to regulations.gov. If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information on a cover

letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via mail or hand delivery, please provide all items on a CD, if feasible. It is not necessary to submit printed copies. No facsimiles (faxes) will be accepted.

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

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

Confidential Business Information. According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery two well-marked copies: one copy of the document marked confidential including all the information believed to be confidential, and one

copy of the document marked non-confidential with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) a description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

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

VI. Approval of the Office of the Secretary

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

List of Subjects

10 CFR Part 429

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

10 CFR Part 431

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

Issued in Washington, DC, on January 31, 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 revising paragraph (b)(2) to read as follows:

§ 429.46 Commercial clothes washers.

* * * * *

(b) * * *

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

(i) When testing was conducted using Appendix J1 to subpart B of 10 CFR Part 430 for units manufactured on or after January 8, 2013: 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) When testing was conducted using Appendix J2 to subpart B of 10 CFR Part 430 for units manufactured on or after January 8, 2013: The modified energy factor (MEF) in cu ft/kWh/cycle, as calculated pursuant to paragraph (b)(2)(ii)(A) of this section after applying the sampling provisions of paragraph (a) of this section; and the water factor (WF) in gal/cu ft/cycle, as

calculated pursuant to paragraph (b)(2)(ii)(B) of this section after applying the sampling provisions of paragraph (a) of this section.

(A) Calculate MEF as:

$$MEF = (MEF_{J2} \times A_{MEF}) + B_{MEF}$$

where MEF_{J2} is defined as the modified energy factor as calculated in section 4.5 of Appendix J2, and A_{MEF} and B_{MEF} are defined in Table 1:

Table 1 – Modified Energy Factor Translation Coefficients for Commercial Clothes Washers

Product Class and Water Fill Control System	A_{MEF}	B_{MEF}
Top-Loading, Manual water fill	1.53	-0.14
Top-Loading, Automatic water fill	1.09	0.15
Front-Loading	1.13	0.14

(B) Calculate WF as:

$$WF = (WF_{J2} \times A_{WF}) + B_{WF}$$

where WF_{J2} is defined as the water factor as calculated in section 4.2.12 of Appendix J2, and A_{WF} and B_{WF} are defined in Table 2:

Table 2 –Water Factor Translation Coefficients for Commercial Clothes Washers

Product Class	A_{WF}	B_{WF}
Top-Loading	0.81	1.33
Front-Loading	1.00	1.00

(iii) When using Appendix J2 to subpart B of 10 CFR Part 430 for units manufactured on or after the effective date of any amended standards for commercial clothes washers based on Appendix J2 efficiency metrics: The modified energy factor (MEF) in cu ft/kWh/cycle, as determined in section 4.5 of Appendix J2; and the integrated water factor (IWF) in gal/cu ft/cycle, as determined in section 4.2.13 of Appendix J2.

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_{J2},” “WF,” and “WF_{J2},” to read as follows:

§ 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_{J2} 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.

WF_{J2} means water factor, in gal/cu ft/cycle, as determined in section 4.2.12 of Appendix J2 to subpart B of 10 CFR Part 430.

5. Section 431.154 is revised to read as follows:

§ 431.154 Test procedures.

The test procedures for clothes washers in either Appendix J1 or Appendix J2 to subpart B of part 430 of this chapter must be used to test commercial clothes washers before the effective date of any amended standards based on Appendix J2 efficiency metrics. The test procedures for clothes washers in Appendix J2 to subpart B of part 430 of this chapter must be used to test commercial clothes washers manufactured on or after the effective date of any amended standards based on Appendix J2 efficiency metrics.

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