

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

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

III. Discussion of Direct Final Rulemaking

The Department is publishing this direct final rule without having published a Notice of Proposed Rulemaking because DOE views this amendment as noncontroversial and anticipates no significant adverse comments. However, in the event that the Department receives significant adverse comments, DOE has prepared a Notice of Proposed Rulemaking (NPR) proposing the same amendment. The Department is publishing this NPR as a separate document in this issue of today’s **Federal Register**. The direct final rule will be effective January 1, 2004, unless DOE receives significant adverse comments by December 1, 2003. If DOE receives significant adverse comments, it will withdraw the revisions before their effective date. In case of the withdrawal of this direct final rule, DOE will announce the

withdrawal in the **Federal Register**. DOE will then address all public comments in a separate final rule based on the proposed rule that DOE is publishing today. DOE will not implement a second comment period on this action. Any parties interested in commenting on this rule should do so at this time.

IV. Procedural Requirements

A. Review Under the National Environmental Policy Act of 1969

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

B. Review Under Executive Order 12866, “Regulatory Planning and Review”

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

C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–612, requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. A regulatory flexibility analysis examines the impact of the rule on small entities and considers alternative ways of reducing negative impacts. 5 U.S.C. 605. As required by Executive Order 13272, “Proper Consideration of Small Entities in Agency Rulemaking,” 67 FR 53461 (August 16, 2002), DOE published

procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process (68 FR 7990). DOE has made its procedures and policies available on the Office of General Counsel’s Web site: <http://www.gc.doe.gov>.

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

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