

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the error for the class E airspace, Bemidji, MN, as published in the **Federal Register** February 2, 2000 (65 FR 4872), (FR Doc. 00-2256), is corrected as follows:

§ 71.1 [Corrected]

1. On page 4873, Column 2, in the airspace description for Bemidji, MN, incorporated by reference in § 71.1, lines 1 and 2 and 16, correct "Bemidiji-Beltrami" to read "Bemidji-Beltrami".

Issued in Des Plaines, IL on March 15, 2000.

Christopher R. Blum,

Manager, Air Traffic Division.

[FR Doc. 00-7343 Filed 3-24-00; 8:45 am]

¹ Section 325 of EPCA, 42 U.S.C. 6295, directs DOE to develop efficiency standards for major household appliances to achieve the maximum improvement in energy efficiency for residential appliances that is technologically feasible and economically justified. As amended, the statute itself sets the initial national standards for appliances and establishes a schedule for regular DOE review of the standards for each product category.

² Appendix F defines "Compact" as including all household clothes washers with a tub capacity of less than 1.6 cubic feet or 13 gallons of water; "Standard" includes all washers with a capacity of 1.6 cubic feet or 13 gallons of water or more.

one configuration, and information respecting the energy usage of products having the other configuration may not be useful. For example, consumers wanting to stack a clothes dryer on top of their washer to conserve space would only be interested in a front loading washer. The Commission finds, therefore, that separate ranges of comparability for these products would benefit consumers. Accordingly, the Commission is * * * amending the sub-categories for clothes washers to reflect a further subdivision into top-loading and front-loading models.

59 FR 34014, 34019 (July 1, 1994).

C. The Petition to Change the Sub-categories

The Consortium for Energy Efficiency, Inc. ("CEE")³ petitioned the Commission to amend the Rule by changing the clothes washer category in Appendix F to eliminate the "Front-Loading" and "Top-Loading" subdivisions of the "Standard" and "Compact" sub-categories. CEE asserted that, because of the recent introduction of high-efficiency products from major domestic manufacturers, it is at a critical point in its efforts to promote high-efficiency clothes washers, and that its members have committed to significant expansions of their consumer-targeted campaigns to promote the purchase of these products. CEE argued that Appendix F to the Rule confuses consumers and undermines CEE's and its members' efforts to promote high-efficiency clothes washers. In its petition, CEE contended that eliminating the "Front-Loading" and "Top-Loading" subdivisions of the "Standard" and "Compact" sub-categories would remedy these concerns.

CEE asserted that, since the Commission's 1994 statement in the **Federal Register**, the clothes washer market has changed, and front-loading washers are no longer merely a niche product. According to CEE, consumer research in the Northwest has shown that a significant proportion of consumers who were shopping for top-loading machines were also interested in, and had looked at, front-loading models, and that many were ready to pay a premium for the front-loading models. The research showed that many consumers could be persuaded to

purchase front-loading washers at the point of sale.⁴

CEE explained that, because the most highly efficient clothes washers are all front-loading,⁵ an EnergyGuide comparison only among front-loading models provides an incomplete picture of the efficiencies available in the clothes washer market. According to the petition, the least efficient of the high-efficiency front-loading clothes washers, will, of necessity, appear at the "Uses Most Energy" end of the comparability range on the label attached to it, even though it consumes only half the energy that the average top-loading model does. This situation, according to CEE, confuses consumers and creates the erroneous impression that these highly-efficient products are high energy users.

CEE also asserted that the current front-loading and top-loading subdivisions are particularly problematical in connection with the DOE/EPA Energy Star Program.⁶ Under that program, all front-loading clothes washers produced by manufacturers participating in the program qualify for the Energy Star logo. This means that the label on the least energy efficient of these highly efficient products will indicate that the product "Uses Most Energy" while also bearing the Energy Star logo. CEE contended that this situation creates consumer confusion and undermines the credibility of both the EnergyGuide and Energy Star programs.

In addition, CEE noted that the Canadian EnerGuide appliance labeling program (which is very similar to the EnergyGuide Program) does not distinguish between front-loading and top-loading clothes washers for range purposes. The Canadian Program divides the clothes washer category into only the "Compact" and "Standard" sub-categories.

⁴ CEE summarized the results of the intercept interviews and surveys in its petition, which appears on the public rulemaking record in binder R611004-1-1-3. The research itself, which was a study prepared in January, 1998 by Pacific Energy Associates, Inc. under contract to the Northwest Energy Efficiency Alliance, also appears in binder R611004-1-1-3.

⁵ CEE noted one exception: one manufacturer makes a horizontal-axis, highly efficient washer that loads from the top and is thus classified as a top-loading model.

⁶ DOE and EPA staff are implementing statutory directives to promote high-efficiency household appliances in the marketplace. They have produced a joint effort called the "Energy Star" Program, which defines what constitutes a high-efficiency product and identifies products that qualify for the designation. A product's qualification for the Program is indicated by the Energy Star logo, currently either on the product or a separate Energy Star label. The Commission is considering a proposal to permit manufacturers of qualifying appliances to place the Energy Star logo on the Appliance Labeling Rule EnergyGuides.

Finally, CEE asserted that technological advances in the clothes washer industry have begun to eliminate the distinction between the front-loading and top-loading subdivisions. As examples, CEE cited the Maytag Neptune model, which has a basket that operates on an axis that is 15 degrees off of vertical and an opening mounted on a plane angled between the top and front of the machine (Maytag classifies this as a front-loading model), and the Staber Industries horizontal axis model that loads from the top (and is thus a top-loading model). CEE maintained that, perhaps in recognition of this incipient blurring of the distinction between the subdivisions, DOE is considering eliminating the separate classes from its testing and standards program. CEE urged that the Commission grant its petition to help achieve consistency on this issue at the Federal level.

D. The Notice of Proposed Rulemaking

On November 2, 1998, the Commission published a Notice of Proposed Rulemaking (the NPR) proposing amendments that would eliminate the "Top-Loading" and "Front-Loading" sub-categories of the "Standard" and "Compact" categories. 63 FR 58671. In the NPR, the Commission discussed the reasons for the proposed amendments and solicited comment on several specific questions and issues.

The NPR explained that the market for clothes washers has changed significantly since the Commission promulgated the "Front-Loading" and "Top-loading" subdivisions. In 1993-94, front-loading machines appeared to be a "niche" product.⁷ Since that time, the availability of and technology for these products have advanced considerably. When the NPR was published, ten of the 228 clothes washer models for which data were submitted in March 1998 were front-loading models. In comparison, in 1993-1994, five models were front-loaders. Front-loaders are still a small percentage of the overall number of models (now s washer

⁷ The Commission theorized that these products may have been considered a niche market in part because they were so much more expensive than top-loading models and because they may have been favored by consumers with limited space looking for stackable models. The Commission noted that, although front-loading models are on average still more expensive than top-loading, the price differential is now much smaller, citing "A New Spin on Clothes Washers," in the July 1998 issue of Consumer Reports.

⁸ The data report for clothes washers for March 1999 shows that there is a continuing increase in

³ According to its Mission Statement, CEE is a non-profit, public benefit corporation that expands national markets for super-efficient technologies, using market transformation strategies. Its members include more than 40 electric and gas utilities, public interest groups, research and development organizations, and state energy offices. Major support is provided to CEE by DOE and the Environmental Protection Agency ("EPA").

But, the increase in their availability, coupled with CEE's research suggesting that a significant proportion of current clothes washer consumers are receptive to the idea of buying a front-loading machine, suggested that eliminating the distinction between them on labels could assist consumers interested in purchasing more efficient products.

The NPR also cited information the Commission had received stating that the current sub-categories may be causing confusion among prospective clothes washer purchasers. Specifically, two letters to Commission staff, dated April 27 and May 19 of 1998, from the Office of Energy of the Oregon Department of Consumer and Business Services ("OEO") supported CEE's petition.⁹ In both letters, OEO expressed concern that consumers are confused by the current subdivisions and that such confusion undermines consumer confidence in the EnergyGuide itself, which, according to OEO, has been rising steadily since the Rule was promulgated in 1979.

The NPR explained that consumer confusion may occur because, although the label for clothes washers states that "Only standard size, front-loading (or top-loading) clothes washers are used in this scale," not all consumers may notice the disclosure. Consumers looking at top-loading machines may not realize that front-loading models are generally much more efficient, and may not even consider purchasing a front-loading model simply because the energy consumption figures for front-loading machines are not included in the range scales appearing on labels for top-loading models. And, consumers shopping for front-loading machines may get the incorrect impression that some of the most efficient models (front-loading) on the market are not really highly energy efficient, only because they are being compared unfavorably to other even more highly-efficient models (also front-loading), instead of to the generally less efficient top-loading models. Finally, the NPR pointed out that, because some front-loading clothes washers that have qualified for the Energy Star logo are shown on the EnergyGuide to be at or near the "Uses Most Energy" end of the comparability scale bar, this may cause consumer confusion about the Energy Star Program.¹⁰

the availability of front-loading clothes washers (there were 29 front-loading models out of a total of 381 models (7.6%).

⁹These two letters are on the public rulemaking record in Binder R611004-1-1-3.

¹⁰The NPR also stated that, without the subdivisions, it may be more difficult for consumers to determine the range of energy use possibilities

The NPR also discussed DOE's energy conservation standards for clothes washers and possible future changes to the DOE test procedure, and their impact on the proposed amendments. DOE has announced, in connection with an ongoing review of its energy conservation standards for clothes washers, that it may eliminate any reference to front-loading or top-loading (or horizontal-or vertical-axis) in the standards.¹¹ Thus, when DOE completes its review of the clothes washer standards rule, it is reasonable to expect that DOE will no longer use the "Front-loading" and "Top-loading" (or "horizontal-axis" and "vertical-axis") subdivisions to describe clothes washers. An August 14, 1998 letter to Commission staff from DOE's Assistant Secretary for Energy Efficiency and Renewable Energy asked that the Commission eliminate the top-loading and front-loading sub-categories for clothes washers because they are causing consumer confusion about washer efficiency and appear to be undermining the Energy Star Program's credibility. The Assistant Secretary also stated that, although the amendments to DOE's rules will not take effect for several years, DOE believes "that it is in the consumer's best interest for FTC to adopt the new classifications for labeling purposes as soon as possible."¹²

for each type of washer. Thus, for a consumer who, because of price or some other reason, wishes to purchase a top-loading washer, eliminating the "Top-Loading" and "Front-Loading" sub-categories would make it more difficult to determine which top-loading machine achieves the highest energy efficiency possible for a top-loader. Although a given retail outlet will likely have several brands and models for comparison, and such a consumer would be able to find the most efficient top-loader in the store by comparing EnergyGuides, the consumer still would not know whether he should seek other choices by going to another retailer. The Commission suggested that consumers' search costs may not be significantly increased, however, because consumers may not necessarily know the range of possibilities for other characteristics (such as price) of the washer, and thus already need to search various retailers.

¹¹In connection with its review of the energy and water consumption standards for clothes washers, DOE published an Advance Notice of Proposed Rulemaking on November 14, 1994, in which it indicated its intention to consider only two classes for the clothes washer category—"Compact" and "Standard." 59 FR 56423, at 56425. Later in the review process, DOE issued a Draft Report on Design Options for Clothes Washers for use in a November 1996 DOE workshop in which DOE again proposed reducing the number of clothes washer categories to "Compact" and "Standard." In July 1997, DOE published a draft Clothes Washer Rulemaking Framework, which DOE staff describes as a "roadmap" for the review process. In that document, DOE stated that it "believes that there is no basis for maintaining separate classes for horizontal and vertical clothes washers."

¹²DOE's letter is on the public record in binder R611004-1-1-3.

The NPR also discussed the Commission's interest in harmonizing the Rule's labeling requirements with those of the Canadian EnerGuide Program in accordance with the North American Free Trade Agreement ("NAFTA") goals of reducing or eliminating non-tariff barriers to trade (e.g., labeling requirements). Commission staff has worked with staff at Natural Resources Canada ("NRCan") since 1992 to harmonize the two countries' appliance labeling programs as much as possible. One example of this cooperation is a change in the primary energy use descriptor on EnergyGuides for most appliances from estimated annual operating cost to kiloWatt-hours per year, the descriptor used in the Canadian Program.¹³

The Canadian EnerGuide Program does not divide the "Standard" and "Compact" clothes washer sub-categories further into top-loading and front-loading (or horizontal-axis and vertical-axis) subdivisions.¹⁴ The NPR suggested that eliminating the "Top-loading" and "Front-loading" subdivisions would benefit consumers and have the salutary effect of promoting international harmonization and furthering the NAFTA goal of making the standards-related measures of the treaty signatories compatible, thereby facilitating trade among the parties.

Finally, the NPR solicited comment from the public on the proposed amendments. In particular, the NPR sought comments on the following questions and issues: The effect of the "Top-Loading" and "Front-Loading" sub-categories on consumers' ability to choose the most energy efficient model that will fill their needs; the extent to which consumers shop exclusively for either a top-loading or a front-loading model; the economic impact on manufacturers of the proposed amendment; the costs and benefits of the proposed amendment, and to whom; the benefits and economic impact of the proposed amendment on small businesses; whether there should be additional descriptors added to the label (such as tub volume); and whether the timing of the anticipated change to

¹³59 FR 34014 (July 1, 1994). In addition, in 1996, the Commission amended the Rule to permit Canada's EnerGuide, as well as Mexico's energy label, to be placed "directly adjoining" the Rule's required "EnergyGuide" label. Previously the Rule prohibited the placement of non-required information "on or directly adjoining" the EnergyGuide. 61 FR 33651 (June 28, 1996).

¹⁴According to NRCan staff, this is because the definition of "clothes washer" in the Canadian regulations encompasses both top-loading and front-loading technologies, and the rulemaking staff saw no reason for further differentiation.

¹⁵ Willett Kempton ("Kempton") (1); Consumers Union ("CU") (2); City of Portland, Oregon Energy Office ("POE") (3); Amana Appliances ("Amana") (4); Oregon Office of Energy ("OOE") (5); Maytag Corporation ("Maytag") (6); City of Austin, Water Conservation Division ("Austin-WCD") (7); Boston Edison (8); American Council for an Energy Efficient Economy ("ACEEE") (9); Whirlpool Corporation ("Whirlpool-1") (10); Whirlpool Corporation ("Whirlpool-2") (11) (Whirlpool filed its substantive comments twice; this second version contains a confidential attachment and is not on the public part of the rulemaking record); General (4); Oregon1ool

⁶² Kempton (1) p. 1; CU (2) p. 1; POE (4) p. 1; OOE (5) p. 3; Maytag (6) pp. 2-4; Austin-WCD (7) p. 1; Boston Edison (8) pp. 1-2; ACEEE (9) p. 2; Mass. Elec. (13) pp. 1-2; NRDC (15) p. 1; CEE (16) p. 5; Com. Elec. (18) pp. 1-2; Bay State (20) pp. 1-2; NPPC (21) p. 1; TPU (22) p. 1; NEEP (23) pp. 1-2.

⁶³ OOC (5) p. 3; Maytag (6) p. 3 (Consumers could determine at a glance how any washer compares with the universe of standard size washers of all configurations.); Boston Ed. (8) p. 1 (There would be an increased consumer awareness about energy efficiency.); CEE (16) p. 5 (Better and more accurate information to consumers.); ACEEE (9) p. 2 ("The prime benefits . . . stem from the fact that consumers would better be able to compare different products, with the result that some consumers will likely purchase more efficient washers than if the amendment were not adopted."); Com. Elec. (18) p. 2 (Increased consumer awareness of energy efficiency.); NPPC (21) p. 2 (The current label may cause confusion among consumers who want to purchase a resource-efficient washer.)

⁶⁴ OEE (5) p. 3; CEE (5) p. 3.

⁶⁵ Kempton (1) p. 1; CU (2) p. 1; POE (3) p. 1; ACEEE (9) p. 2.

⁶⁶ Maytag (6) p. 2.

⁶⁷ Maytag (6) p. 2; Boston Edison (8) pp. 1-2; Com. Elec. (18) pp. 1-2; NPPC (21) p. 1.

⁶⁸ Kempton (1) p. 1; POE (3) p. 1; TPU (22) p. 1 (There is a cost of about \$300 for a resource-efficient machine, but households that purchase these machines save \$75 to \$100 in yearly charges for electricity, water and wastewater; which means there is a quick pay-back.)

⁶⁹ Kempton (1) p. 1; OOE (5) p. 3 ("[A]s the sales of more efficient clothes washers increase, there will be enormous water, wastewater treatment and energy savings benefits."); Austin-WCD (7) p. 1 (Emphasizing water conservation.); NRDC (15) p. 1 (There are energy and water savings with more efficient clothes washer models.); CEE (16) p. 5 ("There will be significant energy savings, avoided air pollution and greenhouse gas emissions, substantial water savings, and wastewater treatment savings as sales of more efficient clothes washers increase."); Bay State Gas (20) p. 1.

⁷⁰ Kempton (1) p. 1 (By purchasing more efficient washers, consumers could reduce their non-discretionary expenditures and money would be made available for other consumer spending.); OOE (5) p. 3; Maytag (6) p. 2 (Consumer could determine at a glance how any washer compares with the universe of standard-size washers of all

configurations.); Boston Edison (8) p. 1; ACEEE (9) p. 2 ("The prime beneficiary of this change will be consumers who purchase these more efficient washers as the high-efficiency washers now being sold can reduce operating costs by 50% or more relative to typical units being sold."); Mass. Elec. (13).

⁷¹ Kempton (1) p. 1; CEE (16) p. 5.

⁷² ACEEE (9) p. 2; Boston Edison (8) p. 1; Mass. Elec. (13) p. 1.

⁷³ POE (3) p. 1; OOE (5) p. 5 ("[I]t will be at least five years from the w8Mi4n

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⁵⁸ *Id.* p. 4.

⁵⁹ Whirlpool-1 (10) pp. 3-4.

⁶⁰ *Id.* p. 3 ("front-loading machines * * * generally run from \$800 to \$1100 plus. Most toploaders average about \$400.")

⁶¹ *Id.* p. 1.

⁷⁹ Kempton (1) pp. 1–2; OOE (5) p. 3.

⁸⁰ Amana (4) p. 3; OOE (5) p. 3; Maytag (6) p. 3; Whirlpool–1 (10) p. 5; CEE (16) p. 5; Alliance (19) p. 2.

⁸¹ Alliance (19) p. 2 (“Frequent label changes are disruptive to our business.”)

⁸² Maytag (6) p. 3.

⁸³ Whirlpool–1 (10) p. 5.

⁸⁴ Amana (4) p. 3.

⁸⁵ *Id.*

⁸⁶ OOE (5) p. 3; ACEEE (9) p. 2; CEE (16) p. 5.

⁸⁷ The Commission agrees that there is potential for confusion when consumers see a high-efficiency front-loading washer bearing the Energy Star logo with an accompanying EnergyGuide label that shows the model is close to the “Uses Most Energy” end of the comparability scale. This would occur only because it is not as efficient as the even more efficient competing models.

⁸⁸ In part, this may be due to the fact that the price differential is diminishing. For example, a July, 1999 Consumer Reports article on clothes washers rated four front-loading models priced at

EnergyGuides that do not distinguish between the two subcategories, and that, in particular, H-axis machines would appear to have greater relative efficiency than is actually the case. GE did not provide evidence of consumer behavior respecting the pounds of clothes that consumers wash, or expect to wash, in front-loading machines. And, although GE implies that front-loaders have greater capacity than top-loaders, a recent study by Consumer Reports magazine states that there is little variation in capacity among full-sized washers, including both front- and top-loading.⁹⁰ Thus, there is no clear indication that the load used in the DOE test for front-loading machines is too small.

The seven-pound load specified as the large load (to be used with a three-pound load in conducting the test) in the DOE test was the result of a rulemaking procedure conducted by DOE with input from all sectors of the public. One of DOE's goals in developing this aspect of the test was to capture the concept of "maximum fill" so that the test results for front-loaders would be analogous to the results for top-loaders. Therefore, in the absence of evidence to the contrary, the Commission believes that the test results are comparable.

The Commission has concluded that any inaccuracies in the relative efficiency of H-axis and V-axis washers that may be caused by the differences in the current DOE test procedures are likely to be small. Accordingly, the Commission has decided not to delay the effective date of these amendments until DOE's amended energy conservation standards and test procedure for clothes washers become effective and possibly eliminate any slight inequalities between the measured energy use of the two types of machines.⁹¹

⁹⁰ Consumer Reports, July 1999. In the article, "capacity" is based on how well clothes can circulate in increasingly large loads.

⁹¹ The Commission does not agree, moreover, with FE's contention that the Commission cannot amend the product classes set out in the Appendices to its Rule independent of a DOE determination on product class. The Commission is not constrained by any statutory provisions from establishing the product classes in the Appendices for purposes of the ranges of comparability in whatever form it believes to be most appropriate. For example, until 1994, the product classes for refrigerators, refrigerator-freezers, and freezers in (then) Appendices A-1, A-2, and B were significantly different from the more feature-specific configurations in DOE's energy conservation standards, and the current classes for dishwashers are determined differently (the Commission's Rule differentiates between "Standard" and "Compact" on the basis of place settings, and DOE uses exterior width). The Commission has chosen to align its product classes

The Commission also is not persuaded by the contention of Alliance that the proposed amendment would result in an EnergyGuide label that compares the energy efficiency of two distinct products. An EnergyGuide label that does not categorize washers based on loading orientation will enable consumers who are not looking for a washer with particular loading option to compare easily features and energy consumption for all washers within either the "standard" or "compact" subcategories, or both.

Finally, the Commission does not agree with White & Case that top-loading and front-loading washers are necessarily in separate product markets according to the Commission's Horizontal Merger Guidelines. White & Case's argument rests almost entirely on the difference in purchase prices between the two types of washers, but, as noted above, this price differential has changed considerably in recent years and is likely to change in the future. Furthermore, consumers often consider the differences in operating costs of these products, which may reduce the overall price differential between the two types of products.

To implement today's decision, the Commission amends Sample Label 3 in Appendix I of the Rule, which shows the proper format for a clothes washer EnergyGuide label, by deleting references on the label to the "Top-loading" and "Front-Loading" subcategories.

B. The Need for Additional Information on the Label

1. Comments

Fourteen commenters responded to the question in the NPR asking whether the Commission should add other descriptors of clothes washer capacity (such as tub volume) to the label if it eliminates the "Top-Loading" and "Front-Loading" sub-categories.⁹² Six stated that other information or descriptors are unnecessary.⁹³

CU stated that it would like to see the proposed amendment taken one step further, noting that the FTC label looks only at total energy consumption, and not efficiency: "Therefore, at first glance, small-clothing-capacity washers may appear better than ones with much

with those in the DOE energy conservation standards program whenever it has concluded that doing so is helpful to consumers and competition.

⁹² Kempton (1) p. 2; CU (2) p. 1; Amana (4) pp. 2 and 3; OOE (5) p. 4; POE (3) p. 1; OOE (5) p. 5; Maytag (6) p. 4; ACEEE (9) p. 3; Whirlpool-1 (10) p. 6; GE (12) p. 2; PNNL (14) p. 1; NRDC (15) p. 1; CEE (16) p. 5; Alliance (19) p. 2.

⁹³ Kempton (1) p. 2; OOE (5) p. 5; Maytag (6) p. 4; ACEEE (9) p. 3; NRDC (15) p. 1; CEE (16) p. 5.

larger capacities. However, the larger clothing capacity may make for a much more efficient machine."⁹⁴ To improve on this situation, CU stated that the annual energy cost should be for washing a specific number of pounds of clothing per year, based on the DOE test's assumed average annual use of 392 cycles per year.⁹⁵

Five commenters stated that the Commission should require that the internal tub volume of clothes washers, in cubic feet or in gallons (or both), also be required on the EnergyGuide labels.⁹⁶ PNNL pointed out:

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⁹⁴ CU (2) p. 1.

⁹⁵ Id. p. 1 ("We would suggest that the annual pounds-of-clothing be calculated by multiplying 392 by about 8 pounds per load, or 3136 pounds-of-laundry per year. Therefore, the yellow sticker should list the amount of energy used to wash 3136 pounds of clothes, rather than the amount of energy used in 392 cycles regardless of how many pounds of clothes can be washed in those 392 cycles.")

⁹⁶ Amana (4) p. 3; OOE (5) p. 4; ACEE (9) p. 3; PNNL (14) p. 1; CEE (16) pp. 5-6.

⁹⁷ PNNL (14) p. 1.

⁹⁸ The DOE test measures the tub volume in top-loaders without including the space taken up by the agitator, so the volume figure reflects the amount of water that can actually go into the tub. Maytag suggested applying a factor of 1.2 to the volume of an H-axis machine to correct this inconsistency for test procedure purposes; for example, and H-axis machine with a measured volume of 3.0 cubic feet would have the equivalent usable volume of a 3.6-cubic-foot V-axis machine. Maytag (6) p. 4.

⁹⁹ Maytag (6) p. 4.

¹⁰⁰ OOE (5) p. 4.

the "Standard" and "Compact" descriptors at this time. At present, internal tub volume is a metric that is not directly comparable between vertical and horizontal axis machines. Thus, adding tub volume to the EnergyGuide label might be more confusing, and perhaps misleading, than helpful to consumers.

The Commission also is not adopting CU's suggestion to include operating cost for a specific number of pounds of clothes per year. This information cannot be derived by means of the current DOE test procedure for clothes washers. The Commission is not empowered, therefore, to require that manufacturers include it on EnergyGuides. If DOE decides to provide for the quantification of this information in its test procedure at some future time, the Commission may revisit this issue. In the meantime, because the information could be helpful to consumers, the Commission encourages manufacturers to consider including it, together with a meaningful explanation of its use, in promotional materials relating to their products.

III. Regulatory Flexibility Act

This notice does not contain a regulatory analysis under the Regulatory Flexibility Act ("RFA"), 5 U.S.C. 603-604, because the Commission believes that the amendment will not have "a significant economic impact on a substantial number of small entities," 5 U.S.C. 605.

In the NPR, the Commission concluded tentatively that the amendment would not impose any new requirements on manufacturers of clothes washers. Instead, it would require less information than is currently required on labels that clothes washer manufacturers already must affix to their products. The Commission stated that it therefore believed that the impact of the proposed amendment on all entities within the affected industry, if any, would be *de minimis*.

In light of the above, the Commission certified in the NPR, pursuant to section 605 of the RFA, 5 U.S.C. 605, that the

proposed amendments would not, if granted, have a significant impact on a substantial number of small entities. To ensure that no substantial economic impact was overlooked, however, the Commission solicited comments concerning the effects of the proposed amendment, including any benefits and burdens on manufacturers or consumers and the extent of those benefits and burdens, beyond those imposed or conferred by the current Rule, that the amendment would have on manufacturers, retailers, or other sellers. The Commission expressed particular interest in comments regarding the effects of the amendment on small businesses. The Commission stated that, after reviewing any comments received, it would determine whether it would be necessary to prepare a final regulatory flexibility analysis if it determined to issue the amendment.

Five comments responded to the Commission's solicitation.¹⁰¹ ACEEE stated that "For retailers who sell high efficiency machines, we would expect modest benefits, as sales of high-efficiency machines increase sales and profits."¹⁰² OOE, Maytag, and CEC commented that there would be virtually no impact on small businesses.¹⁰³ Amana said that label confusion and training costs could have an adverse economic impact on small businesses,¹⁰⁴ and Whirlpool stated that "Small retailers that specialize in top-loaders only could be disadvantaged."¹⁰⁵

The Commission acknowledges that manufacturers that do not make, and small businesses that do not sell, front-loading clothes washers, and especially those companies that do manufacture and/or sell efficient top-loading models, may, in the short run, be at a slight disadvantage as a result of today's amendment. The Commission has concluded, however, that such

¹⁰¹ Amana (4) p. 3; OOE (5) p. 4; ACEEE (9) p. 3; Whirlpool-1 (10) p. 5; and CEE (16) p. 5.

¹⁰² ACEEE (9) p. 3.

¹⁰³ OOE (5) p. 4; Maytag (6) p. 3; CEE (16) p. 5.

¹⁰⁴ Amana (4) p. 3.

¹⁰⁵ Whirlpool-1 (10) p. 5.

disadvantages are offset by the benefits to consumers. Further, continuing developments in clothes washer technology and ongoing changes in the marketplace (and manufacturer and retailer responses to such changes), could quickly overcome any slight disadvantages that may be incurred now.

Therefore, although the comments on this issue seem split as to whether there will be any effect at all on small businesses, the Commission believes that the impact of the results that do accrue will be *de minimis*, because the potential costs will be small in comparison to the overall budgets of the businesses affected, and thus will not be "significant."

In light of the above, the Commission certifies, pursuant to section 605 of the RFA, 5 U.S.C. 605, that the amendment published today will not have a significant impact on a substantial number of small entities.

IV. Paperwork Reduction Act

The Paperwork Reduction Act ("PRA"), 44 U.S.C. 3501 *et seq.*, requires government agencies, before promulgating rules or other regulations that require "collections of information" (*i.e.*, recordkeeping, reporting, or third-party disclosure requirements), to obtain approval from the Office of Management and Budget ("OMB"), 44 U.S.C. 3502. The Commission currently has OMB clearance for the Rule's information collection requirements (OMB No. 3084-0069).

In the NPR, the Commission concluded that the conditional exemption would not impose any new information collection requirements. To ensure that no additional burden was overlooked, however, the Commission sought public comment on what, if any, additional information collection burden the proposed conditional exemption would impose.

No comments addressed this issue. The Commission again concludes, therefore, that the conditional exemption will not impose any new information collection requirements.

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 6294.

V. Final Amendment

In consideration of the foregoing, the Commission amends title 16, chapter I, subchapter C of the Code of Federal Regulations, as follows:

PART 305—RULE CONCERNING DISCLOSURES REGARDING ENERGY CONSUMPTION AND WATER USE OF CERTAIN HOME APPLIANCE AND OTHER PRODUCTS REQUIRED UNDER THE ENERGY POLICY AND CONSERVATION ACT (“APPLIANCE LABELING RULE”)

1. The authority for part 305 continues to read as follows:

Authority: 42 U.S.C. 6294.

2. Appendix F to Part 305—Clothes Washers is revised to read as follows:

Appendix F to Part 305—Clothes Washers Range Information

“Compact” includes all household clothes washers with a tub capacity of less than 1.6 cu. ft. or 13 gallons of water.

“Standard” includes all household clothes washers with a tub capacity of 1.6 cu. ft. or 13 gallons of water or more.

Capacity	Range of estimated annual energy consumption (kWh/yr.)	
	Low	High
COMPACT	537	607
STANDARD	156	1154

3. Sample Label 3 in Appendix L to Part 305 is revised to read as follows:

BILLING CODE 6750-01-P

