

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.

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FEDERAL TRADE COMMISSION

16 CFR Part 305

Rule Concerning Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act ("Appliance Labeling Rule")

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission (the Commission) amends Appendix F to its Appliance Labeling Rule (the Rule) to eliminate the "Front-Loading" and "Top-Loading" sub-categories for clothes washers. The purpose of this change is to provide consumers with a more accurate basis to compare the efficiency of clothes washers.

EFFECTIVE DATE: July 14, 2000.

FOR FURTHER INFORMATION CONTACT: James G. Mills, Attorney (202-326-3035; jmills@ftc.gov), or Janice Podoll Frankle, Attorney (202-326-3022; jfrankle@ftc.gov) Division of Enforcement, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Commission's Appliance Labeling Rule

The Commission issued the Appliance Labeling Rule on November 19, 1979, pursuant to a directive in section 324 of Title III of the Energy Policy and Conservation Act of 1975, 42 U.S.C. 6294 (EPCA). The Rule requires manufacturers to disclose energy

information about major household appliances to enable consumers purchasing appliances to compare the energy use or efficiency of competing models. When published, the Rule applied to eight appliance categories: Refrigerators, refrigerator-freezers, freezers, dishwashers, water heaters, clothes washers, room air conditioners, and furnaces. Since then, the Commission has expanded the Rule's coverage five times: In 1987 (central air conditioners, heat pumps, and certain new types of furnaces, 52 FR 46888 (Dec. 10, 1987)); 1989 (fluorescent lamp ballasts (54 FR 28031 (July 5, 1989)); 1993 (certain plumbing products (58 FR 54955 (Oct. 25, 1993); and twice in 1994 (certain lighting products (59 FR 25176 (May 13, 1994)), and pool heaters and certain other types of water heaters (59 FR 49556 (Sept. 28, 1994)).

Manufacturers of all covered appliances must disclose specific energy consumption or efficiency information at the point of sale in the form of an "EnergyGuide" label affixed to the covered product. The information on the EnergyGuide also must appear in catalogs from which covered products can be ordered. Manufacturers must derive the information from standardized tests that EPCA directs the Department of Energy ("DOE") to promulgate. 42 U.S.C. 6293. Manufacturers of furnaces, central air conditioners, and heat pumps also either must provide fact sheets showing additional cost information or be listed in an industry directory that shows the cost information for their products. Required labels for appliances and required fact sheets for heating and cooling equipment must include a highlighted energy consumption or efficiency disclosure and a scale, or "range of comparability," which appears as a bar on the label below the main energy use or efficiency figure, that shows the highest and lowest energy consumption or efficiencies for all similar appliance models. Labels for clothes washers and some other appliance products also must disclose estimated annual operating cost based on a specified national average cost for the fuel the appliances use.

B. Ranges of Comparability and the Categories in Appendix F

The "range of comparability" scale on the EnergyGuide is intended to enable consumers to compare the energy consumption or efficiency of the other models (perhaps competing brands) in the marketplace that are similar to the labeled model they are considering. Section 305.8(b) of the Rule, 16 CFR 305.8(b), requires manufacturers to

report annually (by specified dates for each product type) the estimated annual energy consumption or energy efficiency ratings for the appliances derived from the DOE test procedures. Due to modifications to product lines and improvements in the energy use of individual models, the base of reported information is constantly changing. To keep the required information on labels consistent with these changes, the Commission publishes new range figures (but not more often than annually) for manufacturers to use on labels if the upper or lower limits of the range scales have changed by more than 15%. 16 CFR 305.10. Otherwise, the Commission publishes a statement that the prior ranges remain in effect for the next year.

Each category of the products covered by the Rule is divided to some extent into sub-categories for purposes of the ranges of comparability. These sub-categories, which are generally the same as those developed by DOE in connection with its efficiency standards program,¹ are based on fuel type, size, and/or functional features, depending on the type of product.

When the Commission published the Rule in 1979, the clothes washer category in Appendix F was divided into the sub-categories "Standard" and "Compact" only.² 44 FR 66466, 66486 (Nov. 19, 1979). These sub-categories stayed in effect until 1994, when the Commission amended Appendix F in response to comments received in connection with a comprehensive review of the Rule. The amendment to Appendix F created the additional subdivisions of "Top Loading" and "Front Loading" that appear in the current Rule. In the **Federal Register** notice announcing the amendments that grew out of the review, the Commission discussed the comments on clothes washer sub-categories and its reasons for the amendment to Appendix F:

Horizontal axis clothes washers (which are generally front-loading) are significantly more energy-efficient than vertical axis washers (generally top-loading). Because the typical door configurations for these products are different, consumers may shop for only

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 7.6% as compared to 4.4% in 1998).⁸

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

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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%)).

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

¹⁰ The 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.

¹¹ In 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."

¹² DOE'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

¹³ 59 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).

¹⁴ According 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.

DOE's energy conservation standard rule should affect the timing of the amendments (if they become final), and, if so, how.

II. Discussion of the Comments and Final Amendments

A. The Proposed Amendment

The Commission received twenty-three comments in response to the NPR.¹⁵ The comments were from five manufacturers,¹⁶ six non-profit public interest groups,¹⁷ five utilities,¹⁸ two city energy offices,¹⁹ one state energy office,²⁰ one research laboratory,²¹ one intra-state compact,²² one law firm on behalf of a manufacturer,²³ and one individual.²⁴ Three of the commenters opposed the Commission's proposal to amend the Rule to eliminate the "Front-Loading" and "Top-Loading" sub-categories.²⁵ One other commenter supported the amendment but opposed its becoming effective in advance of anticipated revisions to DOE's test

procedure and energy conservation standards for clothes washers,²⁶ and another opposed the amendment on grounds that will likely be resolved by DOE's revised test and standards.²⁷

1. Comments in Support

Eighteen comments expressed general support for the Commission's proposal to eliminate the "front-loading" and "top-loading" sub-categories for clothes washers.²⁸ They contended that the current "front-loading" and "top-loading" sub-categories confuse consumers,²⁹ undermine efforts to promote high-efficiency clothes washers,³⁰ or impair a consumer's ability to distinguish highly efficient equipment from standard.³¹ The commenters explained that the confusion occurs because under the current labeling system, front-loaders are not compared to top-loaders in any direct way. Consequently, some of the most energy efficient front-loading models have an EnergyGuide label stating "Uses Most Energy" because the front-loading models are only compared with other front-loading models.³² Two

commenters pointed out that those same high-efficiency models labeled "Uses Most Energy" also bear a DOE/EPA Energy Star endorsement indicating that they are highly efficient.³³ ACEEE stated:

On one hand, consumers have been told by utilities and DOE to look for the Energy Star and rebate-eligible models. On the other hand, when they look at the Energy Guide, they see that some highly-efficient washers are labeled "uses most energy" while other, much less efficient models, are labeled "uses least energy."³⁴

Several commenters stated that combining the categories would enable consumers to compare the different types of machines and be better informed regarding energy efficiency,³⁵ and that this would provide better quality information to consumers.³⁶

Nine commenters stated that typically customers do not choose a washer on the basis of top- versus front-loading.³⁷ ACEEE stated that its understanding, based on discussions with appliance manufacturers and retailers, as well as discussions with manufacturers of high-efficiency clothes washers, is that many consumers are now considering both top- and front-loading machines and are comparing a range of product attributes, including cleaning ability; wear on clothes; manufacturer reputation; washer capacity; energy, water and

subdivision, the rating of a specific model front loader washer may appear to be less efficient than a specific model top load washer, when in reality it is much more efficient."; Boston Edison (8) p.1; Mass. Elec. (13) p.1; Bay State Gas (20) p.1.

³³ CEE (16) p.1; Bay State Gas (20) p.1.

³⁴ ACEEE (9) p.1.

³⁵ Kempton (1) p. 1; POE (3) p.1; Austin-WCD (7) p. 1 ("Combining the categories would . . . emphasize the savings derived from the more efficient washers, promoting the more efficient machines at the expense of the less efficient."); NEEA (17) p. 1; NPPC (21) p. 1; NEEP (23) p. 1.

³⁶ Maytag (6) p.3 ("Unfortunately, because of the separate classes and labels for H-axis and V-axis, the dramatic difference in energy use between these washer designs is not apparent to the consumer. By combining H-axis and V-axis into a single class and therefore a single, label, the energy savings would be immediately apparent."); Boston Edison (8) p. 2; Com. Elec. (18) p. 2.

³⁷ Kempton (1) p. 1 (Most consumers will choose a washer based on other features, including operating cost.); POE (3) p. 1 (Capacity, rather than door configuration, is most consumers' first consideration, and cost is next.); Boston Edison (8) p. 1; Mass. Elec. (13); CEE (16) pp. 3-4; NEEA (17) p. 3 (When consumers were asked which clothes washer features were important to them, they ranked good cleaning first, followed by load capacity, energy/water efficiency, price and operating costs.); Com. Elec. (18) p. 1; NPPC (21) p. 2 (Other features of the clothes washer have more importance in the decision making process than style of loading.); NEEP (23) p. 2 (Current FTC label is based on a now arbitrary distinction regarding how the washers load, a feature that is not considered by consumers when shopping for a new clothes washer.)

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 Electric Appliances ("GE") (12); Massachusetts Electric ("Mass. Elec.") (13); Pacific Northwest National Laboratory ("PNNL") (14); Natural Resource Defense Council ("NRDC") (15); Consortium for Energy Efficiency ("CEE") (16); Northwest Energy Efficiency Alliance ("NEEA") (17); Commonwealth Electric Company ("Com. Elec.") (18); Alliance Laundry Services ("Alliance") (19); White & Case Limited Liability Partnership ("White & Case") (19A); Bay State Gas Company ("Bay State Gas") (20); Northwest Power Planning Council ("NPPC") (21); Tacoma Public Utilities ("TPU") (22); Northeast Energy Efficiency Partnerships ("NEEP") (23). The comments are on the public record and are available for public inspection in accordance with the Freedom of Information Act, 5 U.S.C. 552, and the Commission's Rules of Practice, 16 CFR 4.11, at the Consumer Response Center, Public Reference Section, Room 130, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, D.C. The comments are organized under the Appliance Labeling Rule, 16 CFR part 305, Matter No. R611004, "Clothes Washer Categories Rulemaking."

¹⁶ Amana (4); Maytag (6); Whirlpool-1 (10); GE (12); and Alliance (19).

¹⁷ CU (2); ACEEE (9); NRDC (15); CEE (16); NEEA (17); and NEEP (23).

¹⁸ Boston Edison (8); Mass. Elec. (13); Com. Elec. (18); Bay State Gas (20); and TPU (22).

¹⁹ POE (3); and Austin-WCD (7).

²⁰ OOE (5).

²¹ PNNL (14).

²² NPPC (21).

²³ White & Case (19A).

²⁴ Kempton (1) (Willett Kempton is a senior policy scientist at the University of Delaware.)

²⁵ Amana (4); Alliance (19); White & Case (19A).

²⁶ Whirlpool-1 (10).

²⁷ GE (12).

²⁸ Kempton (1) p. 1; CU (2) p. 1; POE (3) p. 1; OOE (5) p. 1; Maytag (6); Austin-WCD (7) p. 1; Boston Edison (8) p. 1; ACEEE (9) p. 1; Whirlpool-1 (10) p. 1; Mass. Elec. (13) p. 1; NRDC (15); CEE (16) p. 1; NEEA (17) p. 1; Com. Elec. (18) p. 1; Bay State Gas (20) p. 1; NPPC (21) p. 1; TPU (22) p. 1; NEEP (23) p. 1.

²⁹ OOE (5) p. 2 (Many consumers who have called OOE have asked for clarification regarding what seems to be contradictory information on the EnergyGuide labels.); Maytag (6) p. 2 (Separation of top-loading and front-loading washers into different subdivisions makes the comparison misleading.); Austin-WCD (7) (Received calls from consumers who were confused by the EnergyGuide label.); ACEEE (9) p. 1; NEEA (17) p. 2 (Top- and front-loading subdivisions may confuse consumers interested in purchasing a resource-efficient clothes washer.); Bay State Gas (20) p. 2 (Evidence that the current system of labeling categories is inaccurate and confusing to consumers is overwhelming and agreed upon by a broad cross-section of stakeholders, e.g., utilities, efficiency advocates, manufacturers, Consumer Reports magazine.); NPPC (21) p. 1 (Current label may cause confusion among consumers wanting to purchase a resource-efficient model since the "least efficient" front-loading resource-efficient models are far less costly to operate than the "most efficient" top-loading models.); NEEP (23) pp. 1-2 (May cause confusion for those who want to buy a resource-efficient model.)

³⁰ CU (2) p. 1; POE (3) p. 1 (Seeing a highly efficient, horizontal-axis washing machine on the high end of the energy use spectrum is inconsistent with the message about how efficient they are.); Maytag (6) p. 3 (Single EnergyGuide label for all standard size washers could be a significant force in transforming the clothes washer market to high efficiency models.); NRDC (15) p. 1; CEE (16) p. 1; Bay State Gas (20) p. 1; TPU (22) p. 1.

³¹ Maytag (6) p.2; CEE (16) p.1; Bay State Gas (20) p.1.

³² Maytag (6) p.2 ("By placing all front loaders, which tend to be far more efficient, in a separate

detergent use; ease of use; and cycle time.³⁸

Maytag stated:

When consumers shop for a washer, their natural inclination is to shop for what they previously owned unless there is a compelling reason to change. When comparing a V-axis to a H-axis, the substantial difference in energy use could be that compelling reason. Unfortunately, because of the separate classes and labels for H-axis and V-axis, the dramatic difference in energy use between these washer designs is not apparent to the consumer.³⁹

Several commenters stated that a clear technological distinction between top- and front-loaders can no longer be easily made as a result of the introduction of new products,⁴⁰ and that these new products make the current system of rating clothes washers in separate categories based on loading style obsolete.⁴¹ ACEEE stated "(W)e applaud the FTC for recognizing that the clothes washer market is changing, and that a labeling approach developed several years ago may not be appropriate today."⁴² Four commenters observed that the growth in sales volume of front-loading high efficiency washers shows that they are securing a wider market acceptance and that they are no longer a "niche" product that only a subset of consumers are interested in purchasing.⁴³ Maytag stated that the front-loading Maytag Neptune has proven to have consumer appeal across all demographic segments and is helping to transform the U.S. market by focusing attention on the environmental benefits of high efficiency appliances.⁴⁴

2. Comments in Opposition

Three commenters stated that they opposed the proposed amendment on its merits.⁴⁵ Alliance stated that the Commission must respect the existing product class definitions in DOE's energy conservation standards program, which are based largely on capacity and consumer utility, and that the Commission should not combine the categories just because a petitioner believes one class of product is no longer a niche product. Alliance added that consumers who are uncertain why a product carries an Energy Star logo while showing high energy use on the EnergyGuide should consult with a salesperson or look at the EnergyGuides on other models.⁴⁶

White & Case argued that putting front-loading and top-loading washing machines on a single label would combine two products that are not similar and are not within the same product market and, therefore, do not compete pursuant to the Commission's Horizontal Merger Guidelines.⁴⁷ Thus, consumers searching for the most efficient top-loading clothes washer among other top-loading washers would confront considerable difficulties with a label that included the energy efficiency of non-competing products.⁴⁸ White & Case also asserted that consumers shop exclusively for either a top-loader or a front-loader. It contended that some of the reasons for this are the substantial price difference between the two and that front-loaders must use specially formulated, more expensive laundry detergents because regular detergents do not function well in front-loading machines.⁴⁹

Amana stated that any change in the energy standards or labeling requirements for clothes washers could have a significant impact on its business and associated employment.⁵⁰ It contended that elimination of the sub-categories will remove a significant distinction and cause increased

confusion to the consumer when trying to compare models in a consolidated category.⁵¹ Amana stated that the justification for separate categories is based on ergonomics, product utility and technology employed, including costs and energy and water consumption, and that the differences in technology and energy consumption between V-axis and H-axis machines are clearly evident.⁵² Amana contended that the retail price of a high end H-axis washer is more than 50% above the most highly featured, stainless steel, electronically-controlled V-axis washer currently available, and argued that this difference is important to a consumer's buying decision.⁵³

Amana and Alliance, as well as two other commenters, took the position that the Commission should not make any change to the "Top-Loading" and "Front-Loading" sub-categories until the effective date of DOE's proposed revisions to its energy conservation standards for clothes washers.⁵⁴ Amana stated: "While we believe there is no justification for, and it is inappropriate for the FTC to consider changing the labels, there is less justification to do it before DOE has established revised Energy Standards in the proposed rulemaking."⁵⁵

Alliance cited DOE's recent initiation of work on a consumer analysis, which, "although not necessarily determinative of the issues, is intended to measure and document the 'consumer utility' associated with horizontal-axis and vertical-axis designs." Alliance maintained that it was premature to combine the categories before DOE's consumer analysis is completed.⁵⁶

GE said that the Commission should reject the petition, but that if it does not do so, it should not revise the labeling program to eliminate the classes contained in the current DOE standard until the pending DOE clothes washer energy efficiency rulemaking is concluded and the product class issue is resolved.⁵⁷ GE also opposed the amendment because it believes that a clothes washer label with a combined front-loading/top-loading range scale would misrepresent the true energy performance of horizontal-axis

³⁸ ACEEE (9) p. 1.

³⁹ Maytag (6) p.3.

⁴⁰ Maytag (6) p. 1; Boston Edison (8) p. 1; Mass. Elec. (13); CEE (16) pp. 1-2 (Whirlpool has a resource efficient top-loading vertical-axis washer with an annual kWh usage of 451 that is far more comparable in terms of energy efficiency and annual operating cost to the high efficiency horizontal-axis washers than to the standard efficiency vertical-axis washers; under the current system, the Whirlpool Resource Saver would be labeled "Uses Least Energy," while the Maytag Neptune, a front-loading machine that uses only 333 kWh annually would be labeled "Uses Most Energy."); Com. Elec. (18) p. 1.

⁴¹ Maytag (6) p. 1 (Top-loading and front-loading subdivisions are becoming "meaningless" because of the introduction of new washer designs that no longer fit into those categories in the way they were intended; other designs are possible that will allow for high efficiency with the top-loading capacity or access somewhere in between, e.g., Maytag Neptune.); NEEA (17) p. 1; NPPC (21) p. 1; NEEP (23) p. 2 (Now there are many more choices in the market and distinctions based on how the consumers load washers are no longer relevant.)

⁴² ACEEE (9) p. 3.

⁴³ Maytag (6) p. 2; Austin-WCD (7) p. 1; CEE (16) p. 1; Bay State gas (20) p. 1.

⁴⁴ Maytag (6) p. 2.

⁴⁵ Amana (4) p. 1; Alliance (19) pp. 1-2; White & Case (19A) pp. 1-3.

⁴⁶ Alliance (19) p. 1 ("The current FTC label clearly identifies the product class being compared and it would be no more logical to combine the clothes washer classes than it would (be to combine) those used for the refrigerator-freezer product with its numerous classes and their ranges of comparability.")

⁴⁷ White & Case (19A) pp. 1-3 ("The purpose of the Commission's test for product markets under the Horizontal Merger Guidelines is to determine what the practical demand-side choices are for the buyers of various products. Front-loading washing machines do not compete with top-loading machines at current pricing levels.")

⁴⁸ *Id.* p.3.

⁴⁹ *Id.*

⁵⁰ Amana (4) p. 1.

⁵¹ *Id.* pp. 2-3.

⁵² *Id.* p. 1. ("The typical H-axis machine of comparable washer capacity uses less than half of the water of a typical V-axis machine.")

⁵³ *Id.* p. 2.

⁵⁴ Amana (4) p. 2; Whirlpool-1 (10) pp. 1,7; GE (12) pp. 2-5; Alliance (19) p. 1.

⁵⁵ Amana (4) p. 2.

⁵⁶ Alliance (19) p. 1.

⁵⁷ GE (12) pp. 1-2.

machines by understating their actual energy consumption.

GE's point was based on the fact that, under the current DOE test procedure, vertical-axis machines are tested for the average energy used in running the machine in the maximum fill and minimum fill cycles with no test load in the tub, while front-loaders are tested for the average energy used in running the machine with three-pound and seven-pound loads. GE argued that thus only the test for V-axis machines accounts for the full range of potential clothes loads. GE contended that "advocates of horizontal-axis clothes washers tout these machines' ability to hold far more garments than the users of traditional machines would perceive to be optimal," and that "this claimed advantage" would result in an understatement in energy label values for horizontal-axis washers. GE asserted that this understatement results from the fact that the larger loads would use more water, and thus energy to heat it, which would mean a higher energy use value than what is on the front-loading machines' labels. GE conceded that "if the DOE eliminates the different product classes [in its revised energy conservation standards and test procedure], the change sought by [CEE's] petition could be reconsidered."⁵⁸

Whirlpool stated that consumers know the difference between top- and front-loading and that the vast majority of consumers have strong preferences for the ease of loading offered by top-loaders.⁵⁹ Whirlpool also expressed concern about the cost differential between top- and front-loading washing machines. It stated that most consumers cannot afford the high cost of front-loading machines, and thus shop for top-loaders generally because of the perceived or actual convenience that top-loaders offer and because of the price difference. Consumers who wish to shop for the more efficient top-loaders would not be able to discern the ranges of comparability for these products with a consolidated range scale.⁶⁰ Whirlpool concluded that the amendment is the best course to follow only if it is made effective in concert with the effective date of new DOE energy standards for clothes washers, when high-efficiency top-loaders have much more market penetration.⁶¹

3. Comments Addressing the Benefits and Costs of the Proposed Amendment

A majority of the commenters maintained that the amendment would have beneficial results.⁶² Several asserted that consumers would be more effectively educated⁶³ and that there would be consistency with the categories used by the EnerGuide Program in Canada.⁶⁴ Four commenters contended that one of the benefits of the proposed amendment would be that some purchasers would choose to buy more efficient washers.⁶⁵ Commenters variously stated that the proposed amendment would reduce water consumption,⁶⁶ promote energy efficiency,⁶⁷ and that saving energy means saving money.⁶⁸ Several commenters stated that they believed that the proposed amendment would benefit the environment,⁶⁹ consumers,⁷⁰

the economy,⁷¹ and retailers and manufacturers.⁷² Six commenters urged that the Commission not wait for possible changes to the DOE regulations before implementing the revised sub-categories because the implementation of the test and standards is still at least several years away.⁷³ Those arguing in favor of immediate implementation contended generally that continuance of the current sub-categories: would continue consumer confusion;⁷⁴ could impede DOE/EPA and utilities' efforts to increase consumer awareness about energy efficiency in clothes washers;⁷⁵ would result in significant uncaptured energy and water savings due to lost sales of more efficient clothes washer models;⁷⁶ and would perpetuate an artificial market barrier to adoption of a highly energy efficient technology.⁷⁷

Amana saw no benefits in the proposed amendment. It is believed that a label change would confuse consumers and adversely impact energy consumption and/or delay purchase decisions in favor of the repair of older, less efficient models.⁷⁸ Two other commenters said that manufacturers who currently have no front-loading, efficient models would incur the costs of slightly lower sales and that the sales of more efficient washer models would

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 OOE (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 time of the Commission's decision to implementation if the Commission wishes to coordinate with DOE's standard implementation. This is far too long for consumers to live with the disadvantages of the current labeling classifications."); Maytag (6) p. 4 ("Immediate adoption by the Commission of the proposed amendment, regardless of the timing of the next rulemaking by the Department of Energy, is in the best interests of consumers."); ACEEE (9) p. 3 (The earliest time that a new DOE standard can take effect is September 2003; that time frame is "much too long to wait to correct a serious problem with the current label."); CEE (16) p. 6 ("[I]f the FTC waits for DOE, it could be a very long time before an accurate EnergyGuide label for clothes washers is implemented."); NPPC (21) p. 3 (Strongly recommended that the Commission not wait for DOE to make its changes since the earliest possible date that the new standard could take effect is the fall of 2002.)

⁷⁴ Boston Edison (8) pp. 1-2; Mass. Elec. (13) p. 2; NRDC (15) p. 1; CEE (16) p. 6.

⁷⁵ Boston Edison (8) pp. 1-2; Mass. Elec. (13) p. 2.

⁷⁶ NRDC (15) p. 1.

⁷⁷ CEE (16) p. 1.

⁷⁸ Amana (4) p. 2.

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.

increase at the expense of less efficient models.⁷⁹

Six commenters mentioned specifically the costs associated with changing the EnergyGuide labels.⁸⁰ Alliance stated that the cost of creating new labels and scrapping finished printed labels would be borne by manufacturers.⁸¹ Maytag stated, however, that the economic impact should not be detrimental to any manufacturer: "In fact, in the long run it could result in a small savings for those manufacturers that presently have to stock two different types of labels, one for 'front loader' and one for 'top loader.'" ⁸² Whirlpool was concerned that there would be some engineering, administrative and cost implications that would ultimately be borne by consumers:

With the constant turnover of personnel in sales, marketing, manufacturing and engineering there would be ongoing confusion between the newly formatted label with one product category and the DOE's vertical and horizontal axis categories. This considerably increases the likelihood of an inadvertent error in energy reporting/certification. At the most, a cost of \$100 per unit per day, under Section 333 of the Energy Policy and Conservation Act, could be a serious burden of manufacturers. At the least, there is a real possibility of a lesser fine as well as substantial internal cost of correcting mislabeled units.⁸³

Addressing the expense to manufacturers of changing EnergyGuide labels to eliminate the "Top-loading" and "Front-Loading" categories, some commenters explained that the cost depended on the timing of the change. Amana stated: "If the label changes are made at some time other than a normal FTC label revision, there would be significant cost impact for the manufacturers." ⁸⁴ Whirlpool stated that if the washer category consolidation could be combined with other changes to the Energy Guide, such as a change in the ranges of comparability, the confusion for manufacturers and potential complications would be minimized.⁸⁵ OOE, ACEEE, and CEE pointed out that there are fixed costs incurred any time there is a change to the ranges of comparability, energy prices, model descriptions, or any other information on the label, but that timed to coincide with such a change, and

with enough lead time, the costs of changing labels to reflect the eliminated product categories would be near zero.⁸⁶

4. Final Amendments

After careful consideration of the comments, the Commission has decided to amend Appendix F of the Rule, which pertains to the clothes washer category, by eliminating the "front-loading" and "top-loading" subdivisions of the "standard" and "compact" sub-categories. The Commission agrees with the comments that maintained that the current "front-loading" and "top-loading" subdivisions may be confusing to consumers, may impair efforts to promote high-efficiency clothes washers and may hinder a consumer's ability to distinguish highly energy efficient clothes washers.⁸⁷ Further, the Commission has determined not to add any additional information or descriptors, other than the current "standard" and "compact" subdivisions, to the EnergyGuide label at this time, as discussed in section II.B., below.

In deciding to amend Appendix F, the Commission concludes that the technological distinction between top-loading and front-loading clothes washers is becoming blurred. As several commenters noted, the present system of placing clothes washers in separate product categories based on loading orientation is becoming outmoded.⁸⁸ The comments largely showed that consumers are willing to consider both types of washers and that the present labeling system can impair consumers' ability to make meaningful comparisons based on energy efficiency.

The Commission recognizes that consumers are more familiar with top-loading machines, because they have been sold in the U.S. for many years longer than front-loaders. However, the Commission believes that if consumers are provided with the opportunity to compare directly the energy use of both top- and front-loading washers, then, when making a purchase decision, they

will be able to consider the purchase cost differential between the two types of washers along with other product attributes, such as cleaning ability, tub capacity, ease of use, and water and energy consumption. Because of being able to compare energy use more efficiently, some consumers may choose to buy more efficient washers. Ultimately, the amendment will help to promote energy efficiency while reducing water and energy consumption, which will save consumers money. The Commission also gave weight to the fact that the proposed amendment will provide consistency with Canada's EnerGuide for clothes washers.

The Commission recognizes the potential, raised by Whirlpool and others, for some negative impact on manufacturers and retailers producing and marketing only top-loading machines (especially resource-efficient models). The Commission believes however, that the beneficial effects on consumers and the environment that are likely to result from the elimination of the top-loading and front-loading sub-categories will significantly outweigh whatever negative impact occurs.

The Commission has decided that the amendment will become effective in July, 2000, rather than after the effective date of DOE's expected changes to its energy conservation standards and test procedure for clothes washers. There is uncertainty about the final date of DOE's changes, and DOE itself has advised Commission staff in its letter of August 14, 1998, that it would be in the consumer's best interest for the Commission to adopt the changes to the clothes washer sub-categories "as soon as possible." ⁸⁹ Because there are costs associated with changing the EnergyGuide label, as discussed in section II.A.3., above, the Commission is coordinating the effective date of the amendment with the next scheduled change to the ranges of comparability for clothes washers. Consequently, the relabeling costs of eliminating the top-loading and front-loading subdivisions will be minimal. And, as Maytag pointed out, there could be a long-run savings to manufacturers because they will no longer have to stock separate labels for both top-loading and front-loading clothes washers.

The Commission has considered GE's contention that the current differences in the DOE test procedures may affect the comparability of the energy ratings for H-axis and V-axis machines on

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 \$700, \$720, \$800, and \$1,000. The article rated 18 top-loading models, of which the six most costly models were priced at \$550 (two models), \$580, \$600, \$640, and \$800.

⁸⁹ Letter from Dan W. Reicher, Assistant Secretary, Energy Efficiency and Renewable Energy, DOE (Aug. 14, 1998). See note 12, *supra*.

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:

Without some reference to tub volume the consumer may believe that the comparison between two machines of different tub volume is equal. In reality, a comparison of two machines of different tub volumes is not equal. Assuming that near-full loads are washed, the machine with the smaller tub volume will require that more loads be washed per year than the machine with the larger tub volume.⁹⁷

Maytag contended that tub volume measurements in cubic feet are misleading because in H-axis washers the entire measured tub volume is usable, whereas V-axis tub volume measurement includes unusable space at the top of the tub.⁹⁸ Maytag also stated that using gallons as a measurement of internal tub volume would likely confuse consumers because it could be construed as a water consumption measurement rather than a capacity measurement.⁹⁹ OEE stated that using cubic feet as a capacity indicator is a problem because, according to manufacturers, this metric is not directly comparable from vertical axis to horizontal axis products.¹⁰⁰

2. The Commission's Conclusions

The Commission has decided not to add other capacity descriptors to labels for clothes washers, and to keep only

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

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.

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.

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 an- nual 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

Based on standard U.S. Government tests

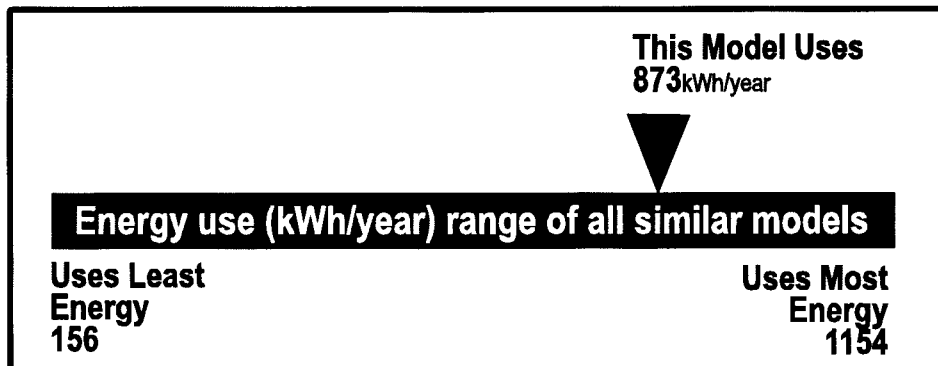
ENERGYGUIDE

Clothes Washer
Capacity: Standard

XYZ Corporation
Model(s) MR328, XL12, NAA83



**Compare the Energy Use of this Clothes Washer
with Others Before You Buy.**



kWh/year (kilowatt-hours per year) is a measure of energy (electricity) use. Your utility company uses it to compute your bill. Only standard size clothes washers are used in this scale.

Clothes washers using more energy cost more to operate.
This model's estimated yearly operating cost is:

\$70

when used with an electric water heater

\$33

when used with a natural gas water heater

Based on eight loads of clothes a week and a 2000 U.S. Government national average cost of 8.03¢ per kWh for electricity and 68.8¢ per therm for natural gas. Your actual operating cost will vary depending on your local utility rates and your use of the product.

Important: Removal of this label before consumer purchase violates the Federal Trade Commission's Appliance Labeling Rule (16 C.F.R. Part 305).

Sample Label 3

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 00-7461 Filed 3-24-00; 8:45 am]

BILLING CODE 6750-01-C