

conservation standard requires that all new residential clothes washers manufactured after January 1, 2004 be 22% more efficient than today's minimally compliant clothes washer.¹ Accordingly, the 2004 energy standard will render a substantial portion of the existing clothes washer market obsolete.

The new DOE test procedure for clothes washers, which also will become effective on January 1, 2004, is found at 10 CFR part 430, Subpart B, Appendix J1.² Application of the new test procedure (sometimes referred to as the "J1" test or the "Modified Energy Factor" test) will likely produce energy consumption figures different from those yielded by the old ("J") test procedure (10 CFR part 430, subpart B, Appendix J).³ Because these test results are used to determine energy use information that appears on the FTC EnergyGuide label, consumers may not be able effectively to compare the energy performance of clothes washers if the labels are based on the two different test procedures.

II. AHAM's Request

To ease the transition to the new energy efficiency standard and new (J1) test procedure, AHAM⁴ wrote to FTC staff on February 7, 2003, requesting permission to begin using that test for labeling clothes washers during 2003, before the test becomes effective. In addition, AHAM's letter requests that the Commission allow its members to provide special wording on the EnergyGuide labels for these models to help consumers in distinguishing washers tested under the new (J1) procedure from those tested under the old (J) procedure (see Prototype Label 2 at the end of this document). AHAM's proposed label would display a banner across the top stating: "This Model has

been Tested to the 2004 Test Procedure. Compare only with Models with this Notice." AHAM requested that the Commission allow its members to begin using the new (J1) test and modified labels on May 1, 2003, and that the labeling changes be made "permanent."⁵ To grant AHAM's request, the Commission would have to grant an exemption from certain EnergyGuide testing and labeling requirements for the remainder of this year and issue Rule amendments to make the requested labeling changes a permanent requirement for all manufacturers after January 1, 2004.

AHAM submitted its request because it asserts that the transition to clothes washers compliant with the new 2004 energy efficiency standard and new test procedure, with respect to testing and labeling, could be unduly burdensome to manufacturers and confusing to consumers. According to AHAM, there will be hundreds of new energy efficient models introduced throughout the course of 2003. Under current requirements, manufacturers will have to test and rate these new models first under the old (J) procedure for 2003, and then again under the new (J1) procedure in order to distribute them in 2004. AHAM stated that, since several samples of each basic model need to be tested to determine statistically valid ratings, such duplicative testing would result in tremendous laboratory and manufacturer staff resources for hundreds of new models. Also, AHAM states that retail floor models are not changed frequently. Thus, without action by the FTC, retail display units for new models introduced this year will have energy labels based on the old (J) test well into 2004 and beyond. AHAM is concerned that these display units could be very confusing and misleading as consumers seek to compare units tested under different procedures in a single showroom without any notice that differences exist.

III. Discussion

AHAM's request raises two procedural matters: (1) A request for an exemption from certain testing and labeling requirements for clothes washers from May through December 31, 2003 (to permit testing and labeling pursuant to the new (J1) test); and (2) a proposed "permanent" rule change, effective January 1, 2004, to conform existing

label content and format requirements to label changes permitted by the 2003 exemption. The Commission is seeking public comment on both the exemption request and the proposed rule.

A. Proposed Conditional Exemption for 2003

AHAM's request implicates several provisions of the Appliance Labeling Rule. The Rule requires that, for the purposes of the EnergyGuide label, manufacturers use the estimated annual energy consumption as derived from the DOE clothes washer test procedures in 10 CFR part 430 (see 16 CFR 305.5(a) and 305.11(a)(5)(i)(E)). Because the new (J1) test for clothes washers will not become effective until January 1, 2004, the Rule does not authorize the use of that test for energy consumption information on EnergyGuide labels until that date. By granting the requested exemption, the Commission would allow manufacturers to begin using the new test results on EnergyGuide labels before 2004. In addition, the Rule does not allow any marks or identification other than those specified in the Rule to appear on the label except for some limited exceptions not applicable here (see 16 CFR 305.11(a)(5)(i)(K)). Accordingly, absent an exemption, the Rule does not allow the kind of explanatory information proposed by AHAM (e.g., "Compare the Energy Use of this Clothes Washer only with other Models tested to the 2004 Test Procedure").

Because most consumers use the showroom models for EnergyGuide information, the Commission believes that there are benefits to allowing manufacturers to begin changing over to the new labels and test results sooner. First, as AHAM indicates, this would allow manufacturers to avoid testing their new products multiple times pursuant to two test procedures. It is the Commission's understanding that AHAM's members intend to test new models under the new (J1) test procedure and use limited testing under the old (J) procedure to develop data for the purposes of DOE and FTC reporting requirements during the remainder of 2003. Under this proposal, consumers would obtain information based on the new test sooner. The Commission also believes that AHAM's proposed label changes would minimize consumer confusion resulting from the use of the new test in 2003 by alerting consumers that the energy use information on some models is derived from a new test procedure.

The Commission proposes to grant AHAM's request for an exemption from the requirements in 16 CFR 305.5(a) and

¹ 66 FR 3314, 3315 (Jan. 12, 2001). A second amended energy efficiency standard, slated to take effect on January 1, 2007, requires that all new residential clothes washers manufactured after that date be 35% more efficient than today's minimally compliant clothes washer.

² The EnergyStar program, run by DOE and the U.S. Environmental Protection Agency, already requires use of the new (J1) test to certify clothes washers under that program.

³ According to AHAM, the clothes washer test procedures were revised to better reflect current usage habits by incorporating updated temperature utilization factors that are more appropriate for today's designs.

⁴ The manufacturers identified in AHAM's request are Alliance Laundry Systems, Electrolux Home Products, Fisher & Paykel Ltd., GE Appliances, Maytag Appliances, Miele Corp., and Whirlpool Corp. Subsequently, AHAM informed Commission staff that BSH, Gorenje, and Asko also are participating in AHAM's request. According to AHAM, these manufacturers produce roughly 98% of the clothes washers sold in the United States.

⁵ AHAM also requested that the Commission change the reporting date in the Rule from March 1 to October 1 for each year. The Commission has already addressed the requested date change for data submission in an earlier **Federal Register** document (see 68 FR 8448 (Feb. 21, 2003)).