

305.11(a) only to the extent required to allow manufacturers to:

(1) Use the test procedure in 10 CFR part 430, subpart B, Appendix J1 for determining the energy use figure printed on EnergyGuide labels of clothes washers distributed between May 1 and December 31, 2003; and

(2) For such models, use EnergyGuide labels that contain the following modifications to the format and content requirements in 16 CFR 305.11, as illustrated in Prototype Label 2 at the end of this document:

(a) The use of the statement "Compare the Energy Use of this Clothes Washer only with other Models tested to the 2004 Test Procedure" in lieu of the statement "Compare the Energy Use of this Clothes Washer with Others Before You Buy";

(b) the use of the statement "This Model has been Tested to the 2004 Test Procedure. Compare only with Models with this Notice." at the top of the label; and

(c) the use of a label 8 inches (20.32 cm.) in length to accommodate statements specified in (b) above instead of the 7 $\frac{3}{8}$  inch (18.73 cm.) currently required by § 305.11(a)(1) of the Rule.

The Commission proposes to grant the exemption on the following conditions: (1) That any manufacturers using this exemption must use it for all clothes washer models introduced between May 1, 2003 and December 31, 2003 (they may use it for existing models that meet the new conservation standard), and (2) that the modified EnergyGuide label must be used if the new (J1) test is used to derive energy use information on the EnergyGuide label for clothes washers. The manufacturers would remain obliged to comply with all other Rule requirements. Manufacturers not specifically named in AHAM's request would be able to use this exemption as long as they follow the conditions specified by the Commission.

The Commission is seeking comment on the exemption proposal. In particular, the Commission would like input on whether the differences between the results yielded by the new and the old DOE tests for clothes washers are significant enough to warrant AHAM's proposed label change. In addition, the Commission seeks comment on whether AHAM's proposed label changes are appropriate and will help consumers in their purchasing decisions. For instance, it is possible that the reference to the year "2004" in referring to the test procedure will confuse consumers who are reading the label in subsequent years (e.g., 2005 or 2006). The Commission has offered alternative language and specific

questions for comment in Section IV below.<sup>6</sup>

#### *B. Proposed Rule Change for EnergyGuide Labels for 2004 and Beyond*

If the Commission grants AHAM's exemption request, it is probable that many new clothes washers distributed for sale in the United States for the remainder of 2003 will have labels containing the proposed advisory language that "This Model has been Tested to the 2004 Test Procedure. Compare only with Models with this Notice." Once this change is made to EnergyGuide labels on units distributed in 2003, a return to the conventional label in the future may cause consumer confusion because the units with the modified label will stay on showroom floors into 2004 and beyond. Given these considerations, AHAM has asked the Commission to make its proposed label changes permanent. The Commission is seeking public comment on a proposed rule change that would incorporate AHAM's suggested label changes (see Prototype Label 2 and Sample Label 3) and require these changes for all clothes washers distributed for sale in the United States beginning January 1, 2004. The Commission's proposed amendments to this effect appear at the end of this document.

The Commission believes that it is preferable that any permanent changes to the EnergyGuide label match the label modifications used during the exemption period. It could be confusing to consumers to allow advisory language on the label during the exemption period that is different from advisory language required by the Rule after January 1, 2004. Accordingly, the Commission believes that, if the exemption is granted and the Rule is also amended, the modified label language should be identical in both instances. The Commission seeks comment on alternatives to the label language proposed by AHAM. Section IV contains some possible alternatives and specific questions regarding these proposed amendments.

#### **IV. Request for Comment**

The Commission requests that interested persons submit written comments on any issue of fact, law or policy that may bear upon the proposed rule and conditional exemption. Although the Commission welcomes comments on any aspect of these

matters, the Commission is particularly interested in comments on the questions listed in this section. All written comments should state clearly the question or issue, or the specific condition, that the commenter wishes to address.

The Commission requests that commenters provide representative factual data in support of their comments. Experiences of individual firms are relevant to the extent they typify industry experience in general or the experience of similar-sized firms. Comments opposing the proposed conditional exemption and proposed Rule amendments should, if possible, suggest specific alternatives. Proposals for alternative conditions should include reasons and data that indicate why the alternatives would better serve the requirements of the Appliance Labeling Rule. The Commission is particularly interested in comments addressing the following questions and issues:

1. Should the Commission grant the requested exemption and permit manufacturers to begin testing and labeling clothes washers to the new (J1) test in 2003? Are there alternatives to the proposed conditional exemption and rule change that would better accomplish the same objectives?

2. Are the differences between the results yielded by the new (J1) and old (J) tests significant enough to warrant special advisory language on the EnergyGuide labels? Are the differences unbiased, or does one test yield consistently higher or lower results than the other?

3. If the Commission grants AHAM's exemption request, should the Commission amend the rule to incorporate label changes as a permanent requirement?

4. Are AHAM's proposed changes to the label, such as the content, size, and placement of the modified language on the EnergyGuide, appropriate? Will the proposed language on the EnergyGuide label help consumers in their purchasing decisions or will it cause undue confusion? Will the reference to the year "2004" on the label create confusion in subsequent years if the proposed change becomes a permanent fixture on the label? Should the explanatory language be required on both the top and the bottom of the label?

5. Are there additional, or different, changes that should be made to the label related to AHAM's request?

6. Would either of the following alternatives be preferable to the language proposed by AHAM:

*Alternative 1:* Statement at Top of Label—"This Model has been Tested to

<sup>6</sup> Given the limited duration of this proposed exemption, the Commission does not plan to incorporate the exemption into the text of the Rule (see § 305.19).