

refrigerator-freezers, freezers, dishwashers, clothes washers, water heaters, room air conditioners, furnaces, and central air conditioners. The rule requires manufacturers of all covered appliances to disclose specific energy consumption or efficiency information (derived from the DOE test procedures) at the point of sale in the form of an "EnergyGuide" label and in catalogs. The rule requires manufacturers to include, on labels, an energy consumption or efficiency figure and a "range of comparability." This range shows the highest and lowest energy consumption or efficiencies for all comparable appliance models so consumers can compare the energy consumption or efficiency of other models similar to the labeled model.

The rule requires manufacturers, after filing an initial report, to report annually the estimated annual energy consumption or energy efficiency ratings for the appliances derived from tests performed pursuant to the DOE test procedures. 16 CFR 305.8(b). Because manufacturers regularly add new models to their lines, improve existing models, and drop others, the database from which the ranges of comparability are calculated is constantly changing. Under section 305.10 of the rule, to keep the required information on labels consistent with these changes, the Commission publishes new ranges (but not more often than annually) if an analysis of the new information indicates that the upper or lower limits of the ranges have changed by more than 15%. Otherwise, the Commission publishes a statement that the prior ranges remain in effect for the next year.

#### *B. New DOE Test Procedure and Energy Standards for Clothes Washers*

New energy conservation standards and a new DOE test procedure for clothes washers will become effective on January 1, 2004. The new energy 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.<sup>1</sup> 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.<sup>2</sup> 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).<sup>3</sup> 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, AHAM<sup>4</sup> 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 proposed a modified label that 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."<sup>5</sup> 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

<sup>2</sup> 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.

<sup>3</sup> 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.

<sup>4</sup> 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 over 95% of the clothes washers sold in the United States.

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

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. Proposed Exemption and Proposed Rulemaking**

In an April 3, 2003, document (68 FR 16231), the Commission sought comments on AHAM's proposal. The proposal raised 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.

##### *A. Proposed Conditional Exemption for 2003*

The proposed exemption implicated several provisions of the Appliance Labeling rule. The rule requires that, for 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)

<sup>1</sup> 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.