

unclear whether manufacturers will distribute new models in Canada if, in doing so, they will have to conduct the same double testing they have sought to avoid through their petition to the Commission. In addition, NRCAN, as suggested in its comment, may identify a "non-regulatory" solution that allows manufacturers to use the J1 test for labels on products sold in Canada and thus eliminate these concerns altogether.

Even assuming some new models are distributed this year bearing the joint label, the Commission does not expect that differences between the Canadian and U.S. labels will significantly impede consumers' ability to compare the energy use of competing products. Since 1996, the Commission's rule has allowed manufacturers to print the EnergyGuide label directly adjoining the Canadian EnerGuide. *See* 16 CFR 305.11(5)(i)(I). The U.S. EnergyGuide label contains operating cost information not found on the Canadian EnerGuide label. In addition, range of comparability information on the FTC EnergyGuide label may not be the same as that on the Canadian EnerGuide labels. We have no evidence that these differences have caused confusion. As Alliance suggests in its comments, the EnergyGuide's reference to U.S. government tests alerts consumers that the label is intended for U.S. consumers.<sup>19</sup> In the long term, the Commission believes it is important to harmonize the U.S. label with the Canadian label as much as possible. Given the relatively short duration of the exemption period and for the other reasons discussed above, however, the Commission is not requiring any specific conditions for the exemption with regard to adjoining labels.

#### *D. Benefits and Costs of the Conditional Exemption and Amendments*

##### *Comments*

The Commission asked for comments on the economic impact of the proposed rule and conditional exemption, including impacts on small business. AHAM stated that the proposals would impose no additional burdens on manufacturers and would assist manufacturers in meeting DOE efficiency standards by January 1, 2004.<sup>20</sup> Whirlpool added that it would suffer serious consequences if the FTC failed to implement these changes by early May.<sup>21</sup> Alliance indicated that the proposal would reduce a significant

burden on manufacturers. It estimated that the proposal would save that company 35 working days of one laboratory technician dedicated to DOE energy testing.<sup>22</sup>

##### *Discussion*

The manufacturers have described the burdens they are seeking to avoid through the requested exemption. The Commission believes that issuance of the exemption and final rule will help to avoid those burdens while, at the same time, minimizing any consumer confusion associated with the transition from the old Appendix J test procedure to the new Appendix J1 procedure.

#### **V. Final Conditional Exemption and Amendments**

The Commission has considered the comments received and has decided to issue the conditional exemption and amendments as detailed in this section. The Commission believes that there are benefits to allowing manufacturers to begin changing over to the new labels and test results at this time. The exemption and rule change will allow manufacturers to avoid testing their new products multiple times pursuant to two test procedures for the purposes of FTC labeling.<sup>23</sup> In addition, consumers will obtain information based on the new test sooner. The Commission also believes that the changes to the label will minimize consumer confusion resulting from the exemption and transition to the new test by alerting consumers that the energy use information on some labels is derived from a new test procedure.

##### *A. Final Conditional Exemption*

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

June 11, 2003, and December 31, 2003;<sup>24</sup> 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 using the 2004 test procedure" in lieu of the statement "Compare the Energy Use of this Clothes Washer with Others Before You Buy"; and

(b) The use of the statement "This model has been tested using the 2004 test procedure. Compare only with models displaying this statement." in a 10/16 inch (1.59 cm.) in height, process black bar across the top of the label.

The Commission grants the exemption with the following conditions: (1) That any manufacturers using this exemption must use it for all clothes washer models introduced between June 11, 2003, and December 31, 2003 (they may also use it for existing models that meet the new conservation standard), and (2) 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 remain obliged to comply with all other Rule requirements. Manufacturers not specifically named in AHAM's request may use this exemption as long as they follow the conditions specified by the Commission.<sup>25</sup>

##### *B. Final Amendments*

After considering the comments, the Commission has determined to issue the final rule as described in this section. To avoid confusion that may result from switching back to the conventional label after the exemption period, the Commission believes that is preferable to amend the Rule to require the explanatory language on EnergyGuide labels for all models beginning January 1, 2004. These label changes are identical to those allowed by the conditional exemption. The final amendments published here will minimize consumer confusion that could result from a return to the conventional label at the end of the exemption period.

<sup>22</sup> Alliance (1) p. 2.

<sup>23</sup> As stated in the proposal, 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. 64 FR at 16232. The final conditional exemption and rule amendments announced in this document apply only to FTC labeling requirements and do not change existing DOE requirements or otherwise relieve manufacturers from complying with DOE requirements.

<sup>24</sup> The April 3, 2003, **Federal Register** document proposed that the exemption period begin May 1, 2003 (*see* 68 FR at 16233). This date is now infeasible given the timing of the April 3 document's publication.

<sup>25</sup> Given the limited duration of this conditional exemption, the Commission is not incorporating the exemption into the text of the rule (*see* 16 CFR 305.19).

<sup>19</sup> Alliance (1) p. 2.

<sup>20</sup> AHAM (3) p. 3.

<sup>21</sup> Whirlpool (2) p. 5.