

reverser(s) deactivated shall be determined in accordance with Airbus Flight Operations Telex (FOT) 999.0066/99, dated June 9, 1999, as follows:

For takeoff on wet runways, use performance data in accordance with paragraph 4.1.1 of the FOT.

For takeoff on contaminated runways, use performance data in accordance with paragraph 4.1.2 of the FOT.”

(1) Notwithstanding the provisions of the FAA approved A300-600 and A310 Master Minimum Equipment List (M MEL), dispatch with both thrust reversers deactivated, for the purposes of complying with this AD, is approved.

(2) Notwithstanding the provisions of the FAA Approved A300-600 and A310 M MEL, airplanes which have deactivated one or both thrust reversers in compliance with this AD, may not conduct operation on contaminated runways, as defined in Airbus Flight Crew

Operating Manual Section 2.18.50, unless all components of the Main Wheel Brakes, Green and Yellow Brake Systems, Antiskid System, Ground Spoiler System, and all Spoiler and Speed Brake Surfaces, operate normally.

**Note 2:** The “FCOM” referenced in Airbus FOT 999.0066/99, dated June 9, 1999, is Airbus Industrie Flight Crew Operating Manual (FCOM), Revision 27 for Airbus Model A310 series airplanes and Revision 22 for A300-600 series airplanes. [The revision number is indicated on the List of Effective Pages (LEP) of the FCOM.]

**Alternative Methods of Compliance**

(k) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must submit their request through an appropriate

FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

**Special Flight Permits**

(l) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be done.

**Documents That Have Been Incorporated By Reference**

(m) The actions must be done in accordance with the following Middle River Aircraft Systems Alert Service Bulletins:

Document no.	Pages	Revision	Date
CF6-80C2A, PMC SB 78A1118 ..... Total Pages: 18.	All .....	Original ...	April 4, 2002
CF6-80C2A, PMC SB 78A1118 .....	1 .....	1 .....	August 23, 2002
	2-4 .....	Original ...	April 4, 2002
	5 .....	1 .....	August 23, 2002
	6-8 .....	Original ...	April 4, 2002
	9-10 .....	1 .....	August 23, 2002
	11-18 .....	Original ...	April 4, 2002
Total Pages: 18.			
CF6-80A1/A3, SB 78A4030 .....	All .....	Original ...	April 4, 2002
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CF6-80A1/A3, SB 78A4030 .....	1 .....	1 .....	August 23, 2002
	2-4 .....	Original ...	April 4, 2002
	5 .....	1 .....	August 23, 2002
	6-8 .....	Original ...	April 4, 2002
	9-10 .....	1 .....	August 23, 2002
	11-18 .....	Original ...	April 4, 2002
Total Pages: 18.			

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Middle River Aircraft Systems, Mail Point 46, 103 Chesapeake Park Plaza, Baltimore, MD, 21220-4295, telephone: (410) 682-0094; fax: (410) 682-0100. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Effective Date**

(n) This amendment becomes effective on July 23, 2003.

Issued in Burlington, Massachusetts, on June 9, 2003.

**Francis A. Favara,**

*Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

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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 and conditional exemption.

**SUMMARY:** The Federal Trade Commission (“Commission”) announces amendments to the Appliance Labeling Rule and the issuance of a conditional exemption in response to a request from the Association of Home Appliance Manufacturers (“AHAM”) related to certain labeling requirements for clothes washers.

**DATES:** The effective date of the amendments to 16 CFR part 305 is January 1, 2004. The effective date of

the conditional exemption described herein is June 11, 2003.

**FOR FURTHER INFORMATION CONTACT:** Hampton Newsome, Attorney, Division of Enforcement, Federal Trade Commission, Washington, DC 20580, (202) 326-2889.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

*A. FTC Requirements*

The Commission issued the Appliance Labeling Rule in 1979, 44 FR 66466 (Nov. 19, 1979) (“Rule”), in response to a directive in the Energy Policy and Conservation Act of 1975 (“EPCA”) (42 U.S.C. 6294). EPCA also requires the Department of Energy (“DOE”) to develop test procedures that measure how much energy certain appliances use, and to determine the representative average cost a consumer pays for the different types of available energy.

The rule covers, among other things, eight categories of major household appliances: refrigerators and

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, Gonrenje, 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.

and 305.11(a)(5)(i)(E)). Because the new (J1) test for clothes washers will not become effective until January 1, 2004, the current 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.

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

In the April 3, 2003, document, the Commission indicated that, by granting the exemption, it is probable that many new clothes washers distributed for sale in the United States for the remainder of 2003 would 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 asked the Commission to make its proposed label changes permanent. The Commission proposed that the advisory language required by the rule after January 1, 2004, should be identical to that on the label during the exemption period. The Commission sought public comment on a proposed rule change that would incorporate AHAM's suggested label changes and require these changes for all clothes washers distributed for sale in the United States beginning January 1, 2004.

#### **IV. Comment Analysis**

The Commission received four comments in response to the April 3, 2003, document.<sup>6</sup> The three industry comments (from Alliance, Whirlpool, and AHAM) supported the proposed conditional exemption and rule change. AHAM stated that, "early compliance

with J1 labeling requirements in 2003 is critical to the efficiency of testing and production as the industry transitions to new washer standards by the end of 2003."<sup>7</sup> Whirlpool echoed AHAM's comment, adding that, without the conditional exemption, it would be not be able "to meet existing commitments to trade partners."<sup>8</sup> These three commenters also supported the proposal to make the changes to the EnergyGuide label permanent. The fourth commenter, NRCAN (the agency responsible for appliance labeling in Canada), raised concerns about the impact of the proposal on adjoining labels bearing both the U.S. EnergyGuide and the Canadian "EnerGuide" label (as allowed by the Commission's rule). An analysis of specific issues raised by the comments follows:

#### *A. Differences Between the J and J1 Tests*

##### Comments

The Commission requested comments on whether the differences between the results yielded by the new (J1) and old (J) tests are significant enough to warrant special advisory language on the EnergyGuide labels. The Commission also asked whether one test yields significantly higher or lower results than the other. The three industry comments indicated that the differences were significant enough to warrant the change. Alliance stated that the tests yielded a 25% difference for one of its models.<sup>9</sup> Whirlpool and AHAM commented that the new (J1) test results are generally lower than the older (J) test results and the differences could be as much as 40%.<sup>10</sup>

##### Discussion

According to the commenters, the differences in energy use results yielded by the two tests can be significant. Given this information, we believe the explanatory text on the labels is appropriate to aid consumers in distinguishing models tested under the two procedures. The Commission notes that DOE periodically modifies the test procedure for covered products and such changes can yield different test results for the same model. In the past, the Commission has not required additional information on the EnergyGuide label in response to test procedure changes. In this case, however, there are special circumstances that, in the Commission's view, warrant the explanatory language

as requested by AHAM. First, because the new conservation standard will become effective on the same date as the new test procedure, a large number of new models will appear on the market over a short period of time in response to the more stringent efficiency standards. In addition, the differences between the results of the old and new test procedures could be quite substantial in this case, up to 40% as indicated by the industry comments. Finally, because the exemption will allow manufacturers to begin using the new (J1) test results for labeling early, manufacturers will distribute new products with labels based on the new test while they will continue to distribute older products with labels reflecting the old test. Accordingly, the transition between the old and new labels in showrooms will likely be longer than is usually the case when DOE amends a test procedure. Considering all these factors, the Commission believes that explanatory language as suggested by AHAM is appropriate.

#### *B. Content, Size, and Placement of the Modified Language*

##### Comments

The Commission solicited comments on the proposed changes to the label, such as the content, size, and placement of the modified language on the EnergyGuide. The Commission asked whether the proposed language on the EnergyGuide label will help consumers in their purchasing decisions, or cause undue confusion. In addition, commenters were asked whether the reference to the year "2004" on the label will create confusion in subsequent years if the proposed change becomes a permanent fixture on the label and whether the explanatory language should be required on both the top and the bottom of the label. The Commission sought comment on alternatives to the proposed advisory language, such as using the term "J1" or "Modified Energy Factor" in lieu of "2004" in describing the test.

The three industry comments stated that the proposed changes are appropriate and that the changes to the EnergyGuide label will help consumers. Whirlpool stated that there will be less need for dealers to "refloor" model units and less confusion for "energy conscientious consumers when selecting new appliances."<sup>11</sup> The industry commenters also preferred the reference to "the 2004 procedure" over other descriptors such as "J1" or

<sup>6</sup> The Commission received comments from Alliance Laundry Systems ("Alliance") (1), Whirlpool Corporation ("Whirlpool") (2), AHAM (3), and Natural Resources Canada ("NRCAN") (4).

<sup>7</sup> AHAM (3) p. 1.

<sup>8</sup> Whirlpool (2) p. 3.

<sup>9</sup> Alliance (1) p. 1 (attachment).

<sup>10</sup> AHAM (3) p. 2; Whirlpool (2) p. 4.

<sup>11</sup> Whirlpool (2) p. 4.

“Modified Energy Factor” because consumers would have “no clue” as to the meaning of these latter terms.<sup>12</sup> They did not believe it was necessary to place the explanatory language on the bottom of the label (in addition to the statements proposed for the top and middle of the label). Whirlpool wrote that such information would be redundant for consumers.<sup>13</sup> Finally, AHAM and Alliance requested that the size of the new label be  $7\frac{3}{8}$  inch (18.73 cm.) as currently required by the Rule and not 8 inches (20.32 cm.) as proposed by the Commission.<sup>14</sup> Alliance suggested that the use of a  $7\frac{3}{8}$  inch (18.73 cm.) label can be accomplished by not incorporating the proposed text in the middle of the label.<sup>15</sup>

#### Discussion

The Commission agrees with the commenters that the “2004” language is preferable to alternatives such as “J1” and “Modified Energy Factor.” It is possible that, in later years, the reference to “2004” on the label may raise questions for consumers. Ultimately, however, we do not believe that this reference will have a significant impact on consumers’ ability to compare clothes washer energy use because the relevant energy use and operating cost information will be clearly marked on the label. Accordingly, we have retained the reference to “2004” in the explanatory language for the final rule.

The Commission recognizes that it may not be desirable to retain this “2004” reference on the clothes washer labels indefinitely. Although the explanatory language will aid consumers during the upcoming transition period, the language will eventually become unnecessary because all models will carry the same label. The Commission may consider eliminating the special advisory language from the rule in the future. Each year, the Commission analyzes energy use information submitted for all clothes washers sold in the United States to determine whether the ranges of comparability for the EnergyGuide labels should change. If the Commission determines to amend the ranges in a given year, new labels printed as a result will display different ranges and use updated information to calculate operating costs. Accordingly, if there is perceived need to discontinue the

explanatory statements on the labels in the future, the issuance of new ranges could provide the Commission with the opportunity to consider eliminating the advisory language published here.

The Commission has decided to make minor revisions to the proposed wording of the explanatory language. Instead of stating in the banner on top of the label that, “This Model has been Tested to the 2004 Test Procedure. Compare only with Models with this Notice,” the Commission believes that it is preferable to state, “This model has been tested using the 2004 test procedure. Compare only with models displaying this statement.” Similarly, the Commission has changed the explanatory text in the middle of the label to read: “Compare the energy use of this clothes washer only with models tested using the 2004 test procedure.” These modifications replace the phrase “Tested to the” with “tested *using* the” (emphasis added). In addition, the phrase “with this Notice” in the top banner has been changed to “displaying this statement.” The final language also eliminates stray capitalization that appeared in the proposed language. The Commission believes these minor changes will make it easier for consumers to understand the intended message.

Finally, some commenters stated that the conventional size label ( $7\frac{3}{8}$  inches; 18.73 cm.) should be used for the exemption and final rule instead of an 8 inch (20.32 cm.) label as proposed. Upon further review, the existing label size ( $7\frac{3}{8}$  inch; 18.73 cm.) will accommodate the additional banner. We see no significant benefit to requiring the proposed 8 inch (20.32 cm.) label instead of the conventional  $7\frac{3}{8}$  inch (18.73 cm.) label. The Commission, however, does not agree with Alliance that the modified language in the middle of the label should be removed. This language in the middle of the label reinforces the message provided by the explanatory information in the top banner. Using existing font and format requirements for the EnergyGuide label, the conventional ( $7\frac{3}{8}$  inch; 18.73 cm.) label can accommodate the explanatory language at the top and in the middle of the label (as shown in Prototype Label 2).

#### *C. Impact on Canadian and Mexican Labels*

##### Comments

The Commission asked whether the implementation of AHAM’s proposal would cause consumer confusion for those units with EnergyGuide labels adjoining energy labels required by

Mexico or Canada. Manufacturers using such joint labels generally print them on hang tags with the U.S. label on one side and the Canadian label on the other. NRCAN raised concerns about the impact of the proposal for consumers examining these adjoining labels. Beginning in 2004, NRCAN will require an equivalent of the J1 test for labeling purposes. That agency, however, may not have time to harmonize fully with the FTC’s exemption and rule if the changes are implemented as proposed before then. Therefore, NRCAN is concerned that there may be confusion if both labels do not report the same information on both sides. NRCAN indicated, however, that it has discussed options with the Canadian Appliance Manufacturers Association and is willing to work to identify non-regulatory approaches to this issue.<sup>16</sup> Without such a resolution, manufacturers would continue to use the Canadian equivalent of the old (J) test for new models sold in Canada until the end of this year.

The other commenters believed that the proposal would not cause confusion where adjoining labels are used. AHAM stated that the EnergyGuide label is discernable from that of Mexico or Canada because it is entirely in English, has a unique format, and clearly states that the results are based on U.S. government tests. In addition, AHAM suggested that the proposed J1 label would make it clear that the label should only be compared with other labels bearing the same message.<sup>17</sup> Alliance asserted that, “[t]he Commission’s first priority is to provide accurate information to U.S. consumers, not withhold action or information because of potential impacts to consumers in neighboring countries.” In its view, any confusion resulting from the change would be far less than the confusion that would result if the Commission does not issue the proposed exemption and amendment.<sup>18</sup>

##### Discussion

The Commission understands NRCAN’s concerns about the use of new (J1) test data on labels and the advisory language related to that test on adjoining U.S.-Canadian labels. We do not, however, believe that these concerns warrant a change to the proposed conditional exemption and rule amendments. Beginning January 1, 2004, all models distributed in the U.S. and Canada will display labels based on the same test. Before that time, it is

<sup>12</sup> AHAM (3) p. 2; Alliance (1) p. 2; and Whirlpool (2) p. 4.

<sup>13</sup> Whirlpool (2) p. 4.

<sup>14</sup> AHAM (3) p. 2; Alliance (1) p. 2.

<sup>15</sup> Alliance (1) p. 2.

<sup>16</sup> NRCAN (4) pp. 1–2.

<sup>17</sup> AHAM (3) p. 2; *see also* Whirlpool (2) p. 4.

<sup>18</sup> Alliance (1) p. 2.

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

<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.

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>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.

Consistent with the conditional exemption, the final rule does not require an 8 inch label as proposed but instead retains the 7<sup>3</sup>/<sub>8</sub> inch (18.73 cm.) length currently required by the Rule. In addition, the final rule incorporates the minor wording and format changes to the explanatory statements described in the comment analysis and in the description of the conditional exemption. The final rule changes are printed at the end of this document. All manufacturers must follow these requirements beginning January 1, 2004.<sup>26</sup>

## VI. Regulatory Analysis and Regulatory Flexibility Act Requirements

Under section 22 of the FTC Act, 15 U.S.C. 57b, the Commission must issue a regulatory analysis for a proceeding to amend a rule only when it: (1) Estimates that the amendment will have an annual effect on the national economy of \$100,000,000 or more; (2) estimates that the amendment will cause a substantial change in the cost or price of certain categories of goods or services; or (3) otherwise determines that the amendment will have a significant effect upon covered entities or upon consumers. The Commission has determined that the exemption and amendments to the rule will not have such effects on the national economy, on the cost of covered products, or on covered parties or consumers.

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601–612, requires that agencies conduct analyses of the anticipated economic impact of proposed amendments on small businesses. The purpose of a regulatory flexibility analysis is to ensure that the agency considers impact on small entities and examines regulatory alternatives that could achieve the regulatory purpose while minimizing burdens on small entities. Section 605 of the RFA, 5 U.S.C. 605, provides that such an analysis is not required if the agency head certifies that the regulatory action will not have a significant economic impact on a substantial number of small entities.

There are approximately 20 manufacturers of clothes washers sold in the United States. Most of these manufacturers are relatively large.<sup>27</sup>

<sup>26</sup> Prototype Label 2 in the final rule does not contain a specific reference to the 10/16 inch height for the black bar across the top of the label. Because the final graphic may not be to scale as it appears in the *Federal Register* or the Code, specific references to dimensions on the prototype label may be confusing. The text of the rule clearly states the 10/16 (1.59 cm.) inch requirement.

<sup>27</sup> Although no comments were received regarding the size of manufacturers subject to the Rule, the Commission believes that few would

Because the clothes washer requirements of the Appliance Labeling rule cover a limited number of manufacturers, most of which are large, the Commission does not believe the proposed amendments or exemption will affect a substantial number of small businesses. In any event, the proposed amendments and exemptions are unlikely to have a significant economic impact upon such entities, if any. Specifically, the proposed rule and exemption involve minor text changes to labels already required by the rule. The content of these labels must be changed in response to new ranges of comparability published by the Commission from time to time. Moreover, for the reasons explained earlier, the final rule amendments and exemption are expected to lessen the compliance burdens that would be imposed on regulated entities if they were not permitted to label their products in accordance with the 2004 test procedures before those procedures officially take effect. In the Commission's view, the amendments and exemption should not have a significant or disproportionate impact on the costs of small manufacturers and retailers.

Based on available information, therefore, the Commission certifies that these amendments to the Appliance Labeling rule and the issuance of the requested exemption will not have a significant economic impact on a substantial number of small businesses.

## VII. Paperwork Reduction Act

In a 1988 notice (53 FR 22113), the Commission stated that the Rule contains disclosure and reporting requirements that constitute "information collection requirements" as defined by 5 CFR 1320.7(c), the regulation that implements the Paperwork Reduction Act.<sup>28</sup> The Commission noted that the rule had been reviewed and approved by the Office of Management and Budget ("OMB") and has been assigned OMB Control No. 3084–0068 with respect to the rule's recordkeeping and reporting requirements until September 30, 2004, subject to further renewal. The exemption and amendments issued in this document do not change the substance, frequency of the recordkeeping, disclosure, or reporting

qualify as a small business under the relevant threshold (*i.e.*, 1000 employees). See <http://www.sba.gov/size/sizetable2002.html> (Small Business Standards Matched To North American Industry Classification System, Code 335224, Household Laundry Equipment Manufacturing).

<sup>28</sup> 44 U.S.C. 3501–20.

requirements and, therefore, do not require further OMB clearance.<sup>29</sup>

## List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

## VIII. Final Rule Amendments

■ For the reasons set out in the preamble, the Federal Trade Commission amends 16 CFR part 305 as follows:

### PART 305—[AMENDED]

■ 1. The authority citation for part 305 continues to read as follows:

**Authority:** 42 U.S.C. 6294.

■ 2. Amend § 305.11 by revising paragraph (a)(5)(i)(A) and adding new paragraph (a)(5)(i)(L) to read as follows:

#### § 305.11 Labeling for covered products.

(a) \* \* \*  
(5) \* \* \*  
(i) \* \* \*

(A) Headlines and texts, as illustrated in the Prototype Labels in Appendix L to this Part, are standard for all labels except clothes washer labels, which must have the text and features described in 305.11(a)(5)(i)(L) of this part.

\* \* \* \* \*

(L) Clothes washer labels must have the headlines and texts as illustrated in Prototype Label 2 of Appendix L of this Part. In particular, clothes washer labels must have the following headline as illustrated in Prototype Label 2: "Compare the energy use of this clothes washer only with other models tested using the 2004 test procedure." In addition to the requirements for other labels, clothes washer labels must have a 10/16 inch (1.59 cm.) in height, process black bar across the top that contains the following text in process yellow as illustrated in Prototype Label 2: "This model has been tested using the 2004 test procedure. Compare only with models displaying this statement."

\* \* \* \* \*

■ 3. Appendix L to part 305 is amended by revising Prototype Label 2 and Sample Label 3 to read as follows:

#### Appendix L to Part 305—Sample Labels

\* \* \* \* \*

**BILLING CODE 6750-01-C**

<sup>29</sup> The exemption and final rule amendments may modify the existing burden slightly by requiring additional information on the labels. However, because the labels are already required and their content changes from time to time when ranges of comparability are amended, we believe that the overall impact of this final rule and exemption is negligible and does not significantly alter the rule's overall burden.

All copy Arial Narrow Regular or Bold as below.  
Helvetica Condensed series typeface or other equivalent also acceptable.

All copy x 28 pi.

← All copy x 28 pi. →

**This model has been tested using the 2004 test procedure.  
Compare only with models displaying this statement.**

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 only  
with other models tested using the 2004 test procedure.**

**This Model Uses**  
873kWh/year

▼

**Energy use (kWh/year) range of all similar models**

<b>Uses Least Energy</b> 177	<b>Uses Most Energy</b> 1298
---------------------------------	---------------------------------

**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:**

<b>\$70</b>	<b>\$33</b>
when used with an electric water heater	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).

Prototype Label 2

This model has been tested using the 2004 test procedure.  
Compare only with models displaying this statement.

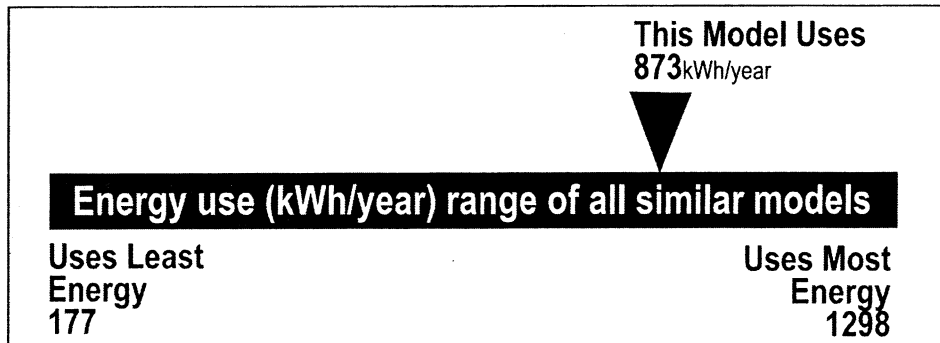
Based on standard U.S. Government tests

# ENERGYGUIDE

Clothes Washer  
Capacity: Standard

XYZ Corporation  
Model(s) Mr328, XL12, NAA83

Compare the energy use of this clothes washer only  
with other models tested using the 2004 test procedure.



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.

**Donald S. Clark,**

Secretary.

[FR Doc. 03-15369 Filed 6-17-03; 8:45 am]

BILLING CODE 6750-01-P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[COTP San Diego 03-023]

RIN 1625-AA00

#### Safety Zone; Colorado River, Laughlin, NV

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone near Laughlin, NV on the navigable waters of the Colorado River in support of the Laughlin 4th of July fireworks show. This temporary safety zone is necessary to provide for the safety of the crew, spectators, participants of the event, participating vessels and other vessels and users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

**DATES:** This rule is effective from 8:30 p.m. (PDT) on July 4, 2003 through 9:30 p.m. (PDT) on July 6, 2003.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket, are part of docket [COTP San Diego 03-023] and are available for inspection or copying at Marine Safety Office San Diego, 2716 N. Harbor Drive, San Diego, CA 92101-1064 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Petty Officer Austin Murai, USCG, c/o U.S. Coast Guard Captain of the Port, telephone (619) 683-6495.

#### SUPPLEMENTARY INFORMATION:

##### Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. In keeping with the requirements of 5 U.S.C. 553(d)(3), the Coast Guard also finds that good cause exists for making this regulation effective less than 30 days after publication in the **Federal**

**Register.** The precise location of the event necessitating promulgation of this safety zone and other logistical details surrounding the event were not finalized until a date fewer than 30 days prior to the event. Delaying the effective date of this rule would be contrary to the public interest because doing such would prevent the Coast Guard from maintaining the safety of the participants of the event and users of the waterway.

##### Background and Purpose

The Coast Guard is establishing a temporary safety zone on the navigable waters of the Colorado River in Laughlin, Nevada in support of the Laughlin 4th of July fireworks show. The fireworks will be launched from an area on land, however, the fallout area will be over a section of the Colorado River and a safety zone is necessary to provide for the safety of the spectators and users of this waterway.

##### Discussion of Rule

The Coast Guard proposes to establish this temporary rule to provide for the safety of the participants, spectators and other users of the waterways. The temporary safety zone is specifically defined as 600 yards around the point 35°09.270" N, 114°34.222" W. Persons and vessels will be prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

##### Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

Due to the temporary safety zone's short duration of one hour for two days, its limited scope of implementation, and because vessels will have an opportunity to request authorization to transit, the Coast Guard expects the economic impact of this rule to be so minimal that full regulatory evaluation under the regulatory policies and procedures of the DHS is unnecessary.

##### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule would have a significant economic impact on a

substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

For the same reasons set forth in the above Regulatory Evaluation, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule is not expected to have a significant economic impact on any substantial number of entities, regardless of size.

##### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), the Coast Guard wants to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please contact Lieutenant Commander Rick Sorrell, U.S. Coast Guard Marine Safety Office San Diego at (619) 683-6495.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247).

##### Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

##### Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

##### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of