

radius of frame 40 adjacent to the tension bolts in the center section of the wings, in accordance with Airbus Service Bulletin A300-57-6062, Revision 02, dated January 29, 1997, at the applicable time specified in either paragraph (a)(1) or (a)(2) of this AD.

(1) For airplanes that have accumulated fewer than 9,100 total landings or 22,300 total flight hours as of the effective date of this AD: Inspect at the later of the times specified in either paragraph (a)(1)(i) or (a)(1)(ii) of this AD.

(i) Prior to the accumulation of 7,250 total landings or 17,700 total flight hours, whichever occurs first.

(ii) Within 1,500 landings after the effective date of this AD.

(2) For airplanes that have accumulated 9,100 total landings or more and 22,300 total flight hours or more as of the effective date of this AD: Inspect within 750 landings after the effective date of this AD.

**Note 2:** Inspections that were accomplished prior to the effective date of this AD in accordance with Airbus Service Bulletin A300-57-6062, Revision 1, dated July 23, 1995, are considered acceptable for compliance with paragraph (a) of this AD.

(b) If no crack is detected during the inspection required by paragraph (a) of this AD, repeat the ultrasonic inspection required by that paragraph thereafter at intervals not to exceed 6,500 landings or 16,000 flight hours, whichever occurs first; in accordance with Airbus Service Bulletin A300-57-6062, Revision 02, dated January 29, 1997.

(c) If any crack is detected during any inspection required by paragraph (a) or (b) of this AD, prior to further flight, install an access door, and perform an eddy current inspection to confirm the presence of a crack; in accordance with Airbus Service Bulletin A300-57-6062, Revision 02, dated January 29, 1997. Accomplishment of this eddy current inspection terminates the repetitive inspection requirement of paragraph (b) of this AD.

(1) If no crack is detected during the eddy current inspection, repeat the eddy current inspection, in accordance with the service bulletin, thereafter at intervals not to exceed 6,500 landings or 16,000 flight hours, whichever occurs first.

(2) If any crack is detected during any eddy current inspection performed in accordance with paragraph (c) or (c)(1) of this AD, prior to further flight, blend out the crack and repeat the eddy current inspection in accordance with the service bulletin.

(i) If the eddy current inspection performed after the blend-out shows that the crack has been removed, and if the blend-out is equal to or less than 50 millimeters (mm) long and equal to or less than 2 mm deep, thereafter repeat the eddy current inspection at intervals not to exceed 2,800 landings or 7,000 flight hours, whichever occurs first.

(ii) If the eddy current inspection performed after the blend-out shows that the crack has not been removed, or if the blend-out is more than 50 mm long or more than 2 mm deep, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM-116, FAA, Transport Airplane Directorate; or the Direction Générale de l'Aviation Civile (or its delegated agent).

(d)(1) 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, International Branch, ANM-116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM-116.

(d)(2) Operators may request an extension to the compliance times of this AD in accordance with the "adjustment-for-range" formula found in Paragraph 1.B.(5) of Airbus Service Bulletin A300-57-6062, Revision 02, dated January 29, 1997; and provided in A300-600 Maintenance Review Board, Section 5, Paragraph 5.4. The average flight time per flight cycle (landing) in hours used in this formula should be for an individual airplane. Average flight time for a group of airplanes may be used if all airplanes of the group have flight times differing by no more than 10 percent. If compliance times are based on the average flight time for a group of airplanes, the flight times for individual airplanes of the group must be included for FAA review.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM-116.

(e) Special flight permits may be issued in accordance with sections 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 accomplished.

**Note 4:** The subject of this AD is addressed in French airworthiness directive 95-063-177(B)R3, dated July 2, 1997.

Issued in Renton, Washington, on November 18, 1998.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane 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:** Request for public comments on proposed conditional exemption.

**SUMMARY:** The Federal Trade Commission ("the Commission") proposes granting manufacturers of residential appliances covered by its Appliance Labeling Rule ("the Rule") a conditional exemption from the Rule's prohibition against the inclusion of non-

required information on the EnergyGuide labels required by the Rule. The exemption would permit appliance manufacturers to place the logo of the Department of Energy's ("DOE") and Environmental Protection Agency's ("EPA") joint "ENERGY STAR" Program on required EnergyGuides on certain appliances under specific conditions. The Commission seeks comment on its proposal to grant this conditional exemption. The Commission also proposes a non-substantive amendment to the Rule to include "Federal Trade Commission" on all EnergyGuide labels so consumers and others will be clear as to the identity of the agency with the authority to enforce the Rule.

**DATES:** Written comments will be accepted until January 8, 1999.

**ADDRESSES:** Written comments should be directed to: Secretary, Federal Trade Commission, Room H-159, Sixth St. and Pennsylvania Ave., NW, Washington, D.C. 20580. Comments about this conditional exemption to the Appliance Labeling Rule should be identified as: "Conditional exemption for ENERGY STAR, 16 CFR Part 305—Comment."

#### FOR FURTHER INFORMATION CONTACT:

James Mills, Attorney, Division of Enforcement, Rm 4616, Federal Trade Commission, Washington, D.C. 20580 (202-326-3035).

#### SUPPLEMENTARY INFORMATION:

#### I. Background

##### A. The Commission's Appliance Labeling Rule

The Commission issued the Appliance Labeling Rule, 44 FR 66466 (Nov. 19, 1979), pursuant to a directive in section 324 of the Energy Policy and Conservation Act of 1975 (42 U.S.C. 6294 ("EPCA")). The Rule requires manufacturers to disclose energy information about certain major household appliances ("covered appliances") to enable consumers purchasing appliances to compare the energy use or efficiency of competing models. The Rule initially applied to eight appliance categories: refrigerators, refrigerator-freezers, freezers, dishwashers, water heaters, clothes washers, room air conditioners, and furnaces. Subsequently, the Commission expanded the Rule's coverage five times: in 1987 (central air conditioners, heat pumps, and certain new types of furnaces); 1989 (fluorescent lamp ballasts); 1993 (certain plumbing products); and twice in 1994 (certain lighting products, and pool heaters and certain other types of water heaters).

Manufacturers of all covered appliances must disclose specific energy consumption or efficiency information at the point of sale in the form of an EnergyGuide label that is affixed to the covered product.<sup>1</sup> Manufacturers must derive this information from standardized tests that EPCA directs DOE to develop.<sup>2</sup> Required labels for appliances and required fact sheets for heating and cooling equipment must include an energy consumption or efficiency disclosure and a "range of comparability" that shows the highest and lowest energy consumption or efficiencies for all similar appliance models. Labels for refrigerators, refrigerator-freezers, freezers, clothes washers, dishwashers, water heaters, and room air conditioners also must contain a secondary disclosure of estimated annual operating cost based on a specified national average cost for the fuel the appliances use. The Rule prescribes specifications for the size and colors of the EnergyGuides and for the size and style of the type to be used in the required disclosures. Sample labels appear as appendices to the Rule. The Rule also prohibits the inclusion of non-required information on the EnergyGuide to ensure that such information does not detract from the required information:

No marks or information other than that specified in this part shall appear on or directly adjoining this label, except a part or publication number identification may be included on this label, as desired by the manufacturer, and the energy use disclosure labels required by the governments of Canada or Mexico may appear directly adjoining this label, as desired by the manufacturer. \* \* \*<sup>3</sup> 16 CFR 305.11(a)(5)(i)(K).

DOE and EPA staff (informally) and an appliance manufacturer (the Maytag Company) have requested that the Commission grant a conditional

exemption from this prohibition against non-required information that would allow the placement of the DOE/EPA ENERGY STAR logo on the EnergyGuides on qualifying appliances.

#### B. The ENERGY STAR Program

##### 1. Description of the Program

Section 127 of the Energy Policy Act of 1992<sup>4</sup> directed DOE, in conjunction with EPA, utilities, and appliance manufacturers, to submit a report to the Congress assessing the potential for the development and commercialization of appliances that are substantially more efficient than required by state or federal law,<sup>5</sup> and that are likely to be cost-effective for consumers. The appliances contemplated in the directive include those covered by the Commission's Appliance Labeling Rule. The report, which DOE submitted to Congress in April, 1995, concluded in part that the involvement of the federal government in "market transformation" programs could have a positive effect on consumer purchasing decisions regarding higher efficiency products.

Following the report, DOE began to develop a program—originally called the ENERGY SAVER Program—to promote high efficiency household appliances and water heaters in the U.S. marketplace. Concurrently, EPA was developing a similar program—the ENERGY STAR Program—in response to a directive in section 103(g) of the Clean Air Act, 42 U.S.C. 7403(g), that encompassed home heating and cooling equipment ("HVAC equipment"). EPA also has developed ENERGY STAR Programs for lighting products, consumer electronics, office equipment, and home insulation products. Ultimately, the two programs for appliances and HVAC equipment were merged into a single program under the ENERGY STAR name. An ENERGY STAR logo can be used by Program participants in connection with qualifying products directly on the product itself or on an ENERGY STAR

label or fact sheet associated with or attached to the product or used in promotional materials or advertising. The logo indicates significantly better energy performance than some specified norm (DOE's minimum efficiency standards, in the case of appliances and HVAC equipment), or indicates the incorporation of a specific energy saving feature on the product.

The Program is a partnership among DOE, EPA, product manufacturers, major national, regional, and local retailers, utilities, state energy offices, industry trade associations and the financial community. The Program's intent is to increase consumer interest in purchasing highly efficient appliances and heating and cooling equipment (as well as other building products) through promotional programs (including national and regional advertising), lower interest financing, product labeling, sales training, and consumer education.

The appliance products that are (or will be) included in DOE's component of the Program are: refrigerator-freezers, dishwashers, clothes washers, room air conditioners, and water heaters. HVAC equipment has been included since 1995 in EPA's earlier version of the ENERGY STAR Program, and there is already a mechanism in place for designating qualifying HVAC products by means of separate labels, as well as in advertising and promotional materials. EPA staff is joining in the instant request for Commission permission for the HVAC equipment manufacturers participating in the Program to include the ENERGY STAR logo on the EnergyGuides on their qualifying products.

DOE and EPA have established qualifying energy consumption criteria that specific appliance and HVAC equipment categories must meet to be included in the ENERGY STAR Program.<sup>6</sup> To establish its criteria, DOE held public workshops in several cities, and solicited comments from all segments of the public. DOE received comments from appliance manufacturers and retailers, utilities, state energy agencies, public interest groups, and representatives of the Canadian government.

EPA held approximately 30 public meetings, primarily at EPA Headquarters in Washington, DC, mostly in late 1995 and early 1996.

<sup>1</sup> The information on the EnergyGuide also must appear in catalogs from which covered products can be ordered. Manufacturers of furnaces, central air conditioners, and heat pumps also must either provide fact sheets showing additional cost information or be listed in an industry directory that shows the cost information for their products.

<sup>2</sup> Section 323 of EPCA (42 U.S.C. 6293) directs DOE to develop test procedures to be used by appliance manufacturers to determine their products' compliance with DOE's standards. Section 324(c)(1)(A) of EPCA (42 U.S.C. 6294(c)(1)(A)) states that the Commission's Rule must require disclosure on labels of energy use information derived from the DOE test procedures.

<sup>3</sup> The language in this section pertains to labels for refrigerators, refrigerator-freezers, freezers, dishwashers, clothes washers, water heaters, and room air conditioners. Identical language appears in two other sections relating to labels for furnaces and pool heaters, 16 CFR 305.11(a)(5)(ii)(I), and central air conditioners and heat pumps, 16 CFR 305.11(a)(5)(iii)(H)(1). The statute itself (EPCA) does not prohibit the inclusion of non-Rule-required information on the Energy Guide.

<sup>4</sup> Pub. L. No. 102-486, 106 Stat. 2776, 2835 (Oct. 24, 1992).

<sup>5</sup> In this context, "federal law" includes DOE's minimum efficiency standards for appliances, which Congress directed DOE to issue in section 325 of EPCA (42 U.S.C. 6295). As amended, the statute itself set the initial national energy efficiency standards for appliances and established a schedule for regular DOE review of the standards for each product category. The statute directed DOE to design these standards to achieve the maximum improvement in energy efficiency for residential appliances that is technologically feasible and economically justified. 42 U.S.C. 6265(o)(2). In accordance with the statutory directive, DOE regularly reviews the established standards and publishes new standards where appropriate. DOE's rules relating to standards, like its test procedure rules, are codified at 10 CFR Part 430 (1997).

<sup>6</sup> A discussion of DOE's criteria, together with lists of qualifying products, can be found on DOE's ENERGY STAR website, at <WWW.ENERGYSTAR.GOV>. EPA maintains a similar website at <WWW.EPA.GOV/ENERGYSTAR.HTML>, which is hyperlinked to DOE's site.

Attending stakeholders included manufacturers, public interest groups, industry trade associations, and utility groups.

The results of these processes as they apply to specific appliance categories are summarized below:

To be included in the Program:

A refrigerator-freezer must have an annual electrical consumption (as determined by the DOE test for that category of products) that is at least 20 percent less than the maximum energy consumption permitted by DOE's standard for refrigerator-freezers;

A dishwasher must have an Energy Factor ("EF") of 0.52 or greater.<sup>7</sup> An EF of 0.52 represents a 13% improvement in efficiency over DOE's minimum EF of 0.46;

A standard clothes washer (top or front loading) must have an EF of 2.5 or greater.<sup>8</sup> An EF of 2.5 is an approximately 112% efficiency improvement over DOE's minimum EF of 1.18. The relatively high percentage of improvement over the standard is due to the existence of a new technology in the clothes washer industry;

A room air conditioner must be rated with an Energy Efficiency Ratio ("EER") that is 15% greater than the DOE minimum EER for the type and size of that unit.<sup>9</sup>

A gas- or oil-fueled furnace must be rated with an Annual Fuel Utilization Efficiency ("AFUE") that is 90 or better; a gas- or oil-fueled boiler must be rated with an AFUE that is 85 or better.<sup>10</sup>

A central air conditioner or the cooling function of an air-source heat pump must be rated with a Seasonal Energy Efficiency Ratio ("SEER") of 12 or better; the heating function of an air-source heat pump must be rated with a Heating Seasonal Performance Factor ("HSPF") of 7 or higher.<sup>11</sup>

<sup>7</sup> Under the DOE tests, an appliance's EF is a measure of the useful output of its services divided by the energy input.

<sup>8</sup> To date, DOE has included only "standard" clothes washers in the Program because most of the models sold fall within that subcategory. For purposes of its minimum efficiency standards program, DOE's clothes washer category also includes a "compact" subcategory. The criterion for the distinction is tub capacity.

<sup>9</sup> The EER is the efficiency measurement for room air conditioners specified in the DOE test procedure for these products. Only units without reverse cycle (heating function) and with louvered sides can currently qualify for the Program.

<sup>10</sup> The AFUE is the efficiency measurement for forced air furnaces and for boilers that is specified in the DOE test procedure for these products.

<sup>11</sup> The SEER is the efficiency measurements for central air conditioners and the cooling function of air-source heat pumps specified in the DOE test procedure for these products; the HSPF is the DOE test efficiency measurement for the heating function of air-source heat pumps.

To date, DOE has not finished developing the water heater component of the Program.

As discussed in section II., below, the conditional exemption from the Rule's non-required information prohibition would be granted to Program participants for those appliances that meet DOE's and EPA's criteria.

## 2. The ENERGY STAR Logo

EPA owns the ENERGY STAR logo and name and has licensed them to DOE. As a result of this joint partnership, the initials of both agencies appear on the logo. DOE and EPA allow the use of the ENERGY STAR logo by retailers, utilities, manufacturers and other organizations participating in their respective programs under clearly established guidelines that are set out in a memorandum of understanding ("MOU") that each participant must sign. Participants that have signed an MOU are then "partners." Under these MOUs, partners may associate the ENERGY STAR logo and name with specific products that DOE and EPA have determined meet the Program's requirements.<sup>12</sup>

Program partners may use the logo as a product label and in catalogs and advertising to designate specific products that are ENERGY STAR qualifying products. A sample EnergyGuide with an ENERGY STAR logo placed in accordance with the conditions the Commission is proposing appears at the end of Section II., below. Partners also may display the logo when describing one or more of the ENERGY STAR labeling programs, such as in special educational brochures, newsletters, or annual reports. Retailer and utility partners are allowed to include the logo in general educational or promotional materials, such as utility bill stuffers, newsletters, or annual reports.

## 3. The Request for a Conditional Exemption

DOE staff has conducted an inquiry into the appliance manufacturing and marketing industry's receptivity to the use of the ENERGY STAR logo on the EnergyGuides required on appliances. According to DOE staff, the conditional

<sup>12</sup> The MOUs provide that each partner is responsible for using the logo in accordance with the terms of the MOU. Partners must make the logo use guidelines available to other entities, such as advertising agencies, that prepare materials on the partner's behalf. Non-partners must seek specific approval from either EPA or DOE for each specific use of the logo. Under no circumstances may the logo or name be used in a manner that would imply EPA or DOE endorsement. DOE and EPA are responsible for overseeing proper use of the logo and name.

exemption they and Maytag have requested would result in a single, combined label (an "augmented" EnergyGuide) that would be preferable to separate EnergyGuide and ENERGY STAR labels for several reasons.

Currently, retailers apply separate ENERGY STAR labels on qualifying appliances at each store site. The extent and accuracy of label placement is then monitored by participating utilities and DOE contractors. From its public workshops and the comments they generated, DOE has learned that many manufacturers, retailers and consumers would prefer a single, augmented label. Some manufacturers favor an augmented label because it would reduce their costs. In addition, Maytag stated that the augmented EnergyGuide would allow manufacturers "to assure proper identification of qualifying models, [which] is not as easily controlled at the retailer level." According to DOE, retailers believe that the augmented label would be less confusing to consumers than multiple labels relating to energy use, that an augmented EnergyGuide label could build upon the broad "brand recognition" achieved by the Commission's label, and that an augmented label would make it easier for consumers to distinguish efficient products. DOE staff believe that the efforts of the Commission, EPA, and DOE to provide consumer educational materials explaining a new augmented label, coupled with training for appliance salespeople, would lead to broader overall consumer awareness of the differences in energy consumption among competing appliances, and thus would result in more informed consumer decision-making. DOE staff also has suggested that the augmented label could be used by utilities in connection with their efforts to support demand-side load reduction objectives through the use of incentives to consumers.

## II. Discussion

### A. The Commission's Basis for Proposing a Conditional Exemption

The Commission believes that a conditional exemption to allow manufacturers to place the ENERGY STAR logo on EnergyGuides affixed to qualified products is appropriate for the reasons advanced in favor of the augmented EnergyGuide in the discussion at I.B.3., above. Although the ENERGY STAR logo can be affixed to appliances as a separate label without the conditional exemption to the Rule, and is in fact already appearing on some qualifying appliances and most

qualifying HVAC equipment covered by the Rule, the Commission agrees with DOE staff and Maytag that an augmented label is likely to reduce manufacturers' labeling and monitoring costs. Use of an augmented label may also reduce the likelihood of mislabeling. The logo's highlighting of efficient appliances would complement the Rule's objective of providing consumers with energy efficiency and consumption information to enable them to consider these factors when purchasing appliances. To the extent that consumers are unfamiliar with the meaning of the ENERGY STAR logo, its placement in close conjunction with the descriptive information already on the EnergyGuide label may provide a context that better ensures consumer understanding of the logo than if it were physically separated from that information. In addition, the ENERGY STAR logo, and the brief explanatory message that the Commission proposes accompany it (see discussion in II.B., below), also may enhance consumer understanding of the energy efficiency information that already appears on the EnergyGuide. Finally, the augmented label may contribute to the overall aim of conserving energy that underlies EPCA, the statutory basis for both the EnergyGuide and DOE's component of the ENERGY STAR Program.

#### *B. The Terms of the Proposed Conditional Exemption*

The Commission is proposing to grant those manufacturers participating in the ENERGY STAR Program a conditional exemption from the Rule's prohibition against placing "information other than that specified" by the Rule on the EnergyGuides they attach to qualifying products.<sup>13</sup> The Commission would base this exemption on several conditions. First, the ENERGY STAR logo would be permitted on the EnergyGuides of only those covered appliances and HVAC equipment that meet the ENERGY STAR Program qualification criteria that are current at the time the products are labeled. Second, only manufacturers that have signed a MOU with DOE or EPA would be permitted to affix the augmented labels to qualifying appliances. Third, to ensure that the ENERGY STAR logo is permanently placed in the proper position on the augmented EnergyGuide label, manufacturers that choose to avail

<sup>13</sup> For the information and convenience of those covered by the Rule who may wish to avail themselves of the exemption, the Commission also proposes adding a new section to the Rule—305.19 Exemptions. This section would codify the conditional exemption proposed today and provide a section for codification of any future exemptions.

themselves of the conditional exemption would be required to print the ENERGY STAR logo on EnergyGuides for qualified products as part of the usual label printing process; that is, manufacturers (or distributors or retailers) would not be permitted to apply a separate logo onto already finished labels subsequent to the time a product is labeled. Fourth, manufacturers would have to draft the logo in conformance with certain technical specifications relating to its appearance, placement on the EnergyGuide, and size. Specifically, the logo would have to appear above the comparability bar in the box that contains the applicable range of comparability. The precise location of the logo would vary depending on where the caret indicating the position of the labeled model on the scale appears (see the sample label). The required dimensions of the logo would be no more than one and one-eighth inches (3 cm.) in width and no more than three-quarters of an inch (2 cm.) in height. Manufacturers would be prohibited from placing the logo in a way that would obscure, detract from, alter the dimensions of, or touch any element of the label, which in all other respects would have to conform to the requirements of the Commission's Rule. The ENERGY STAR logo would be in process black ink to match the print specifications for the EnergyGuide. The background would remain in process yellow to match the rest of the label.

Finally, the Commission also proposes requiring that manufacturers availing themselves of the conditional exemption add a sentence that explains the significance of the ENERGY STAR logo. Although DOE and EPA have made, and continue to make, a significant effort to disseminate information concerning the Program in general and the meaning of the logo specifically, the Commission is concerned that the addition of the logo to the EnergyGuide without some explanation of its meaning on the face of the label itself may not be meaningful to consumers. Because space is at a premium on the EnergyGuide, the Commission proposes that manufacturers include a brief explanatory sentence below the comparability bar between the "least" and "most" numbers in eight-point Helvetica Cond. Black typeface: "ENERGY STAR [product type(s)] use at least \_\_\_% less energy annually than the Federal Maximum." or: "ENERGY STAR [product type(s)] are at least \_\_\_% more efficient than the Federal Minimum." or: "ENERGY STAR

[product type(s)] must be rated with a [type of efficiency rating] of [rating] or higher." The specific wording of this statement would depend on the product category.

Thus, the text on a label for a qualifying refrigerator-freezer would read:

**ENERGY STAR refrigerators use at least 20% less energy annually than the Federal Maximum.**

Or, the text on a label for a qualifying dishwasher would read:

**ENERGY STAR dishwashers are at least 13% more efficient than the Federal Minimum.**

Or, the text on a label for a qualifying central air conditioner would read:

**ENERGY STAR central air conditioners must be rated with a SEER of 12 or higher.<sup>14</sup>**

In addition to proposing the conditional exemption, the Commission proposes amending the Rule so the Federal Trade Commission is clearly identified as the government entity that requires manufacturers to affix the label to their appliances. This amendment would eliminate confusion if the Commission grants the proposed conditional exemption and the identifying initials of DOE and EPA appear on the labels of appliances that qualify for the ENERGY STAR Program. The proposal would be to change the sentence at the bottom of the EnergyGuide to read:

**Important: Removal of this label before consumer purchase violates the Federal Trade Commission's Appliance Labeling Rule (16 CFR Part 305).<sup>15</sup>**

Because of the non-substantive nature of this proposal, manufacturers would not have to make the change until their supply of current labels is exhausted or they draft new labels for other reasons, such as a change in the ranges of comparability. The proposed language is included on the sample EnergyGuide.

#### **Sample EnergyGuide with ENERGY STAR Logo:**

BILLING CODE 6750-01-P

<sup>14</sup> The "SEER" descriptor ("seasonal energy efficiency ratio") is defined on the EnergyGuide as " \* \* \* the measure of energy efficiency for central air conditioners." The label also states: "Central air conditioners with higher SEERs are more energy efficient."

<sup>15</sup> Currently, this disclosure reads, "Important: Removal of this label before consumer purchase is a violation of Federal law (42 U.S.C. 6302)."

Based on standard U.S. Government tests

# ENERGYGUIDE

Refrigerator-Freezer  
 With Automatic Defrost  
 With Side-Mounted Freezer  
 With Through-the-Door-Ice Service

XYZ Corporation  
 Model ABC-W  
 Capacity: 23 Cubic Feet



**Compare the Energy Use of this Refrigerator  
 with Others Before You Buy.**

**This Model Uses  
 800 kWh/year**



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

**Uses Least  
 Energy  
 750**

ENERGY STAR refrigerators use  
 at least 20% less energy annually  
 than the Federal Maximum.

**Uses Most  
 Energy  
 1008**

kWh/year (kilowatt-hours per year) is a measure of energy (electricity) use.  
 Your utility company uses it to compute your bill. Only models with 22.5 to 24.4  
 cubic feet and the above features are used in this scale.

**Refrigerators using more energy cost more to operate.  
 This model's estimated yearly operating cost is:**

**\$69**

Based on a 1995 U.S. Government national average cost of 8.67¢ per kWh for  
 electricity. 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).

### III. Request for Comment

#### A. General Information for Commenters

The Commission requests interested persons to submit written comments on any issue of fact, law or policy that may bear upon the proposed conditional exemption. Although the Commission welcomes comments on any aspect of the proposed conditional exemption, the Commission is particularly interested in comments on the questions listed below. 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. Individual firms' experiences are relevant to the extent they typify industry experience in general or the experience of similar-sized firms. Comments opposing the proposed conditional exemption or any individual condition 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. Comments should be supported by a full discussion of all the relevant facts and/or be based on firsthand knowledge, personal experience, or general understanding of the particular issues addressed.

The request from Maytag and written comments submitted will be available for public inspection in accordance with the Freedom of Information Act, 5 U.S.C. 552, and Commission regulations on normal business days from 8:30 a.m. to 5:00 p.m. at the Federal Trade Commission, 6th St. and Pennsylvania Ave., N.W., Room 130, Washington, D.C. 20580.

#### B. Questions for Comment

Members of the public are invited to comment on any issues or concerns they believe are relevant or appropriate to the Commission's consideration of the proposed exemption from the Rule's prohibition against the inclusion of non-required information on EnergyGuides for those manufacturers in DOE/EPA's ENERGY STAR Program that wish to identify products that qualify for inclusion in the Program. The exemption would be conditioned on placement, by such manufacturers, of the DOE/EPA ENERGY STAR logo and explanatory statement on the EnergyGuides affixed to the qualifying products in the manner and form detailed in the discussion in Section II.B., above.

The Commission is particularly interested in comments addressing the following questions and issues:

1. Are the conditions under which the Commission proposes the exemption, including the size and placement of the logo on the EnergyGuide, appropriate? Are there additional, or different, conditions that also would be appropriate?

2. Should the exemption be limited to manufacturers who are "partners" in the ENERGY STAR program, or should it include non-partners who have obtained specific approval from either DOE or EPA for a particular use of the ENERGY STAR logo?

3. What is the most cost-effective method (e.g., requiring that manufacturers print the ENERGY STAR logo on EnergyGuides) of assuring that the ENERGY STAR logo will appear on EnergyGuides?

4. a. Do consumers need the proposed explanatory statement to understand why the ENERGY STAR logo is on the EnergyGuide?

b. Are there ways to word the statement, or ways to place the statement on the EnergyGuide, that would better explain the meaning of the ENERGY STAR logo?

c. Would it be clearer to consumers that the proposed explanatory statement on the EnergyGuide label refers to the ENERGY STAR logo if the statement and the logo were both in a color of ink (for example, blue or green) that is different from the black ink on the rest of the EnergyGuide?

d. How would the proposed explanatory statement affect consumer understanding of the other information on the EnergyGuide?

5. What would be the economic impact on manufacturers of the proposed exemption and each of the proposed conditions for use of the exemption?

6. What would be the benefits of the proposed conditional exemption? Who would receive those benefits?

7. What would be the benefits and economic impact of the proposed exemption and each of the proposed conditions on small businesses?

8. Do the ENERGY STAR logo and its promotional materials convey accurate information to consumers, especially with regard to the overall cost over time of purchasing and operating appliances that qualify for the ENERGY STAR logo versus those that do not?

The Commission notes that the ENERGY STAR Program itself was developed by EPA and DOE and that the Commission does not have the authority to modify the terms of that Program. Thus, this proceeding is not an

appropriate forum for comments concerning the ENERGY STAR Program, with the exception of comments responding specifically to question 8, above. This proceeding is limited to exploring the Commission's proposal to permit the inclusion of the ENERGY STAR logo on the EnergyGuides required by the Commission's Rule.

#### IV. Regulatory Flexibility Act

This notice does not contain a regulatory analysis under the Regulatory Flexibility Act ("RFA"), 5 U.S.C. 603-604, because the Commission believes that the conditional exemption, if adopted, would not have "a significant economic impact on a substantial number of small entities," 5 U.S.C. 605. The Rule prohibits the inclusion of non-required information on the EnergyGuide in order to ensure that such information does not detract from the required information. The conditional exemption would not impose any new requirements on manufacturers of appliances and HVAC equipment. Instead, it would allow them the option, under certain conditions, of voluntarily including the DOE/EPA ENERGY STAR logo on EnergyGuides affixed to products that qualify for inclusion in the ENERGY STAR Program. The Commission, therefore, believes that the impact of the conditional exemption on all entities within the affected industry, if any, would be de minimis.

Similarly, manufacturers would not have to comply with the proposed amendment to require different language on the EnergyGuide that identifies the Commission as the agency with enforcement authority for the Rule until they were required to print new labels for other reasons, so the Commission believes that the impact of the proposed amendment on all entities within the affected industry, if any, would be de minimis.

In light of the above, the Commission certifies, pursuant to section 605 of the RFA, 5 U.S.C. 605, that the proposed conditional exemption would not, if granted, have a significant impact on a substantial number of small entities. To ensure that no substantial economic impact is being overlooked, however, the Commission solicits comments concerning the effects of the proposed conditional exemption, including any benefits and burdens on manufacturers or consumers and the extent of those benefits and burdens, beyond those imposed or conferred by the current Rule, that the conditional exemption would have on manufacturers, retailers, or other sellers. The Commission is particularly interested in comments

regarding the effects of the conditional exemption on small businesses. After reviewing any comments received, the Commission will determine whether it is necessary to prepare a final regulatory flexibility analysis if it determines to grant the conditional exemption.

#### V. Paperwork Reduction Act

The Paperwork Reduction Act ("PRA"), 44 U.S.C. 3501 *et seq.*, requires government agencies, before promulgating rules or other regulations that require "collections of information" (i.e., recordkeeping, reporting, or third-party disclosure requirements), to obtain approval from the Office of Management and Budget ("OMB"), 44 U.S.C. 3502. The Commission currently has OMB clearance for the Rule's information collection requirements (OMB No. 3084-0069). The conditional exemption would not impose any new information collection requirements. To ensure that no additional burden has been overlooked, however, the Commission seeks public comment on what, if any, additional information collection burden the proposed conditional exemption may impose.

#### VI. Communications by Outside Parties to Commissioners or Their Advisors

Pursuant to Rule 1.18(c) of the Commission's Rules of Practice, 16 CFR 1.18(c) (1997), communications with respect to the merits of this proceeding from any outside party to any Commissioner or Commissioner's advisor during the course of this rulemaking shall be subject to the following treatment. Written communications, including written communications from members of Congress, shall be forwarded promptly to the Secretary for placement on the public record. Oral communications, not including oral communications from members of Congress, are permitted only when such oral communications are transcribed verbatim or summarized, at the discretion of the Commissioner or Commissioner's advisor to whom such oral communications are made, and are promptly placed on the public record, together with any written communications and summaries of any oral communications relating to such oral communications. Oral communications from members of Congress shall be transcribed or summarized, at the discretion of the Commissioner or Commissioner's advisor to whom such oral communications are made, and promptly placed on the public record, together with any written communications and summaries of any

oral communications relating to such oral communications.

#### List of Subjects in 16 CFR Part 305

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

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

In consideration of the foregoing, the Commission proposes to amend part 305 of title 16, chapter I, subchapter C of the Code of Federal Regulations, as follows:

#### PART 305—RULE CONCERNING DISCLOSURES REGARDING ENERGY CONSUMPTION AND WATER USE OF CERTAIN HOME APPLIANCE AND OTHER PRODUCTS REQUIRED UNDER THE ENERGY POLICY AND CONSERVATION ACT ("APPLIANCE LABELING RULE")

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

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

2. Section 305.11(a)(5)(i)(I) is revised to read as follows:

##### § 305.11 Labeling for covered products.

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

(I) The following statement shall appear at the bottom of the label:

Important: Removal of this label before consumer purchase violates the Federal Trade Commission's Appliance Labeling Rule (16 CFR Part 305).

\* \* \* \* \*

3. Section 305.11(a)(5)(ii)(H) is revised to read as follows:

##### § 305.11 Labeling for covered products.

- (a) \* \* \*
- (5) \* \* \*
- (ii) \* \* \*

(H) The following statement shall appear at the bottom of the label:

Important: Removal of this label before consumer purchase violates the Federal Trade Commission's Appliance Labeling Rule (16 CFR Part 305).

\* \* \* \* \*

4. Section 305.11(a)(5)(iii)(H) is revised to read as follows:

##### § 305.11 Labeling for covered products.

- (a) \* \* \*
- (5) \* \* \*
- (iii) \* \* \*

(H) The following statement shall appear at the bottom of the label:

Important: Removal of this label before consumer purchase violates the Federal Trade Commission's Appliance Labeling Rule (16 CFR Part 305).

\* \* \* \* \*

5. Section 305.19 is added to read as follows:

#### § 305.19 Exemptions.

The Commission has exempted manufacturers, private labelers, distributors, and/or retailers in some instances from specific requirements of the Rule in this part. These exemptions are listed in this section. In some circumstances, use of the exemptions is conditioned on alternative performance by manufacturers, private labelers, distributors, and/or retailers.

(a) Limited conditional exemption for manufacturers from the prohibition against the inclusion of non-required information on the label of covered products that qualify for inclusion in the ENERGY STAR Program maintained by the Department of Energy ("DOE") and the Environmental Protection Agency ("EPA"). Those manufacturers participating in the DOE/EPA ENERGY STAR Program are granted a conditional exemption from the prohibition against placing "information other than that specified" by the Rule on the EnergyGuides they attach to their qualifying products. This exemption is based on several conditions:

(1) The ENERGY STAR logo is permitted on the EnergyGuides of only those covered products that meet the ENERGY STAR Program qualification criteria that are current at the time the products are labeled.

(2) Only manufacturers that have signed a Memorandum of Understanding with DOE or EPA may add the ENERGY STAR logo to labels on qualifying covered products.

(3) Manufacturers that choose to avail themselves of the conditional exemption must print the ENERGY STAR logo on EnergyGuides for qualified products as part of the usual label printing process; that is, manufacturers (or distributors or retailers) are not permitted to apply a separate logo onto already finished labels subsequent to the time a product is labeled.

(4) Manufacturers must place the logo on the EnergyGuide above the comparability bar in the box that contains the applicable range of comparability. The precise location of the logo will vary depending on where the caret indicating the position of the labeled model on the scale appears (see sample label 10 in appendix L to this part). The required dimensions of the logo must be one and one-eighth inches (3 cm.) in width and three-quarters of an inch (2 cm.) in height. Manufacturers are prohibited from placing the logo in a way that would obscure, detract from, alter the dimensions of, or touch any

element of the EnergyGuide, which in all other respects must conform to the requirements of this part. The ENERGY STAR logo must be in process black ink to match the print specifications for the EnergyGuide. The background must remain in process yellow to match the rest of the label.

(5) Manufacturers must add a sentence that explains the significance of the ENERGY STAR logo below the comparability bar between the "least" and "most" numbers in eight-point Helvetica Cond. Black typeface. The sentence must read: "ENERGY STAR [product type(s)] use at least \_\_\_% less energy annually than the Federal Maximum." or: "ENERGY STAR [product type(s)] are at least \_\_\_% more efficient than the Federal Minimum." or: "ENERGY STAR [product type(s)] must be rated with a [type of efficiency rating] of [rating] or higher." The specific wording of this statement will depend on the product category and the ENERGY STAR

Program criteria in effect at the time of the labeled product's manufacture and labeling.

(b) *Examples.* (1) The text on a label for a qualifying refrigerator-freezer must read:

ENERGY STAR refrigerators use at least 20% less energy annually than the Federal Maximum.

(2) The text on a label for a qualifying clothes washer must read:

ENERGY STAR clothes washers are at least 112% more efficient than the Federal Minimum.

(3) The text on a label for a qualifying dishwasher must read:

ENERGY STAR dishwashers are at least 13% more efficient than the Federal Minimum.

(4) The text on a label for a qualifying room air conditioner must read:

ENERGY STAR room air conditioners are at least 15% more efficient than the Federal Minimum.

(5) The text on a label for a qualifying central air conditioner must read:

ENERGY STAR central air conditioners must be rated with a SEER of 12 or higher.

(6) The text on a label for a qualifying heat pump must read:

ENERGY STAR heat pumps must be rated with a HSPF of 7 or higher (for heating) and a SEER of 12 or higher (for cooling).

(7) The text on a label for a qualifying gas-fired furnace must read:

ENERGY STAR gas furnaces must be rated with an AFUE of 90 or higher.

6. Appendix L is amended by the addition of a new Sample Label 10 (which is an EnergyGuide with the ENERGY STAR logo) as follows:

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

\* \* \* \* \*

BILLING CODE 6750-01-P



Based on standard U.S. Government tests



# ENERGYGUIDE

Refrigerator-Freezer  
 With Automatic Defrost  
 With Side-Mounted Freezer  
 With Through-the-Door-Ice Service

XYZ Corporation  
 Model ABC-W  
 Capacity: 23 Cubic Feet



**Compare the Energy Use of this Refrigerator  
 with Others Before You Buy.**

<p><b>This Model Uses</b>                  800 kWh/year</p> 		
<p><b>Energy use (kWh/year) range of all similar models</b></p>		
<p><b>Uses Least                  Energy                  750</b></p>	<p>ENERGY STAR refrigerators use                  at least 20% less energy annually                  than the Federal Maximum.</p>	<p><b>Uses Most                  Energy                  1008</b></p>

kWh/year (kilowatt-hours per year) is a measure of energy (electricity) use. Your utility company uses it to compute your bill. Only models with 22.5 to 24.4 cubic feet and the above features are used in this scale.

**Refrigerators using more energy cost more to operate.  
 This model's estimated yearly operating cost is:**

**\$69**

Based on a 1995 U.S. Government national average cost of 8.67¢ per kWh for electricity. 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 10

\* \* \* \* \*

7. Prototype Labels 1-5 and Sample Labels 1-9 of APPENDIX L are amended by the deletion of the words "Important: Removal of this label before consumer purchase is a violation of Federal law (42 U.S.C. 6302)." at the bottom of each label and the addition, in their place and in the same typeface and size, of the following words: Important: Removal of this label before consumer purchase violates the Federal Trade Commission's Appliance Labeling Rule (16 CFR Part 305).

By direction of the Commission.

**Donald S. Clark,**

Secretary.

[FR Doc. 98-31202 Filed 11-23-98; 8:45 am]

BILLING CODE 6750-01-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 1

[Docket No. 98N-0496]

RIN 0910-AB24

#### Import for Export; Reporting and Recordkeeping Requirements for Unapproved or Violative Products Imported for Further Processing or Incorporation and Subsequent Export

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Proposed rule.

**SUMMARY:** The Food and Drug Administration (FDA) is proposing reporting and recordkeeping regulations to implement certain sections of the Federal Food, Drug, and Cosmetic Act (the act) as amended by the FDA Export Reform and Enhancement Act of 1996. The proposed rule would require an importer to report to FDA each time it imports an unapproved or otherwise violative article that is to be exported after further processing or incorporation into another product in the United States and to keep records to ensure that the article is so processed or incorporated and then exported, and that any portion of the import that is not exported is destroyed.

**DATES:** Submit written comments by February 8, 1999. Written comments on the information collection requirements should be submitted by December 24, 1998.

**ADDRESSES:** Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug

Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit written comments on the information collection requirements to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., Washington, DC 20503. Attn: Desk Officer for FDA.

#### FOR FURTHER INFORMATION CONTACT:

For general information: Marvin A. Blumberg, Division of Import Operations and Policy (HFC-171), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6553.

For information concerning blood products: Kimberly A. Cressotti, Division of Case Management (HFM-610), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852-1448, 301-827-6201.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The FDA Export Reform and Enhancement Act of 1996 (Pub. L. 104-134, amended by Pub. L. 104-180, August 6, 1996) became law on April 26, 1996. One provision of the new law, now codified at section 801(d)(3) of the act (21 U.S.C. 381 (d)(3)), allows importation of any component of a drug, component part or accessory of a device, or other article of device requiring further processing, and any food or color additive, or dietary supplement, if it is to be further processed or incorporated into a product that is to be exported from the United States by the initial owner or consignee in accordance with section 801(e) or 802 of the act (21 U.S.C. 382), or section 351(h) of the PHS Act (42 U.S.C. 262 (h)). (For purposes of section 801(d) of the act, FDA interprets the term "component" broadly to include anything used in, or in the manufacture of, a drug, biologic, or device, as well as a finished final product that will be further processed in the United States. Thus, for example, the term includes bulk drugs, unapproved foreign versions of drugs approved for use in the United States, active and inactive ingredients of a drug or biologic, pieces of a device, and completed devices.) Under section 801(d)(3) of the act, the initial owner or consignee must submit a statement regarding the imported article to FDA at the time of initial importation. Any component of a drug; any component, part, article, or accessory of a device; any food additive, color additive; or any dietary supplement imported under section 801(d) of the act that is not incorporated or further processed by the

initial owner or consignee must be destroyed or exported (see section 801(d)(3)(C) of the act). Section 801(d)(3)(B) of the act further requires the initial owner or consignee to maintain records identifying the use and exportation or disposition of the imported article, including portions that were destroyed, and, upon request from FDA, to submit a report that accounts for the exportation or disposition of the imported article and the manner in which the initial owner or consignee complied with the requirements in section 801(d) of the act.

This provision of the act is generally known as the "import-for-export" provision.

Another new provision, now codified at section 801(d)(4) of the act, places additional requirements on the import-for-export of blood, blood components, source plasma, source leukocytes, or a component, accessory, or part (hereinafter referred to as "blood products"), and of tissue and components or parts of tissue. Section 801(d)(4) of the act prohibits the importation of blood products unless they comply with section 351(a) of the PHS Act or FDA permits the importation under FDA-determined appropriate circumstances and conditions. (Section 351(a) of the PHS Act pertains to the licensing of biological products.)

Section 801(d)(4) of the act also prohibits the importation of tissues and their components, under section 801(d)(3) of the act, unless the importation complies with section 361 of the PHS Act (42 U.S.C. 264). Section 361 of the PHS Act authorizes FDA to issue regulations to control communicable disease, and, for human tissues intended for transplantation, these regulations are found at part 1270 (21 CFR part 1270). FDA, therefore, interprets section 801(d)(4) of the act as meaning that a person importing human tissue for transplantation for further processing or incorporation into a product destined for export must comply with part 1270. Under § 1270.42 published in the **Federal Register** of July 29, 1997 (62 FR 40429), the importer of record must notify the director of the FDA district having jurisdiction over the port of entry or notify his or her designee, and the human tissue must be quarantined until released by FDA.

Human tissue intended for transplantation may be imported and further processed or incorporated into other products without meeting the screening and testing requirements of part 1270 if the human tissue is kept in quarantine at all times (see § 1270.3