

“Modified Energy Factor” because consumers would have “no clue” as to the meaning of these latter terms.¹² 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.¹³ 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.¹⁴ 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.¹⁵

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.¹⁶ 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.¹⁷ 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.¹⁸

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

¹² AHAM (3) p. 2; Alliance (1) p. 2; and Whirlpool (2) p. 4.

¹³ Whirlpool (2) p. 4.

¹⁴ AHAM (3) p. 2; Alliance (1) p. 2.

¹⁵ Alliance (1) p. 2.

¹⁶ NRCAN (4) pp. 1–2.

¹⁷ AHAM (3) p. 2; *see also* Whirlpool (2) p. 4.

¹⁸ Alliance (1) p. 2.