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(2) Refer to Mandatory Continuing Airworthiness Information AD 2012-0117, dated July 3, 2012, for related information.

Issued in Burlington, Massachusetts, on December 31, 2012.

**Kevin Dickert,**

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

[FR Doc. 2013-00130 Filed 1-9-13; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Docket No. FAA-2012-0750; Airspace Docket No. 11-AWP-4]

RIN 2120-AA66

#### Establishment of VOR Federal Airway V-629; Las Vegas, NV

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action establishes VHF omnidirectional range (VOR) Federal airway V-629, near Las Vegas, NV, to supplement the existing routes structure for aircraft navigating in an area of marginal radar coverage. This action enhances the safety and efficiency of the National Airspace System.

**DATES:** Effective date 0901 UTC, March 7, 2013. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

**FOR FURTHER INFORMATION CONTACT:** Paul Gallant, Airspace Policy and ATC Procedures Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-8783.

#### SUPPLEMENTARY INFORMATION:

##### History

On September 6, 2012, the FAA published in the *Federal Register* a notice of proposed rulemaking (NPRM) to establish V-629 near Las Vegas, NV. (77 FR 54859). Interested parties were invited to participate in this rulemaking effort by submitting written comments on this proposal to the FAA. No comments were received.

##### The Rule

The FAA is amending Title 14, Code of Federal Regulations (14 CFR) part 71

by establishing VOR Federal airway V-629, near Las Vegas, NV, to supplement the existing route structure and provide positive course guidance for aircraft navigating in an area of marginal radar coverage.

VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.9W signed August 8, 2012 and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The VOR Federal airway listed in this document will be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes a VOR Federal airway to enhance the safety and efficiency of the National Airspace System in the vicinity of Las Vegas, NV. Except for editorial changes, this rulemaking is the same as published in the NPRM.

##### Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, Environmental Impacts: Policies and Procedures, paragraph 311a. This airspace action is not expected to cause any potentially

significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

##### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

##### Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

#### PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p.389.

##### § 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the FAA Order 7400.9W, Airspace Designations and Reporting Points, signed August 8, 2012, and effective September 15, 2012, is amended as follows:

*Paragraph 6010(a)—Domestic VOR Federal Airways.*

\* \* \* \* \*

##### V-629 [New]

From INT Goffs, CA, 033° and the Boulder City, NV, 182° radials to Boulder City.

Issued in Washington, DC, on December 12, 2012.

**Gary A. Norek,**

*Manager, Airspace Policy and ATC Procedures Group.*

[FR Doc. 2013-00289 Filed 1-8-13; 4:15 pm]

**BILLING CODE 4910-13-P**

## FEDERAL TRADE COMMISSION

### 16 CFR Part 305

RIN 3084-AB15

#### Energy Labeling Rule

**AGENCY:** Federal Trade Commission (FTC or Commission).

**ACTION:** Final rule.

**SUMMARY:** As part of its ongoing regulatory review of the Appliance Labeling Rule ("Rule"), the Commission amends the Rule by streamlining data reporting requirements for manufacturers, clarifying testing requirements and enforcement provisions, improving online energy label disclosures, and making several minor technical changes and

corrections. The Commission continues to consider other issues related to this regulatory review and may seek comment on additional proposals in the future.

**DATES:** The amendments published in this document will become effective on February 15, 2013, with the exception of the amendments to §§ 305.4(b)(6) and 305.6, which become effective on July 15, 2013, and the amendments to § 305.20 and Appendix L, which become effective on January 15, 2014. The incorporation by reference of certain publications listed in the rule was approved by the Director of the Federal Register as of May 10, 2011.

**ADDRESSES:** Requests for copies of this document should be sent to: Public Reference Branch, Room 130, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580. The complete record of this proceeding is also available at that address. Relevant portions of the proceeding, including this document, are available at <http://www.ftc.gov>.

**FOR FURTHER INFORMATION CONTACT:** Hampton Newsome, (202) 326-2889, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580.

#### SUPPLEMENTARY INFORMATION:

### I. Appliance Labeling Rule

The Commission issued the Appliance Labeling Rule pursuant to the Energy Policy and Conservation Act (EPCA).<sup>1</sup> The Rule requires energy labeling for major household appliances and other consumer products to help consumers compare competing models.<sup>2</sup> When first published in 1979,<sup>3</sup> the Rule applied to eight appliance categories: refrigerators, refrigerator-freezers, freezers, dishwashers, water heaters, clothes washers, room air conditioners, and furnaces. Subsequently, the Commission expanded coverage to include central air conditioners, heat pumps, plumbing products, lighting products, ceiling fans, and televisions.<sup>4</sup>

The Rule requires manufacturers to attach yellow EnergyGuide labels on many of these products.<sup>5</sup> It prohibits

retailers from removing these labels or rendering them illegible.<sup>6</sup> In addition, the Rule directs sellers, including retailers, to post energy disclosures on Web sites and in paper catalogs from which consumers can order products.<sup>7</sup>

EnergyGuide labels for covered appliances and televisions contain three key disclosures: estimated annual operating cost (for most products), a “range of comparability” showing the highest and lowest energy consumption or efficiency ratings for all similar models, and the product’s energy consumption or energy efficiency rating as derived from standard Department of Energy (DOE) tests. The Rule specifies the content and format of the label. Manufacturers cannot place any information on the label other than what the Rule specifically allows.

The Rule also contains reporting requirements for most products. Under these requirements, manufacturers must submit data to the FTC both when they begin manufacturing new models and on an annual basis thereafter.<sup>8</sup> These reports must contain, among other things, estimated annual energy consumption or energy efficiency ratings. DOE also has similar reporting requirements for its efficiency standards certification program.<sup>9</sup>

### II. Regulatory Review

In a March 15, 2012 Notice of Proposed Rulemaking (NPRM),<sup>10</sup> the Commission initiated a regulatory review of the Rule, inviting comment on several specific proposals as well as the Rule’s overall regulatory and economic impacts. In particular, the Commission

refrigerator-freezers, freezers, room air conditioners, clothes washers, dishwashers, pool heaters, central air conditioners, heat pumps, furnaces, and televisions. See 16 CFR 305.11, 305.12, 305.14, and 305.17. The EnergyGuide label constitutes a visually uniform “brand” for all these products, but it has different dimensions and disclosures based on the nature and energy use of the product. See 16 CFR Part 305 Appx. L (label prototypes). Ceiling fans must bear labels similar to EnergyGuide labels, but visually distinct. 16 CFR 305.13. The remainder of the Rule’s covered products bear other types of labels or disclosures related to energy or water use (for plumbing products), rather than the EnergyGuide brand. For example, common consumer light bulbs must bear a “Lighting Facts” label.

<sup>6</sup> See 16 CFR 305.4(a)(2); 42 U.S.C. 6302(a)(2).

<sup>7</sup> See 16 CFR 305.20; 42 U.S.C. 6296(a).

<sup>8</sup> See 16 CFR 305.8; 42 U.S.C. 6296(b). In addition to current models, each annual report must identify models discontinued since the previous report. 16 CFR 305.8(b)(2). In addition to annual reports, manufacturers must submit a report for each new model prior to distribution of that model. 16 CFR 305.8(c).

<sup>9</sup> 10 CFR Part 429.

<sup>10</sup> 77 FR 15298 (Mar. 15, 2012). In 2011, the Commission also proposed amendments related to the Rule’s light bulb coverage. See 76 FR 45715 (Aug. 1, 2011).

proposed to: (1) Eliminate duplicative requirements by harmonizing FTC and DOE reporting and testing rules; (2) prohibit hang tag labels for all covered clothes washers, dishwashers, and refrigerators, and instead require adhesive labels; (3) require manufacturers to place room air conditioner labels on display boxes instead of on the product; (4) improve retailer Web site and paper catalog disclosures by retailers; (5) require manufacturers to include estimated operating cost information on ceiling fan labels; (6) require manufacturers to include specific capacity information on clothes washer EnergyGuide labels; (7) require a QR (“Quick Response”) code on EnergyGuide labels to link mobile phone users to FTC and DOE information; (8) update product definitions for refrigerators and freezers; (9) clarify the Rule’s enforcement provisions; and (10) shorten the Rule’s title.<sup>11</sup>

The Commission has reviewed the responsive comments<sup>12</sup> and now issues final amendments to address two of the principal issues raised in the NPRM—the harmonization of reporting and testing requirements, and improvements to the Rule’s online disclosure requirements—as well as several less significant changes. In the future, the Commission plans to address some of the other issues discussed in the NPRM, as well as additional issues raised by commenters, because these issues require further comment and consideration.

### III. Final Amendments

The Commission announces final amendments to improve the Rule

<sup>11</sup> The Commission also proposed two technical corrections related to ENERGY STAR logos on heating and cooling equipment and television labels for small models. 77 FR 15298, 15303.

<sup>12</sup> The Commission received 15 timely comments in response to the NPRM. The commenters included A.O. Smith Corporation (#00003), Air-Conditioning, Heating, and Refrigeration Institute (AHRI) (#00020), Alliance Laundry Systems LLC (#00011), Association of Home Appliance Manufacturers (AHAM) (#00013), Bradford White Corporation (#00004), BSH Home Appliances (#00007), Consumer Electronics Association (CEA) (#00012), consolidated comments from the American Council for an Energy-Efficient Economy, Appliance Standards Awareness Project, Consumer Federation of America, Consumers Union, Earthjustice, Natural Resources Defense Council, and Public Citizen (referred to in this Notice as “consolidated comments from consumer and efficiency organizations”) (#00015), Highfill, Lisa (#00006), National Electrical Manufacturers Association (NEMA) (#00005), Pacific Gas and Electric Company (PG&E) (#00009), Panasonic Corporation of North America (#00014), Sonthipanya, Shannon (#00002), Southern California Edison (#00008), and Whirlpool Corporation (#00010). The comments can be found at: <http://www.ftc.gov/os/comments/energylabelamend/index.shtml>.

<sup>1</sup> 42 U.S.C. 6291 *et seq.*

<sup>2</sup> For more information about the Rule, see <http://www.ftc.gov/appliances>.

<sup>3</sup> 44 FR 66466 (Nov. 19, 1979).

<sup>4</sup> See 52 FR 46888 (Dec. 10, 1987) (central air conditioners and heat pumps); 54 FR 28031 (Jul. 5, 1989) (fluorescent lamp ballasts); 58 FR 54955 (Oct. 25, 1993) (certain plumbing products); 59 FR 25176 (May 13, 1994) (lighting products); 59 FR 49556 (Sep. 28, 1994) (pool heaters); 71 FR 78057 (Dec. 26, 2006) (ceiling fans); and 76 FR 1038 (Jan. 6, 2011) (televisions).

<sup>5</sup> See 42 U.S.C. 6302(a)(1); 16 CFR 305.4(a)(1). The EnergyGuide label must appear on refrigerators,

through harmonization of DOE and FTC reporting and testing rules, enhance retailer Web site and paper catalog disclosures, update product definitions for refrigerators and freezers, clarify the Rule's enforcement and penalty provisions, change the Rule's title, and correct a few technical errors. Below, we discuss the comments received and the Commission's final decision on these issues.

#### A. Reporting and Testing Requirements

*Background:* In the NPRM, the Commission proposed to streamline current reporting requirements by allowing manufacturers to submit FTC-required data through a DOE database and by harmonizing FTC reporting rules with DOE requirements. The Commission also proposed to clarify FTC testing requirements for mandatory label disclosures.<sup>13</sup>

Specifically, the Commission proposed to allow manufacturers to meet FTC reporting requirements by using DOE's new web-based tool for energy reporting (the "Compliance and Certification Management System" (CCMS)).<sup>14</sup> Under current rules, manufacturers of each covered product must submit one report to DOE<sup>15</sup> and another, largely duplicative submission to the FTC. Under the proposal, manufacturers would send their reports only to DOE. Once manufacturers upload their data to DOE's database, the FTC would obtain the information from DOE and place it on the Commission's public record.<sup>16</sup>

The Commission also proposed to harmonize FTC reporting requirements with DOE certification rules. To achieve this goal, the FTC Rule would require the same report content as DOE. However, for ceiling fans, the FTC would continue to maintain separate reporting requirements because DOE's test procedures for these products are not mandatory.

In addition, the Commission proposed to clarify the DOE testing requirements that manufacturers must use to determine energy information for FTC labels. The current FTC Rule calls for adherence to applicable DOE test procedures generally, but does not mention several specific DOE testing requirements such as sampling rules, testing accreditation (for light bulbs), and testing waiver procedures. The proposed amendments specify that manufacturers must test their products

in accordance with all of these DOE testing requirements.<sup>17</sup>

*Comments:* Commenters supported the proposal to harmonize FTC reporting and testing regulations with DOE.<sup>18</sup> For example, the Association of Home Appliance Manufacturers (AHAM) explained that the change "would go a long way to minimize the burdens associated with this dual reporting." Similarly, the Air-Conditioning, Heating, and Refrigeration Institute (AHRI) observed that existing duplicative reporting requirements do not "provide any benefit to consumers while considerably increasing the regulatory burden on manufacturers." No comments opposed the proposals. Commenters also urged the Commission to consider three specific issues related to reporting and testing.

First, some industry members raised concerns about the disparate scope of FTC and DOE reporting requirements.<sup>19</sup> They noted that the FTC's proposal, consistent with its current rule, requires annual reporting for models that are "currently in production." In contrast, DOE reporting covers all models currently "offered for sale," a broader category.<sup>20</sup> These comments preferred the FTC's approach and urged the Commission to maintain its coverage. They explained that DOE's approach requires manufacturers to keep track of information outside their control because manufacturers generally maintain records based on the models in current production, not on whether retailers offer them for sale, and manufacturers do not always know how long retailers will offer discontinued models for sale.

Second, industry commenters urged the FTC to recognize recent DOE rules allowing manufacturers to report energy ratings that are more conservative than tested ratings. Some manufacturers follow this practice to ensure that, given slight variations from unit to unit, their representations do not overstate the efficiency of their products. DOE has explained that "the tested performance of the model(s) must be at least as good

as the certified rating, after applying the appropriate sampling plan."<sup>21</sup> Consistent with this policy, DOE sampling regulations state that reported energy consumption values "shall be greater than or equal to the higher of" the value generated by the sampling procedures.<sup>22</sup>

Third, some industry commenters (e.g., AHAM and Bradford White) noted that several manufacturers currently submit certification reports to DOE and FTC through voluntary industry certification programs, such as one currently administered by AHRI for heating and cooling equipment. These comments urged the Commission to continue allowing this type of reporting, to minimize the burden on manufacturers.

*Discussion:* After considering the comments, the Commission amends the Rule as proposed to harmonize its reporting and testing requirements with DOE.<sup>23</sup> These changes streamline reporting for manufacturers and ensure that all required product data is submitted to a single location.<sup>24</sup> In addition, the amendments will ensure that manufacturers develop the content of energy disclosures for the FTC labels based on DOE-required testing provisions.

Consistent with the proposal and existing rule, the final rule continues to require reporting for all models in current production and all models discontinued during the previous reporting year.<sup>25</sup> DOE currently requires reporting for all models available for sale (not just those in current production). The Commission's amendments should not materially change the scope or burden of reporting to DOE's database because FTC's coverage is not as broad as DOE's.

In addition, the Commission concurs with recent DOE guidance allowing manufacturers to rate models more conservatively than their tested

<sup>21</sup> See 76 FR 12422, 12429 (Mar. 7, 2011).

<sup>22</sup> 10 CFR 429.14(a)(2)(i).

<sup>23</sup> The final rule contains a non-substantive change to the language in section 305.5(a) to reflect recent changes in the location of DOE testing and sampling provisions in 10 CFR Parts 429 and 430.

<sup>24</sup> The final amendments do not eliminate direct reporting to the FTC altogether, because EPCA requires manufacturers to submit annual reports to the FTC containing "relevant data respecting energy consumption and water use developed in accordance with" applicable DOE test procedures. 42 U.S.C. 6296(b)(4).

<sup>25</sup> Consistent with the current FTC Rule (305.8) and as required by EPCA (42 U.S.C. 6296(b)), the final rule contains a technical correction indicating that ceiling fan reports must contain a "starting serial number, date code or other means of identifying the date of manufacture (date of manufacture information must be included with only the first submission for each basic model)."

<sup>13</sup> The Rule's reporting requirements do not apply to televisions and LED (light-emitting diode) light bulbs. 76 FR 1038, 1040 n.28 (Jan. 6, 2011).

<sup>14</sup> 75 FR 27183 (May 14, 2010).

<sup>15</sup> See 10 CFR part 430; 42 U.S.C. 6296.

<sup>16</sup> See 16 CFR 4.9(b)(10)(xii).

<sup>17</sup> Unless otherwise specified in the Rule, the Commission did not propose to require compliance with any DOE testing provisions that DOE does not require for certification. This will ensure that the FTC does not inadvertently impose additional testing requirements. The Commission also proposed to eliminate various references to recommended Illuminating Engineering Society (IES) test procedures for incandescent and compact fluorescent lamps now superseded by specific DOE testing requirements.

<sup>18</sup> See, e.g., Alliance, AHAM, National Electrical Manufacturers Association (NEMA), Energy and Consumer Organization Commenters.

<sup>19</sup> AHAM, Alliance Laundry Systems, Whirlpool, and BSH Home Appliances.

<sup>20</sup> 10 CFR 429.12(f).

performance. These rules allow manufacturers to label their products with higher energy usage numbers (e.g., estimated annual energy cost) than test results for the product indicate. This approach should have no negative impact on consumers because these products may be more energy-efficient than their labels indicate. The Commission does not need to amend the Rule, which already directs manufacturers to derive their energy consumption figures using DOE testing protocols because DOE regulations specifically allow this practice.

Lastly, the FTC will continue to allow manufacturers to submit data through certification bodies or other entities (e.g., testing laboratories) acting on their behalf. This approach is consistent with DOE requirements.<sup>26</sup> The record identifies no reason to change this practice.

#### B. Web Site and Paper Catalog Disclosures

*Background:* In the NPRM, the Commission proposed several amendments to enhance the energy information available to consumers in “catalogs” (i.e., paper catalogs and Web sites selling covered products),<sup>27</sup> consistent with the Commission’s recently issued requirements for television labels.<sup>28</sup> First, the Commission proposed to require retail Web sites to post the full EnergyGuide or Lighting Facts label online. The current Rule requires online retailers to post the label content, but not the label image. Under the proposal, Web sites would post the full label or use an FTC-provided icon to link consumers to the full label. The proposed amendments specified the format and placement for the required information (e.g., label or icon). Second, to ensure that retail Web sites have access to the label, the NPRM proposed to require manufacturers to post their EnergyGuide and Lighting Facts labels online and to retain the label online for two years after discontinuing a model. Finally, for paper catalogs, the Commission proposed to continue allowing retailers to use an abbreviated text disclosure in lieu of the full label, due to space and cost constraints.

*Comments:* Most comments generally supported the proposed requirements

<sup>26</sup> 10 CFR 429.12(g).

<sup>27</sup> The Rule’s definition of “catalog” encompasses both print and online formats. The current rule defines “catalog” as “printed material, including material disseminated over the Internet, which contains the terms of sale, retail price, and instructions for ordering, from which a retail consumer can order a covered product.” 16 CFR 305.2(h).

<sup>28</sup> 76 FR 1038 (Jan. 6, 2011) (television labels).

directing online retailers to post EnergyGuide and Lighting Facts labels. However, several raised concerns with particular details, including the use of Web site hyperlinks. Comments contained mixed support for the proposed requirement that manufacturers make their labels available online, and some commenters urged the Commission to reduce the proposed two-year retention period to six months.

*Online Retailer Duty to Post Labels:* Commenters generally expressed support for, or did not oppose, the revised Web site requirements for retailers, which conform to recently issued rules for television labels. For example, the consolidated comments from consumer and efficiency organizations note that such changes are important “to ensure that the Rule remains useful as consumer purchasing and consumer research increasingly migrate online.”

However, several comments opposed the Commission’s proposal to allow online retailers to use a hyperlink icon from the product page to link consumers to the required label.<sup>29</sup> These commenters argued that the label must appear on the product page itself.<sup>30</sup> In their opinion, consumers may not realize the icon is a link, or understand where the link leads, or may simply find the link inconvenient.<sup>31</sup> In addition, they suggested that consumers may decide not to view the label at all if the Web site requires them to download a PDF or other file to their computer. Given the limited time that consumers review Web site information, the consolidated efficiency and energy group comments explained that the online label must be “conspicuous, easily accessible, and an intrinsic part of the description of the product in order for it to be useful to and used by consumers.” They suggested that retailers could minimize the Web page space consumed by labels with a hover or “mouseover” feature, which would allow consumers to view labels without clicking an icon.

<sup>29</sup> Pacific Gas and Electric Company (PG&E), Southern California Edison, and consolidated comments from efficiency and consumer groups.

<sup>30</sup> The consolidated comments from consumer and efficiency organizations acknowledged that the proposed icon, with its explanatory text, was preferable to the icon currently required for televisions, which contains no such text. However, these organizations argued that any link allowed by the Rule should display the model’s estimated annual operating cost, to provide this important information even if consumers do not click on the link to the full label.

<sup>31</sup> PG&E, Southern California Edison, and consolidated consumer and efficiency organizations comments.

In contrast, Whirlpool argued that the inclusion of the full label itself “would dramatically alter the ability of manufacturers (or retailers) to display product photos and descriptive information” on product pages. In addition, Whirlpool asserted that such an approach would significantly reduce the “reachability and usability of these pages.”

*Manufacturer Duty to Post Labels:* The comments contained mixed views on the proposal requiring manufacturers to post labels online. Consumer and efficiency groups supported the proposed changes; appliance manufacturers did not oppose them but recommended modifications; and heating and cooling equipment manufacturers criticized them.

Consumer and efficiency groups urged adoption of the proposed provision, noting that it will allow retailers to download labels and repost them on their own Web sites. In their view, the requirement will allow consumers to view labels missing from retailer sites and otherwise make it easier to locate product efficiency information.

Appliance manufacturers<sup>32</sup> did not oppose the proposal but raised concerns about having to continue to post labels two years after discontinuing a model’s production.<sup>33</sup> AHAM stated that the proposed timeframe is “far too long and burdensome for manufacturers” and fails to provide “corresponding benefit.”<sup>34</sup> It explained that the two-year period would raise significant complications when the Commission requires changes to the label content (e.g., through range or cost updates), necessitating label changes for models that are no longer in production. To avoid such problems, it suggested a six-month retention period. AHAM also asked the Commission to clarify whether the online label disclosure would apply to products no longer in production when the proposed rule becomes effective.<sup>35</sup>

<sup>32</sup> Whirlpool noted that it already posts labels for its products online.

<sup>33</sup> NEMA indicated that there was no consensus among its members on this proposal.

<sup>34</sup> BSH Home Appliances echoed AHAM’s comments on these issues.

<sup>35</sup> Recent AHRI comments in a separate proceeding involving furnace and air conditioner labels (77 FR 33337 (June 6, 2012)) argued that the two-year retention period conflicts with new “DOE guidance on discontinued models, which requires that basic models be removed from public Web sites once DOE is notified.” AHRI Comments # 560904–00008 (Aug. 6, 2012). <http://www.ftc.gov/os/comments/regionaldisclosuremprm/index.shtml>. After consultation with DOE staff, the FTC staff has identified no such requirement in DOE’s certification rules. See 10 CFR 429.12(d).

Finally, heating and cooling equipment manufacturers opposed the proposal. A.O. Smith, a water heater manufacturer, argued that the proposed requirement will force manufacturers to expend considerable time and resources for a service that the majority of retailers will not use. In AHRI's view, under the current rule, manufacturers already provide adequate product information to retail catalog sellers. In addition, AHRI argued that the proposed requirement will create a burdensome and complicated process for companies that sell private-labeled products procured from other manufacturers.<sup>36</sup> Smith also noted that manufacturers generally do not maintain a Web site for models they sell to private labelers. It further explained that merchants, to save time and avoid errors, generally rely on direct communication with manufacturers to obtain product information.

*Paper Catalogs:* Finally, Whirlpool concurred with continuation of the current practice of allowing abbreviated text disclosure in printed catalogs. No commenters opposed this proposal.<sup>37</sup>

*Discussion:* The Commission amends the Rule's catalog requirements as proposed, with a few minor changes discussed below. Generally, the amendments require Web site sellers to display the full EnergyGuide or Lighting Facts labels on the product page or through a hyperlink from that page, establish specific Web site format requirements, and require manufacturers to post labels for their products on a publicly available Web site. These revised Web site requirements should make it easier for consumers to compare the energy performance of products as they shop and research products online. The changes also will provide a clear, consistent process that manufacturers and retailers must follow to deliver energy information to online consumers. The final rule requires manufacturers to continue posting their labels online for six months after discontinuing production of the model, instead of the proposed two-year period. Finally, manufacturers will have six months to comply with these new requirements, and online retailers will have one year.

<sup>36</sup> Generally, a private labeler purchases products from a manufacturer and markets those products under its own brand name. EPCA defines a private labeler as an entity, other than the product manufacturer, that owns a product brand or trademark other than the product manufacturer. 42 U.S.C. 6291(15).

<sup>37</sup> NEMA indicated that no consensus existed among its members on the issue of online disclosures and provided no details regarding the merits of the proposal.

The amendments do not change requirements for paper catalogs.

*Retail Web sites:* The final amendments require Web sites selling products with the EnergyGuide or Lighting Facts label to display the full label either on the product page or through a hyperlink. These provisions mark a departure from the current online requirements, which allow abbreviated, text-only energy disclosures. The Commission allowed these short disclosures in the past due to space constraints and the costs associated with printing the full label in paper catalogs.<sup>38</sup> However, during the television labeling rulemaking, the Commission determined that this rationale does not apply to Web sites. Accordingly, the Commission required Web sites selling televisions to include the full label or a special icon linking to the full label.<sup>39</sup>

The Commission does not agree with commenters that the full label must appear on the product page with no option to provide a hyperlink. Depending on the design of the Web site, a full label could crowd and clutter product pages, reducing the space available to display photos and other information. Although, as suggested by comments, a hover or "mouseover" feature (presumably coupled with a small, thumbnail label image) could mitigate such problems, the record does not demonstrate that a thumbnail-sized label would be more effective than the icon link, a common Web site feature familiar to consumers.<sup>40</sup> Both approaches require consumers to direct their mouse to a specific location. However, the Commission agrees with commenters that retail Web sites should not require consumers to save files in order to view the labels. Accordingly, the final rule language specifically prohibits this practice.

The final amendments require Web site sellers either to place the full label on the product's detailed description page or, to minimize design impact on their sites, to use a small EnergyGuide or Lighting Facts logo icon provided by FTC, which will link to the full label. The amendments allow Web sites to scale the icon (as well as the label) appropriately to accommodate their layout, as long as the labels and icons remain readable and recognizable. The new icon applies to all products subject to the EnergyGuide or Lighting Facts requirements, including televisions. As

<sup>38</sup> 72 FR 49948, 49961 (Aug. 29, 2007).

<sup>39</sup> 76 FR 1038.

<sup>40</sup> Nothing in the final rule prohibits online retailers from using a "mouseover" or hover feature to allow consumers to magnify label images placed directly on the product page.

proposed, the required icon in the final amendments integrates the text "Click for this product's energy information" into the icon design. This design, which differs slightly from the current television icon, should reduce the likelihood that consumers will view the icon as an endorsement or general claim about a product's environmental quality, rather than as an energy cost disclosure.<sup>41</sup>

Under the amendments, online sellers have some flexibility in how they display the label. For example, they may use a thumbnail image as long as consumers can recognize the image and read it using a hover, "mouseover," or similar feature that magnifies the label. For general service lamps, online sellers may post an image of the manufacturer's package bearing the Lighting Facts label, as long as consumers can read the label by, for example, magnifying the package image to read the label using a mouseover or similar feature. In addition, online sellers may create their own versions of the labels rather than using the images provided by the manufacturers, as long as the labels conform to all the specifications in the amended rule.

The final amendments also provide specifications regarding the format and placement of the required information on Web sites. Consistent with the NPRM,<sup>42</sup> the final rule requires that the label or icon appear "clearly and conspicuously and in close proximity to the covered product's price."<sup>43</sup> This requirement, incorporated into the new television label provisions, should ensure that consumers can easily view the label or icon without excessive scrolling or clicking, and still provide flexibility to Web site designers. The label or icon need only appear on "each Web page that contains a detailed description of the covered product and its price," rather than alongside every image of a covered product on the site. The Commission does not agree with

<sup>41</sup> Web site sellers should not use language implying that the icon constitutes an endorsement or an environmental claim. For example, adding the words "EnergyGuide Rated" near the icon could suggest that the icon represents a product endorsement or a "green" claim about the product. Such language would probably be deceptive under Section 5 of the FTC Act, 15 U.S.C. 45.

<sup>42</sup> 77 FR at 15301.

<sup>43</sup> Similarly, the amendments require that Web site disclosures for required non-label markings or text (e.g., gallons per minute for showerheads and faucets) be displayed clearly and conspicuously, and in close proximity to the product's price on the Web page. Because the Rule does not require a specific product label for these short and simple disclosures, the amendments do not impose any design or font size requirements for these disclosures on Web site, other than that they be clear and conspicuous.

comments suggesting the hyperlink icon should disclose the model's specific estimated energy cost. It is not clear whether any benefits associated with such a disclosure would justify the significant burden this requirement would impose on retailers.

*Manufacturer Duty to Post Labels:* The amendments require manufacturers to make images of their EnergyGuide and Lighting Facts labels available on a Web site for linking and downloading by both paper catalogs and Web sites.<sup>44</sup> As discussed in the NPRM and the comments, this requirement will assist retailers in complying with the Rule and help ensure consumers can view the labels when they are shopping online. In particular, it will provide retail sellers with easy access to the labels for the products they offer for sale, even if they do not handle the labeled products directly. It will also eliminate the need for these retailers to affirmatively request labels from various manufacturers for each individual product sold on their Web sites and catalogs. The Commission does not expect that the amendments, which are consistent with current television label rules,<sup>45</sup> will impose undue burden because industry members have already created labels under Rule and should have them readily available for posting on Web sites.

Under the final rule, the labels must remain available online for six months after the manufacturer ceases to produce the model, instead of two years as proposed in the NPRM. The Commission agrees with commenters that the proposed two-year period could create a significant burden for manufacturers unmatched by the potential benefits for online retailers and ultimately, consumers. Specifically, given periodic FTC-required label updates, the two-year retention period could force manufacturers to revise labels for obsolete products.<sup>46</sup> At the same time, there is no clear evidence that online retailers have a strong need for labels from models discontinued for six months or more. Should the six-month period prove to be insufficient to

provide needed labels to retailers in the future, the Commission may revisit the issue.<sup>47</sup>

The new posting requirement applies to manufacturers, not private labelers.<sup>48</sup> Manufacturers must ensure that the labels are available on a publicly accessible site. However, nothing prohibits manufacturers from arranging with private labelers to post the labels on the private labelers' Web sites.<sup>49</sup> The Rule does not mandate that manufacturers post labels for the products they produce on their own sites. Other labeling responsibilities under the Rule have applied to both manufacturers and their private labelers for decades.<sup>50</sup> Accordingly, the Commission does not expect that this new online label disclosure requirement should unduly complicate coordination between manufacturers and private labelers.<sup>51</sup>

*Compliance Period:* Consistent with the recent television labeling requirements, the final rule staggers the compliance dates for these new requirements. Specifically, manufacturers must make their labels available online by July 15, 2013. In turn, online retailers must begin displaying labels for the covered products they sell by January 15, 2014. These compliance dates should provide industry members adequate time to comply with the new requirements.

*Paper Catalogs:* Finally, for paper catalogs, the Rule continues to allow an abbreviated text disclosure in lieu of the full label. Due to the space and cost constraints involved with paper catalogs, inclusion of the entire label

may be impractical.<sup>52</sup> No comments opposed this approach.

### C. Definitions of Refrigerator and Refrigerator-Freezer

The Commission amends the Rule's refrigerator definitions to match DOE regulations. On December 16, 2010,<sup>53</sup> DOE issued revised definitions for the terms "electric refrigerator" and "electric refrigerator-freezer." In the NPRM, the Commission proposed to conform its own definitions for these terms to ensure consistency. No comments opposed the proposal. AHAM and BSH supported the changes, explaining that they would provide consistency and clarity for regulated parties and consumers.<sup>54</sup>

### D. Prohibited Acts Provision

Consistent with the NPRM, the final rule clarifies the penalty assessments for several non-labeling violations listed in section 305.4(b). These violations include refusal to allow access to records, refusal to submit required data reports, refusal to permit FTC officials to observe testing, refusal to supply units for testing, failure to disclose required energy information in Web sites and paper catalogs, and failure of manufacturers to make labels available online.<sup>55</sup> The current Rule does not specify the method (*e.g.*, per day) for assessing penalties for these non-labeling violations.<sup>56</sup> The amendments clarify that these violations are subject to civil penalties calculated on a per-model, per-day basis. The per-model, per-day basis is consistent with EPCA's enforcement provisions as well as DOE enforcement guidance for the same and

<sup>47</sup> As specified in section 305.6, the final rule does not apply to models discontinued prior to the effective date.

<sup>48</sup> EPCA states that "Each manufacturer of a covered product to which a rule under section 6294 of this title applies shall provide a label which meets, and is displayed in accordance with, the requirements of such rule." 42 U.S.C. 6296(a). The definition of "manufacturer" under EPCA includes importer. 42 U.S.C. 6291(10)-(12).

<sup>49</sup> DOE follows a similar approach to its certification requirements by allowing manufacturers to arrange with third parties, including private labelers, to display product labels on Web sites. See 76 FR 12422, 12427 (Mar. 7, 2011). In addition, though FTC reporting requirements apply solely to manufacturers, the FTC accepts submissions through third parties. See 16 CFR 305.8.

<sup>50</sup> See 16 CFR 305.4(a).

<sup>51</sup> A.O. Smith also argued that many retailers do not use manufacturer Web sites to obtain labels. Nothing in the final rule prohibits manufacturers from also providing labels to their retail partners through means other than the Web site. Nevertheless, the requirement will ensure that labels are available online for those that do use manufacturer Web sites.

<sup>52</sup> Consistent with the NPRM, the amendments also state that, if paper catalogs display more than one covered product model on a page, the seller may disclose the utility rates or usage assumptions underlying the energy information (*e.g.*, 10.65 cents per kWh, 8 cycles per week) only once per page for each type of product (*e.g.*, a single footnote for all refrigerators advertised on the page), rather than repeating the information for each advertised model. The disclosure must be clear and conspicuous. In addition, the final rule language covers heating and cooling equipment disclosures, text inadvertently omitted from the proposed language.

<sup>53</sup> 75 FR 78810.

<sup>54</sup> The consolidated comments from consumer and energy organizations also supported the proposal.

<sup>55</sup> See 16 CFR 305.4(b); see also 42 U.S.C. 6296(b)(2),(4) and 6303(a)(3) (data reports and records access), 6296(b)(5) (testing access), 6296(b)(3) (units for testing), and 6296(a) (catalog sales and manufacturer responsibilities).

<sup>56</sup> In contrast, the current rule specifies the basis for labeling violations. Specifically, consistent with EPCA (42 U.S.C. 6303(a)), section 305.4(a) states that labeling violations are assessed on a *per-unit* basis.

<sup>44</sup> The amendments also include language conforming to the Rule's prohibited acts section (305.4) indicating that a manufacturer's failure to post labels online is subject to civil penalties. See 42 U.S.C. 6296(a), 6302(a)(4). The new requirements stem from EPCA's mandate, in the statute's catalog-related provision, that manufacturers "provide" a label and from the Commission's general authority to dictate the manner in which labels are displayed. 42 U.S.C. 6294(c)(3) & 6296(a).

<sup>45</sup> 76 FR 1038.

<sup>46</sup> The six-month period is also consistent with EPCA's provisions directing manufacturers to change labels and other energy representations 180 days after DOE amends its test procedures for specific products. 42 U.S.C. 6293(c).

similar provisions.<sup>57</sup> For example, a manufacturer's refusal to submit required reports accrues a fine of up to \$110 per day for each model subject to the reporting requirements. In addition, a Web site seller's failure to post required label information accrues a fine of up to \$110 per day for each model on the Web site lacking the disclosure. No comments opposed the proposal.<sup>58</sup>

#### E. Rule Title

As proposed in the NPRM, the Commission shortens the Rule's title. When originally promulgated in 1979, the Rule applied only to appliances. Subsequently, the Commission expanded the Rule to include lighting, plumbing, and consumer electronics. Accordingly, the Commission proposed to change the Rule's title from "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")" to "Part 305—Energy And Water Use Labeling For Consumer Products Under The Energy Policy and Conservation Act ("Energy Labeling Rule")." No comments opposed this proposal.

#### F. ENERGY STAR Logo on Heating and Cooling Equipment Labels

As proposed in the NPRM, the final amendments to § 305.12 allow a wider version of the ENERGY STAR logo on heating and cooling equipment. This minor, non-substantive change accommodates new ENERGY STAR logos developed by the Environmental Protection Agency for these products. No comments opposed this proposal.

#### G. Technical Corrections and Clarifications

The final amendments also contain four minor, technical corrections or clarifications for television labeling, rule language regarding room air conditioner capacity, terminology related to the ENERGY STAR program, and three-way bulb labeling. First, as noted in the NPRM,<sup>59</sup> the amendments clarify that manufacturers of televisions with screen sizes of nine inches or less (measured diagonally) may print or affix the EnergyGuide label on the product

package.<sup>60</sup> Second, the amendments correct the room air conditioner range table in Appendix E to indicate that the applicable room air conditioner capacity for labeling purposes is "Btu per hour," not "Btu per year." Third, in rule sections related to the ENERGY STAR program, the final rule changes the term "qualified" to "certified" to reflect the terminology currently employed by the ENERGY STAR program.<sup>61</sup> Fourth, the amendments change the Rule language for labeling bulbs that operate at multiple, separate light levels (e.g., "3-way" bulbs) to clarify that such language applies to all covered bulb technologies. Currently, the Rule's language addressing such bulbs applies only to incandescent bulbs.<sup>62</sup>

#### IV. Paperwork Reduction Act

The Rule contains recordkeeping, disclosure, testing, and reporting requirements that constitute "information collection requirements" as defined by 5 CFR 1320.3(c), the definitional provision within the Office of Management and Budget (OMB) regulations that implement the Paperwork Reduction Act (PRA).<sup>63</sup> Prior to the FTC's March 15, 2012 NPRM, OMB had approved the Rule's pre-existing information collection requirements through Jan. 31, 2014 (OMB Control No. 3084-0069). As described below, the final amendments modify (to a minor degree) the Rule's labeling and reporting requirements.<sup>64</sup> Accordingly, the Commission is seeking OMB clearance specific to the Rule amendments.

*Manufacturer EnergyGuide Images Online:* The amendments require manufacturers to post images of their EnergyGuide and Lighting Facts labels online. Given approximately 15,000

total models<sup>65</sup> at an estimated five minutes per model,<sup>66</sup> this requirement will entail a burden of 1,250 hours.<sup>67</sup> Assuming graphic designers at a mean hourly wage of \$23.41 per hour will implement the additional disclosure requirement,<sup>68</sup> the associated labor cost would be approximately \$29,300 per year.

*Catalog Disclosures:* The Commission's past estimate of the Rule's burden on catalog sellers (including Internet sellers) has assumed conservatively that catalog sellers must enter their data for each product into the catalog each year (see, e.g., 71 FR 78057, 78062 (Dec. 28, 2006)).<sup>69</sup> The one-time adjustment under the amendments has effectively been accounted for by this prior assumption and the associated burden estimates for catalog sellers. Thus, the Commission believes no modification to existing burden estimates for catalog sellers is necessary.

*Estimated annual non-labor cost burden:* Any capital costs associated with the amendments are likely to be minimal.

#### V. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612, requires that the Commission provide an Initial Regulatory Flexibility Analysis (IRFA) with a Proposed Rule, and a Final Regulatory Flexibility Analysis (FRFA) with the final Rule, unless the Commission certifies that the Rule will not have a significant economic impact on a substantial number of small entities.<sup>70</sup>

The Commission does not anticipate that the final amendments will have a significant economic impact on a substantial number of small entities. The Commission recognizes that many affected entities may qualify as small businesses under the relevant thresholds. The Commission does not expect, however, that the economic

<sup>57</sup> See 42 U.S.C. 6302, 6303; 16 CFR 305.4(a); and DOE "Guidance on the Imposition of Civil Penalties for Violations of EPCA Conservation Standards and Certification Obligations," [http://www.doe.gov/sites/prod/files/gcprod/documents/Penalty\\_Guidance\\_5\\_7\\_2010\\_\\_final\\_%282%29.pdf](http://www.doe.gov/sites/prod/files/gcprod/documents/Penalty_Guidance_5_7_2010__final_%282%29.pdf).

<sup>58</sup> The consolidated consumer and efficiency organizations comments specifically supported the proposal, noting that any other interpretation would lead to absurd results.

<sup>59</sup> 77 FR 15303.

<sup>60</sup> The **Federal Register** notice accompanying the television labeling amendments to the Rule stated that televisions smaller than nine inches may be labeled on the box rather than on the screen. However, the final rule language did not reflect this. See 76 FR at 1044.

<sup>61</sup> Though the Commission did not seek comment on these minor changes to Appendix E and the ENERGY STAR-related language, these amendments involve minor, technical corrections to the background information in the Rule. Accordingly, the Commission finds good cause that public comment for these technical, procedural amendments is impractical and unnecessary (5 U.S.C. 553(b)(A)(B) and (d)).

<sup>62</sup> The Commission proposed this amendment in an August 1, 2011 notice related to light bulb labeling (76 FR 45715). No comments opposed the change.

<sup>63</sup> 44 U.S.C. 3501 *et seq.*

<sup>64</sup> For reporting requirements, the amendments allow manufacturers to submit data to the DOE in lieu of the FTC. This will not affect the PRA burden because the Rule, as directed by the EPCA, will continue to require reporting to the FTC, even if manufacturers may fulfill that requirement by reporting to the DOE.

<sup>65</sup> This is an FTC staff estimate based on data submitted by manufacturers to the FTC pursuant to the current Rule.

<sup>66</sup> This estimate is based on FTC staff's general knowledge of industry practices.

<sup>67</sup> Unlike retail Web sites that already have established Web pages for the products they offer, some manufacturers may have to create new Web pages for posting these requirements. Accordingly, the burden estimate for manufacturers is higher (five minutes per model) than that for catalog sellers (one minute per model).

<sup>68</sup> See U.S. Department of Labor, "Occupational Employment and Wages—May 2011", issued March 27, 2012, Table 1 at p.13 (mean hourly wages), available at [http://www.bls.gov/news.release/archives/ocwage\\_03272012.pdf](http://www.bls.gov/news.release/archives/ocwage_03272012.pdf).

<sup>69</sup> This assumption is conservative because the number of incremental additions to the catalog and their frequency is likely to be much lower after initial start-up efforts have been completed.

<sup>70</sup> 5 U.S.C. 603-605.

impact of implementing the amendments will be significant. The Commission plans to provide businesses with ample time to implement the requirements. In addition, the Commission does not expect that the requirements specified in the final amendments will have a significant impact on affected entities.

Although the Commission certified under the RFA that the amendments would not, if promulgated, have a significant impact on a substantial number of small entities, the Commission has determined, nonetheless, that it is appropriate to publish an FRFA in order to explain the impact of the amendments on small entities as follows:

#### A. Description of the Reasons That Action by the Agency Is Being Taken

The Commission initiated this rulemaking to reduce the Rule's reporting burdens, increase the availability of energy labels to consumers while minimizing burdens on industry, and generally improve existing requirements.

#### B. Issues Raised by Comments in Response to the IRFA

The Commission did not receive any comments specifically related to the impact of the final amendments on small businesses. Comments that involve impacts on all entities are discussed above.

#### C. Estimate of Number of Small Entities to Which the Amendments Will Apply

Under the Small Business Size Standards issued by the Small Business Administration, the standards for various affected entities are as follows: refrigerator manufacturers—up to 1,000 employees; other appliance manufacturers—up to 500 employees; appliances stores—up to \$10 million in annual receipts; television stores—up to \$25.5 million in annual receipts, and light bulb manufacturers—up to 1,000 employees. The Commission estimates that fewer than 600 entities subject to the proposed Rule's requirements qualify as small businesses.

#### D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The Commission recognizes that the proposed changes will involve some burdens on affected entities. However, the amendments should not have a significant impact on small entities. Online sellers would have to make changes to ensure their Web sites provide the full EnergyGuide or Lighting Facts label. However, the Commission has provided them with

ample time to incorporate the changes into their normal Web site updates. There should be minimal capital costs associated with the amendments. As estimated above, the proposed Rule imposes new requirements on fewer than 600 small businesses. The changes are likely to be made by graphic designers.

#### E. Duplicative, Overlapping, or Conflicting Federal Rules

The Commission has not identified any other federal statutes, rules, or policies that would duplicate, overlap, or conflict with the proposed Rule. In fact, the proposed amendments should reduce duplication between FTC and DOE reporting requirements.

#### F. Description of Steps Taken To Minimize Significant Economic Impact, If Any, on Small Entities, Including Alternatives

The Commission sought comment and information on the need, if any, for alternative compliance methods that would reduce the economic impact of the Rule on such small entities. In particular, the Commission sought comments on whether it should delay the Rule's effective date to provide additional time for small business compliance and whether to reduce the amount of information catalog sellers must provide. The Commission did not receive any comments on those specific issues. However, to minimize the impacts on manufacturers and retailers in posting the required labels, the Commission has set the effective date for the new catalog requirements at January 15, 2014.

#### Final Rule

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

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

For the reasons discussed above, the Commission amends part 305 of title 16, Code of Federal Regulations, as follows:

#### PART 305—ENERGY AND WATER USE LABELING FOR CONSUMER PRODUCTS UNDER THE ENERGY POLICY AND CONSERVATION ACT (“ENERGY LABELING RULE”)

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

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

■ 2. Revise the heading of part 305 to read as set forth above.

■ 3. In § 305.3, revise paragraphs (a)(1) and (2) to read as follows:

#### § 305.3 Description of covered products.

(a)(1) Electric refrigerator means a cabinet designed for the refrigerated storage of food, designed to be capable of achieving storage temperatures above 32 °F (0 °C) and below 39 °F (3.9 °C), and having a source of refrigeration requiring single phase, alternating current electric energy input only. An electric refrigerator may include a compartment for the freezing and storage of food at temperatures below 32 °F (0 °C), but does not provide a separate low temperature compartment designed for the freezing and storage of food at temperatures below 8 °F (−13.3 °C).

(2) Electric refrigerator-freezer means a cabinet which consists of two or more compartments with at least one of the compartments designed for the refrigerated storage of food and designed to be capable of achieving storage temperatures above 32 °F (0 °C) and below 39 °F (3.9 °C), and with at least one of the compartments designed for the freezing and storage of food at temperatures below 8 °F (−13.3 °C) which may be adjusted by the user to a temperature of 0 °F (−17.8 °C) or below. The source of refrigeration requires single phase, alternating current electric energy input only.

\* \* \* \* \*

■ 4. In § 305.4, revise paragraph (b) introductory text and add paragraph (b)(6) to read as follows:

#### § 305.4 Prohibited acts.

\* \* \* \* \*

(b) Subject to enforcement penalties assessed per model per day of violation pursuant to 42 U.S.C. 6303 and adjusted for inflation by § 1.98 of this chapter, it shall be unlawful for any manufacturer or private labeler knowingly to:

\* \* \* \* \*

(6) Fail to make a label for a covered product available on a publicly accessible Web site in accordance with § 305.6. This provision applies only to manufacturers.

\* \* \* \* \*

■ 5. Revise § 305.5 to read as follows:

#### § 305.5 Determinations of estimated annual energy consumption, estimated annual operating cost, and energy efficiency rating, water use rate, and other required disclosure content.

(a) Unless otherwise stated in paragraphs (b), (c), (d), or (e) of this section, the content of any disclosures required by this part must be determined in accordance with the testing and sampling provisions required by the Department of Energy as set forth in subpart B to 10 CFR part 430, part 431, and 10 CFR 429.11.



(b) For any representations required by this part but not subject to Department of Energy requirements and not otherwise specified in this section, manufacturers and private labelers of any covered product must possess and rely upon a reasonable basis consisting of competent and reliable scientific tests and procedures substantiating the representation.

(c) For representations of the light output for general service light-emitting diode (LED or OLED) lamps, the Commission will accept as a reasonable basis scientific tests conducted according to IES LM79.

(d) Determinations of estimated annual energy consumption and estimated annual operating (energy) costs of televisions must be based on the procedures contained in the ENERGY STAR Version 4.2 test, which is comprised of the ENERGY STAR Program Requirements, Product Specification for Televisions, Eligibility Criteria Version 4.2 (Adopted April 30, 2010); the Test Method (Revised Aug–2010); and the CEA Procedure for DAM Testing; For TVs, Revision 0.3 (Sept. 8, 2010). Annual energy consumption and cost estimates must be derived assuming 5 hours in on mode and 19 hours in sleep (standby) mode per day. These ENERGY STAR requirements are incorporated by reference into this section. The Director of the Federal Register has approved these incorporations by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the test procedure may be inspected or obtained at the United States Environmental Protection Agency, ENERGY STAR Hotline (6202J), 1200 Pennsylvania Avenue NW., Washington, DC 20460, or at [http://www.energystar.gov/ia/partners/product\\_specs/program\\_reqs/Televisions\\_Program\\_Requirements.pdf](http://www.energystar.gov/ia/partners/product_specs/program_reqs/Televisions_Program_Requirements.pdf) [Telephone: ENERGY STAR Hotline: 1–888–782–7937]; at the Federal Trade Commission, Consumer Response Center, Room 130, 600 Pennsylvania Avenue NW., Washington, DC 20580 [Telephone: 1–202–326–2830]; and at the National Archives and Records Administration, at <http://www.archives.gov/federal-register/cfr/ibr-locations.html> [Telephone: 1–202–741–6030].

(e) Representations for ceiling fans under section 305.13 must be derived from procedures in 10 CFR 430.23.

■ 6. Revise § 305.6 to read as follows:

**§ 305.6 Duty to provide labels on Web sites.**

For each covered product that a manufacturer distributes in commerce

after July 15, 2013, which is required by this part to bear an EnergyGuide or Lighting Facts label, the manufacturer must make a copy of the label available on a publicly accessible Web site in a manner that allows catalog sellers to hyperlink to the label or download it for use in Web sites or paper catalogs. The label for each specific model must remain on the Web site for six months after production of that model ceases.

■ 7. In § 305.8, revise paragraphs (a) and (b)(1) to read as follows:

**§ 305.8 Submission of data.**

(a)(1) Except as provided in paragraphs (a)(2) and (3) of this section, each manufacturer of a covered product subject to the disclosure requirements of this part and subject to Department of Energy certification requirements in 10 CFR part 429 shall submit annually a report for each model in current production containing the same information that must be submitted to the Department of Energy pursuant to 10 CFR part 429 for that product, and that the Department has identified as public information pursuant to 10 CFR part 429. In lieu of submitting the required information to the Commission as required by this section, manufacturers may submit such information to the Department of Energy via the Compliance and Certification Management System (CCMS) at <https://regulations.doe.gov/ccms> as provided by 10 CFR 429.12.

(2) Manufacturers of ceiling fans shall submit annually a report containing the brand name, model number, diameter (in inches), wattage at high speed excluding any lights, airflow (capacity) at high speed for each basic model in current production, and starting serial number, date code or other means of identifying the date of manufacture with the first submission for each basic model. In lieu of submitting the required information to the Commission as required by this section, manufacturers may submit such information to the Department of Energy via the Compliance and Certification Management System (CCMS) at <https://regulations.doe.gov/ccms> as provided by 10 CFR 429.12.

(3) This section does not require reports for televisions and general service light-emitting diode (LED or OLED) lamps.

(b)(1) All data required by § 305.8(a) except serial numbers shall be submitted to the Commission annually, on or before the following dates:

Product category	Deadline for data submission
Refrigerators .....	Aug. 1.
Refrigerators-freezers .....	Aug. 1.
Freezers .....	Aug. 1.
Central air conditioners .....	July 1.
Heat pumps .....	July 1.
Dishwashers .....	June 1.
Water heaters .....	May 1.
Room air conditioners .....	July 1.
Furnaces .....	May 1.
Pool heaters .....	May 1.
Clothes washers .....	Oct. 1.
Fluorescent lamp ballasts .....	Mar. 1.
Showerheads .....	Mar. 1.
Faucets .....	Mar. 1.
Water closets .....	Mar. 1.
Ceiling fans .....	Mar. 1.
Urinals .....	Mar. 1.
Metal halide lamp fixtures .....	Sept. 1.
General service fluorescent lamps.	Mar. 1.
Medium base compact fluorescent lamps.	Mar. 1.
General service incandescent lamps.	Mar. 1.

\* \* \* \* \*

■ 8. In § 305.11, revise paragraph (f)(12)(iii) to read as follows:

**§ 305.11 Labeling for refrigerators, refrigerator-freezers, freezers, dishwashers, clothes washers, water heaters, room air conditioners, and pool heaters.**

\* \* \* \* \*

(f) \* \* \*  
(12) \* \* \*

(iii) The manufacturer or private labeler may include the ENERGY STAR logo on the bottom right corner of the label for certified products. The logo must be 1 inch by 1 inch in size. Only manufacturers that have signed a Memorandum of Understanding with the Department of Energy or the Environmental Protection Agency may add the ENERGY STAR logo to labels on certified covered products; such manufacturers may add the ENERGY STAR logo to labels only on those covered products that are contemplated by the Memorandum of Understanding.

■ 9. In § 305.12, revise paragraphs (f)(8)(iii) and (g)(9)(iii) to read as follows:

**§ 305.12 Labeling for central air conditioners, heat pumps, and furnaces.**

\* \* \* \* \*

(f) \* \* \*  
(8) \* \* \*

(iii) The manufacturer or private labeler may include the ENERGY STAR logo on the bottom right corner of the label for certified products. The logo must be 1 inch high and no greater than 3 inches wide. Only manufacturers that have signed a Memorandum of Understanding with the Department of

Energy or the Environmental Protection Agency may add the ENERGY STAR logo to labels on certified covered products; such manufacturers may add the ENERGY STAR logo to labels only on those covered products that are contemplated by the Memorandum of Understanding.

(g) \* \* \*  
(9) \* \* \*

(iii) The manufacturer or private labeler may include the ENERGY STAR logo on the bottom right corner of the label for certified products. The logo must be 1 inch high and no greater than 3 inches wide. Only manufacturers that have signed a Memorandum of Understanding with the Department of Energy or the Environmental Protection Agency may add the ENERGY STAR logo to labels on certified covered products; such manufacturers may add the ENERGY STAR logo to labels only on those covered products that are contemplated by the Memorandum of Understanding.

■ 10. In § 305.15, revise paragraphs (b)(3)(vi) and (d)(4) to read as follows:

**§ 305.15 Labeling for lighting products.**

\* \* \* \* \*

(b) \* \* \*  
(3) \* \* \*

(vi) The ENERGY STAR logo as illustrated in Prototype Label 6 to appendix L for certified products, if desired by the manufacturer or private labeler. Only manufacturers or private labelers that have signed a Memorandum of Understanding with the Department of Energy or the Environmental Protection Agency may add the ENERGY STAR logo to labels on certified covered products; such manufacturers or private labelers may add the ENERGY STAR logo to labels only on those products that are covered by the Memorandum of Understanding;

\* \* \* \* \*

(d) \* \* \*

(4) For any covered product that is a general service lamp and operates at discrete, multiple light levels (e.g., 800, 1600, and 2500 lumens), the light output, energy cost, and wattage disclosures required by this section must be provided at each of the lamp's levels of light output and the lamp's life provided on the basis of the shortest lived operating mode. The multiple numbers shall be separated by a "/" (e.g., 800/1600/2500 lumens) if they appear on the same line on the label.

\* \* \* \* \*

■ 11. In § 305.17, revise paragraph (d) introductory text and paragraphs (e)(1) and (g), and add paragraph (h) to read as follows:

**§ 305.17 Television labeling.**

\* \* \* \* \*

(d) *Label types.* Except as provided in paragraph (i), the labels must be affixed to the product in the form of either an adhesive label, cling label, or alternative label as follows:

\* \* \* \* \*

(e) *Placement*—(1) In general. Except as provided in paragraph (i), all labels must be clear and conspicuous to consumers viewing the television screen from the front.

\* \* \* \* \*

(g) *Distribution of Labels:* Consistent with section 305.6 of this part, for each covered television that a manufacturer distributes in commerce which is required by this part to bear an EnergyGuide label, the manufacturer must make a copy of the label available on a publicly accessible Web site in a manner that allows catalog sellers to hyperlink to the label or download it for use in Web sites or paper catalogs. The label for each specific model must remain on the Web site for six months after production of the model ceases.

(h) *Labels for small televisions:* For television with screens measuring nine inches or less diagonally, manufacturers may print the label required by this section on the primary display panel of the product's packaging or affix a label to the packaging in lieu of affixing a label to the television screen or bezel. The size of the label may be scaled to fit the packaging size as appropriate, as long as it remains clear and conspicuous.

■ 12. Revise § 305.20 to read as follows:

**§ 305.20 Paper catalogs and Web sites.**

(a) Covered products offered for sale on the Internet. Any manufacturer, distributor, retailer, or private labeler who advertises a covered product on an Internet Web site in a manner that qualifies as a catalog under this Part shall disclose energy information as follows:

(1) *Content.* (i) Products required to bear EnergyGuide or Lighting Facts labels. All Web sites advertising covered refrigerators, refrigerator-freezers, freezers, room air conditioners, clothes washers, dishwashers, ceiling fans, pool heaters, central air conditioners, heat pumps, furnaces, general service lamps, and televisions must display, for each model, a recognizable and legible image of the label required for that product by this Part. The Web site may hyperlink to the image of the label using the sample EnergyGuide and Lighting Facts icons depicted in appendix L. The Web site must hyperlink the image in a way that does not require consumers to save

the hyperlinked image in order to view it.

(ii) Products not required to bear EnergyGuide or Lighting Facts labels. All Web sites advertising covered showerheads, faucets, water closets, urinals, general service fluorescent lamps, fluorescent lamp ballasts, and metal halide lamp fixtures must include the following disclosures for each covered product:

(A) Showerheads, faucets, water closets, and urinals. The product's water use, expressed in gallons and liters per minute (gpm and L/min) or per cycle (gpc and L/cycle) or gallons and liters per flush (gpf and Lpf) as specified in § 305.16.

(B) General service fluorescent lamps, fluorescent lamp ballasts, and metal halide lamp fixtures. A capital letter "E" printed within a circle.

(2) *Format.* The required Web site disclosures, whether label image, icon, or text, must appear clearly and conspicuously and in close proximity to the covered product's price on each Web page that contains a detailed description of the covered product and its price. The label and hyperlink icon must conform to the prototypes in appendix L, but may be altered in size to accommodate the Web page's design, as long as they remain clear and conspicuous to consumers viewing the page.

(b) Covered products offered for sale in paper catalogs. Any manufacturer, distributor, retailer, or private labeler that advertises a covered product in a paper publication that qualifies as a catalog under this Part shall disclose energy information as follows:

(1) *Content.* (i) Products required to bear EnergyGuide or Lighting Facts labels. All paper catalogs advertising covered products required by this Part to bear EnergyGuide or Lighting Facts labels illustrated in appendix L (refrigerators, refrigerator-freezers, freezers, room air conditioners, clothes washers, dishwashers, ceiling fans, pool heaters, central air conditioners, heat pumps, furnaces, general service fluorescent lamps, general service lamps, and televisions) must either display an image of the full label prepared in accordance with this Part, or make a text disclosure as follows:

(A) Refrigerator, refrigerator-freezer, and freezer. The capacity of the model determined in accordance with § 305.7, the estimated annual operating cost determined in accordance with § 305.5 and appendix K of this Part, and a disclosure stating "Your energy cost depends on your utility rates and use. The estimated cost is based on \_\_\_\_

cents per kWh. For more information, visit [www.ftc.gov/energy](http://www.ftc.gov/energy).”

(B) Room air conditioners and water heaters. The capacity of the model determined in accordance with § 305.7, the estimated annual operating cost determined in accordance with § 305.5 and appendix K of this Part, and a disclosure stating “Your operating costs will depend on your utility rates and use. The estimated operating cost is based on a [electricity, natural gas, propane, or oil] cost of [\$ \_\_\_ per kWh, therm, or gallon]. For more information, visit [www.ftc.gov/energy](http://www.ftc.gov/energy).”

(C) Clothes washers and dishwashers. The capacity of the model for clothes washers determined in accordance with § 305.7 and the estimated annual operating cost for clothes washers and dishwashers determined in accordance with § 305.5 and appendix K, and a disclosure stating “Your energy cost depends on your utility rates and use. The estimated cost is based on [4 washloads a week for dishwashers, or 8 washloads a week for clothes washers] and \_\_\_ cents per kWh for electricity and \$ \_\_\_ per therm for natural gas. For more information, visit [www.ftc.gov/energy](http://www.ftc.gov/energy).”

(D) General service fluorescent lamps or general service lamps. All the information concerning that lamp required by § 305.15 of this part to be disclosed on the lamp’s package, and, for general service lamps, a disclosure stating “Your energy cost depends on your utility rates and use. The estimated cost and life is based on 11 cents per kWh and 3 hours of use per day. For more information, visit [www.ftc.gov/energy](http://www.ftc.gov/energy).” For the “Light Appearance” disclosure required by § 305.15(b)(3)(iv), the catalog need only disclose the lamp’s correlated color temperature in Kelvin (e.g., 2700 K). General service fluorescent lamps or incandescent reflector lamps must also include a capital letter “E” printed within a circle and the statement described in § 305.15(d)(1).

(E) Ceiling fans. All the information required by § 305.13.

(F) Televisions. The estimated annual operating cost determined in accordance with § 305.5 and a disclosure stating “Your energy cost depends on your utility rates and use. The estimated cost is based on 11 cents per kWh and 5 hours of use per day. For more information, visit [www.ftc.gov/energy](http://www.ftc.gov/energy).”

(G) Central air conditioners, heat pumps, and furnaces (including boilers), and pool heaters. The capacity of the model determined in accordance with § 305.7 and the energy efficiency or thermal efficiency ratings determined in accordance with § 305.5 on each page that lists the covered product.

(ii) Products not required to bear EnergyGuide or Lighting Facts labels. All paper catalogs advertising covered products not required by this Part to bear labels with specific design characteristics illustrated in appendix L (showerheads, faucets, water closets, urinals, fluorescent lamp ballasts, and metal halide lamp fixtures) must make a text disclosure for each covered product identical to those required for Internet disclosures under § 305.20(a)(1)(ii).

(2) *Format.* The required disclosures, whether text, label image, or icon, must appear clearly and conspicuously on each page that contains a detailed description of the covered product and its price. If a catalog displays an image of the full label, the size of the label may be altered to accommodate the catalog’s design, as long as the label remains clear and conspicuous to consumers. For text disclosures made pursuant to § 305.20(b)(1)(i) and (ii), the required disclosure may be displayed once per page per type of product if the catalog offers multiple covered products of the same type on a page, as long as the disclosure remains clear and conspicuous.

#### Appendix E to Part 305 [Amended]

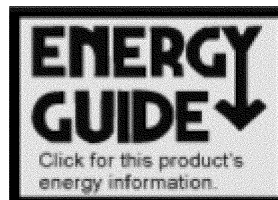
■ 13. In Appendix E, revise the column heading “Manufacturer’s rated cooling capacity in Btu’s/yr” in the table to read “Manufacturer’s rated cooling capacity in Btu’s/hr.”

#### Appendix L to Part 305 [Amended]

■ 14. In Appendix L, remove “Sample Icon 13 Web site Link Icon” and add in its place “Sample EnergyGuide Icon For Use on Web sites” and “Sample Lighting Facts Icon For Use on Web sites” to read as follows:

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

\* \* \* \* \*



SAMPLE ENERGYGUIDE ICON FOR USE ON WEB SITES



SAMPLE LIGHTING FACTS ICON FOR USE ON WEBSITES

\* \* \* \* \*

By direction of the Commission.

**Donald S. Clark,**  
*Secretary.*

[FR Doc. 2013–00116 Filed 1–9–13; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 49 and 51

[EPA–HQ–OAR–2003–0076; FRL–9767–8]

RIN 2060–AH37

### Review of New Sources and Modifications in Indian Country: Notice of Action Partially Granting Petition for Reconsideration and Denying Request for Administrative Stay

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of action partially granting petition for reconsideration and denying request for administrative stay.

**SUMMARY:** The EPA is providing notice that it has responded to a petition for reconsideration and a request for an administrative stay of certain provisions of the rule titled, “Review of New Sources and Modifications in Indian Country” published on July 1, 2011. The EPA received letters dated August 30, 2011, and November 4, 2011, petitioning for reconsideration of various aspects of the minor new source review (NSR) rule (the Petitions) and one provision of the nonattainment major NSR rule pursuant to the Clean Air Act (CAA) from the American Petroleum Institute (API), the Independent Petroleum Association of America (IPAA) and America’s Natural Gas Alliance (ANGA) (collectively, the Petitioners). In the letter dated August 30, 2011, the Petitioners asked, among other things, that the EPA reconsider the synthetic minor source provisions of the minor NSR rule and requested that the EPA stay the effective date of the minor NSR rule as it relates to synthetic minor sources pending its reconsideration. In