

The specific objectives of these rulemaking efforts are to update SNM physical protection requirements to: (1) Improve consistency and clarity; (2) make generically applicable security requirements similar to those imposed by security orders issued after the terrorist attacks of September 11, 2001; (3) consider risk insights from new National Laboratory studies, operational oversight and inspection activities, and international guidance; and (4) use a risk-informed and performance-based structure. The scope of the regulatory basis includes physical protection of SNM at fuel cycle facilities and other facilities that possess and use SNM, and the physical protection of SNM in transit. Potentially affected licensees include fuel cycle facilities, non-power reactors, research and development facilities, industrial facilities, and certain medical isotope production facilities. The regulatory basis, in part, explains why the NRC believes the existing regulations should be updated, revised and enhanced, presents alternatives to rulemaking, and discusses cost and other impacts of the potential changes.

### III. Specific Requests for Comments

The NRC requests that stakeholders consider answering the following questions when commenting on the draft regulatory basis:

- Is the NRC considering an appropriate approach for each objective described in the draft regulatory basis? Should implementing material attractiveness and its associated physical protection measures be “voluntary” or should it be “mandatory?” Given that the potentially revised regulations would be material-based rather than facility-based, are the potential regulatory changes sufficiently performance-based to allow licensees of different facility types to effectively implement the potential physical protection performance objectives and strategies for the various categories of special nuclear material?

- Section 3 of the draft regulatory basis discusses the regulatory problems the NRC expects to address through rulemaking. Section 4 presents the desired regulatory changes to address those regulatory problems and Section 5 discusses alternatives to rulemaking considered by the NRC staff. Are there other regulatory problems within or related to the scope of the rulemaking efforts (see Section 1) that the NRC should consider? Are there other approaches or alternatives the NRC should consider to resolve those regulatory problems?

- Section 8 of the draft regulatory basis presents the NRC staff’s initial assessment of cost and other impacts for a number of key aspects of the potential regulatory changes (i.e., fixed site physical protection, transportation physical protection, safety-safeguards interface and fitness-for-duty impacts). The NRC staff recognizes that this initial assessment is based on limited data. As such, staff is seeking additional data and input relative to expected and/or unintentional impacts from the desired regulatory changes. What would be the potential impacts to stakeholders/ licensees from implementing any of the desired regulatory changes described in this draft regulatory basis (e.g., what would be a reasonable cost estimate for implementation of fatigue requirements for security officers at Category I facilities in accordance to 10 CFR Part 26, Subpart I, including startup and annual costs)?

- The NRC staff recognizes that the security officer work hour data provided voluntarily by licensees in the past and summarized in Attachment 2 of the draft regulatory basis is limited. As such, are there additional data or information (e.g., procedures that demonstrate the licensee has fatigue measures in place for security officers at their site, updated security officer work hour data from the most recent 2-month period and so forth) that would inform the NRC staff’s assessment or analysis?

### IV. Publicly Available Documents

The NRC may post additional materials related to this rulemaking activity to the Federal rulemaking Web site at [www.regulations.gov](http://www.regulations.gov), under Docket ID NRC–2014–0118. By making these documents publicly available, the NRC seeks to inform stakeholders of the current status of the NRC’s rulemaking development activities and to provide preparatory material for future public meetings.

The Federal rulemaking Web site allows you to receive alerts when changes or additions occur in a docket folder. To subscribe: (1) Navigate to the docket folder (NRC–2014–0118); (2) click the “Sign up for Email Alerts” link; and (3) enter your email address and select how frequently you would like to receive emails (daily, weekly, or monthly).

### V. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, “Plain

Language in Government Writing,” published June 10, 1998 (63 FR 31883). The NRC requests comment on this document with respect to the clarity and effectiveness of the language used.

Dated at Rockville, Maryland, this 10th day of June, 2014.

For the Nuclear Regulatory Commission.

**Christopher G. Miller,**

*Director, Division of Intergovernmental Liaison and Rulemaking, Office of Federal and State Materials and Environmental Management Programs.*

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## FEDERAL TRADE COMMISSION

### 16 CFR Part 305

#### RIN 3084–AB03

#### Energy Labeling Rule

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

**ACTION:** Supplemental notice of proposed rulemaking.

**SUMMARY:** As part of its regulatory review of the Energy Labeling Rule, the Federal Trade Commission proposes to expand coverage of the Lighting Facts label, change the current label categories for refrigerators, revise the ceiling fan label design, and require room air conditioner labels on packaging instead of the units themselves.

**DATES:** Written comments must be received on or before August 18, 2014.

**ADDRESSES:** Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write “Supplementary Notice of Proposed Rulemaking on Energy Labeling Rule Regulatory Review (16 CFR Part 305) (Project No. R611004)” on your comment, and file your comment online at <https://public.commentworks.com/ftc/energyguidereview> by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex B), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex B), Washington, DC 20024.

**FOR FURTHER INFORMATION CONTACT:** Hampton Newsome, Attorney, (202)

326–2889, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

In a March 15, 2012 **Federal Register** Notice (77 FR 15298) (“Notice of Proposed Rulemaking” or “NPRM”), the Federal Trade Commission (“FTC” or “Commission”) initiated a review of the Energy Labeling Rule seeking comment on several proposed improvements to the FTC’s labeling requirements.<sup>1</sup> On January 10, 2013, the Commission issued final amendments to streamline data reporting and to improve online disclosures as proposed in the March 2012 NPRM.<sup>2</sup> This NPRM also proposed new labels to help consumers comparison shop for refrigerators and clothes washers after the implementation of upcoming changes to the Department of Energy (DOE) test procedures. The Commission issued final amendments for those issues, as well as updates to comparability ranges, on July 23, 2013 (78 FR 43974).<sup>3</sup>

##### II. Remaining Regulatory Review Issues

This document addresses the remaining issues raised by the Commission or commenters during this regulatory review proceeding and proposes related amendments. These issues include expanded light bulb label coverage, an online label database, more durable labels for appliances, room and portable air conditioner box labels, ceiling fan labels, consolidated refrigerator ranges, updates to furnace labels, QR (“Quick Response”) Codes, bilingual issues, television label updates, a range revision schedule, retailer responsibility, marketplace Web sites, set-top box labeling, clothes dryer labels, and plumbing products. After reviewing the comments received in response to this document, the Commission will publish final amendments as appropriate.

##### A. Expanded Light Bulb Labeling

The Commission proposes requiring the Lighting Facts label for decorative and other specialty bulbs that have energy use and light output similar to general service bulbs already labeled

under the Rule. On July 19, 2010 (75 FR 41696), the Commission created a new Lighting Facts label for general service light bulbs, which discloses information about the bulb’s brightness, estimated annual energy cost, life, color appearance, and energy use.<sup>4</sup> The current labeling rules cover most general service medium screw base incandescent, compact fluorescent, and LED (light-emitting diode) bulbs.<sup>5</sup> They exclude several other common consumer bulbs, such as decorative bulbs (e.g., globe and bent-tip decorative bulbs rated 40 watts or fewer), non-medium screw base bulbs, shatter-resistant bulbs, and vibration service bulbs.<sup>6</sup> In 2011, the Commission proposed labeling for specific bulb shapes generally available to consumers and not covered by the labeling requirements.<sup>7</sup> Specifically, the Commission proposed to expand label coverage to include all screw-based bulbs and GU–10 and GU–24 pin-based bulbs to provide consumers uniform information, such as energy cost, brightness, and bulb life, to help them with their lighting decisions.

*Comments:* The comments offered conflicting views on the proposal.<sup>8</sup> In support of the proposal, the Natural Resources Defense Council (NRDC) (#00006–80665) urged expanded coverage for all screw-base lamps, certain pin-based lamps, and any lamp (i.e., bulb) used as a substitute for general service lamps.<sup>9</sup> Specifically, it recommended new labeling for all screw-based lamps regardless of shape, base size, or technology to ensure lamp purchasers receive basic information about light output, operating cost, lifetime, power, use, and color temperature. It also noted that many of the unlabeled bulbs use significant amounts of energy and are available in different technologies. For example,

<sup>4</sup> 16 CFR 305.15(b). The Energy Independence and Security Act of 2007 (EISA) directed the Commission to examine existing light bulb labeling requirements. Public Law 110–140; see 42 U.S.C. 6294(a)(2)(D)(iii). EISA amended the Energy Policy and Conservation Act (EPCA) (42 U.S.C. 6291 *et seq.*).

<sup>5</sup> 16 CFR 305.3(l).

<sup>6</sup> 16 CFR 305.3(l)(2), (n)(3)(ii).

<sup>7</sup> 76 FR 45715 (Aug. 1, 2011). The Notice also sought comments on bilingual labeling (but did not propose any bilingual requirements).

<sup>8</sup> The comments can be found at <http://www.ftc.gov/os/comments/lampcoveragenprm/index.shtml>. Unless otherwise stated, comments discussed in this section refer to the following: Appliance Standards Awareness Project (ASAP) (#00008–80686); GE Lighting (#00005–80686); Lee (#00007–80686); Moore (#00004–80686); National Electrical Manufacturers Association (NEMA) (#00009–80686); and Natural Resources Defense Council (#00006–80686).

<sup>9</sup> This document uses the terms lamp, light bulb, and bulb interchangeably.

some candelabra-based lamps consume up to 60 watts and frequently appear in fixtures containing five or more sockets. In addition, manufacturers offer alternatives to incandescent candelabra bulbs in efficient compact-flourescent (CFL) or LED versions, which suggests labeling may aid consumers in comparing these bulb types across different technologies.<sup>10</sup> NRDC also supported the proposal to require labels for GU–10 and GU–24 pin-based lamps given their increasing use in new construction, remodels, and commercial spaces. It noted that current packaging for some of these products does not disclose light output.

ASAP, which also supported expanded coverage, focused on labeling bulbs commonly used as substitutes for general service lamps.<sup>11</sup> For example, ASAP supported labeling for rough-service and shatter-resistant lamps because their shape, base, and wattage resemble general service incandescent products. ASAP noted that rough-service light bulbs (60, 75, and 100 watt versions) often sell for about one dollar and shatter-resistant bulbs sell for less than two dollars, which increases the likelihood that consumers will purchase such bulbs for use as general lighting. Similarly, NRDC urged labels for appliance lamps, three-way lamps, and plant lights because these lamps serve as “one-for-one replacements” for inefficient incandescent light bulbs, but do not fall under existing federal efficiency standards.<sup>12</sup>

In contrast, industry comments argued that Commission’s proposal was too broad and would require labels that, in some cases, would provide little benefit to consumers. Instead, they urged the Commission to consider expanded coverage on a product-by-product basis and only impose new requirements if labeling for specific bulb types would aid consumer-purchasing decisions. They also urged the Commission to allow a smaller version of the label for small packages common for specialty bulbs. Finally, these comments opposed the proposal to

<sup>10</sup> NRDC also recommended that DOE amend the definition of general service lamp to clarify that halogen lamps are covered. Because the Rule’s definition of incandescent lamp (16 CFR 305.3(n)) already includes the term “halogen,” the Commission is not proposing an amendment.

<sup>11</sup> Specifically, ASAP explained that converter bases can allow substitution of candelabra and intermediate-base lamps for general service lamps. The Commission notes that EPCA already prohibits sale of adapters designed to “allow an incandescent lamp that does not have a medium screw base to be installed into a fixture or lampholder with a medium screw base socket.” 42 U.S.C. 6302(6).

<sup>12</sup> The current labeling requirements already cover three-way lamps. See 16 CFR 305.3(l)(1), (n)(3); and 75 FR 41698, n. 13.

<sup>1</sup> The comments received in response to the March 2012 regulatory review notice can be found at <http://ftc.gov/os/comments/energylabelamend/index.shtml>.

<sup>2</sup> On January 9, 2013 (78 FR 1779), the Commission published a proposed rule seeking comment on updated ranges of comparability and unit energy cost figures for many EnergyGuide labels.

<sup>3</sup> Additional related proceedings are discussed in this document.

change the definition of “general service lamp” as a vehicle to expand label coverage.

The National Electrical Manufacturers Association (NEMA) (#00009–80665), a lighting industry association, raised concerns about the proposal’s breadth. NEMA argued that expanded coverage would yield little benefit because consumers have minimal concern about lumen output and energy use when purchasing many of the bulb types included in the Commission’s proposal.<sup>13</sup> In NEMA’s view, the broad proposal conflicts with the statute’s primary focus on “general service lamps,” the most common lamp types that satisfy a majority of lighting applications.<sup>14</sup> For example, according to NEMA, intermediate screw base incandescent lamps, unlike “general service lamps,”<sup>15</sup> have extremely low sales volume, have few CFL or LED alternatives, and appear in unusual locations such as desk lamps, appliances, and show cases.

NEMA added that candelabra based lamps are small, decorative bulbs with limited space for labeling and that few pin-based lamps (GU-type) are sold to residential consumers. It also explained that the proposal would cover products with low sales or minor energy use, such as B, BA, CA, and G shape lamps that draw fewer than 30 watts or produce fewer than 310 lumens; small diameter reflector lamps with few sales (e.g., MR–14 lamps); low-wattage night lights (C–7 shape) decorative flame-shapes with little market presence; and low lumen LEDs.<sup>16</sup>

In addition, GE noted the proposal covered several commercial bulb shapes with few, if any, high-efficiency alternatives, such as S-lamps and T-lamps used for exit signs, showcases, and appliances. Finally, NEMA recommended that the FTC maintain the

Rule’s current exclusions,<sup>17</sup> which mostly involve products purchased for their decorative and aesthetic appeal because consumers do not generally consider energy savings when purchasing these products.<sup>18</sup>

Although NEMA raised concerns with the proposal’s structure and coverage, it acknowledged FTC’s authority to consider labeling for additional lighting products. Industry comments, from NEMA and GE, urged the Commission to use that authority to focus on whether additional “labeling or other disclosures will help consumers in making purchasing decisions” as contemplated by EPCA.<sup>19</sup> GE added that the EPCA calls for disclosures “necessary to enable consumers to select the most energy efficient lamps which meet their requirements.”<sup>20</sup> Given this general guidance, GE suggested the Commission allow voluntary labeling for bulb types that: (1) Have high sales volumes; (2) compete with alternative technologies (e.g., CFLs and LED bulbs); and (3) consume meaningful amounts of energy. NEMA noted that the statutory definitions for lighting products already identify the bulb types likely to yield significant energy savings if labeled. In its view, lamp products with low lumen levels, with low wattage levels, or otherwise designed for specialty applications do not qualify.

Both NEMA and GE recommended that the Commission approach any expanded coverage on a bulb-by-bulb basis to provide regulatory clarity and to ensure that substantial evidence exists for such requirements. GE pointed the Commission to a specific set of bulbs as good candidates for labeling. It explained that about 95% of the decorative incandescent lamp shapes are offered in the G (Globe), CA, B, or BA types, which are available in alternative technologies such as CFL or LED and feature medium screw, candelabra or intermediate screw bases. GE also recommended that the Commission focus on labeling for common lamp types rated at 25 or more watts because models below 25 watts do

not consume enough energy to affect consumer purchasing behavior.

Industry members also raised concerns about fitting the required disclosures on packages and lamps. These comments recommended a smaller label and abbreviated content for newly-covered bulbs because many specialty lamp types have smaller packages. Specifically, NEMA urged the Commission to allow a smaller version of the label, which discloses only brightness (average initial lumens), life, and energy usage (wattage). NEMA also repeated its earlier proposal to allow the Rule’s current compressed label for packages up to 48 square inches in size, instead of the Rule’s current 24 square inch threshold.<sup>21</sup> In addition, NEMA argued that the current requirement that the products be marked with mercury and lumen information<sup>22</sup> is not feasible for many of the small specialty lamps. It indicated that marking could interfere with some bulbs’ aesthetic appeal, damaging their popularity.<sup>23</sup>

Finally, NEMA and GE strongly opposed the Commission’s proposal to change the definition of “general service lamp” to expand label coverage. Because EPCA contains a specific definition for “general service lamp,” which is used mostly to define the scope of DOE’s efficiency standards, NEMA warned that the proposed amendment would create inconsistencies between FTC and DOE regulations and sow confusion. NEMA also argued that the Commission does not have authority to amend the statutory definition of “general service lamp” because EPCA reserves such authority to the Secretary of Energy (42 U.S.C. 6291(30)(BB)(i)(IV)). NEMA acknowledged that the Commission has authority to require labeling for consumer products under 42 U.S.C. 6294(a)(6), but argued that, in exercising this power, the Commission should not use definitions inconsistent with EPCA.

*Discussion:* The Commission revises its proposal to cover specialty bulb types with energy use or light output similar to the general service bulbs already covered by the Lighting Facts label. This new proposal is consistent with EPCA’s directive to develop labels that help consumers with their

<sup>13</sup> NEMA also noted that many such lamps operate on dimmers, allowing consumers to reduce their lumen and wattage level to provide ambient illumination, thus creating variations in the actual energy costs of these products.

<sup>14</sup> See e.g., 42 U.S.C. 6292(a)(14).

<sup>15</sup> General service incandescent lamps instead have “medium” screw bases. See 16 CFR 305.3(n)(3).

<sup>16</sup> As part of its comments, NEMA included a chart listing several types of specialty bulbs detailing their typical use, purchasers, substitutes, and sales volume. NEMA detailed objections to the inclusion of the following bulb shapes: F (“flame”) lamps (constitute less than 1% of the incandescent market and have irregular surfaces which prevent direct printing on the bulb itself), M–14 lamps (“have essentially no meaningful sales today” according to GE (#00005–80665)), C–7 lamps (incandescent night lights which use no more than 4 watts), and decorative CA lamps (use under 25 watts).

<sup>17</sup> The current requirements exclude G shape lamps (as defined in ANSI C78.20–2003 and C79.1–2002) with a diameter of 5 inches or more; T shape lamps (as defined in ANSI C78.20–2003 and C79.1–2002) that use no more than 40 watts or have a length of more than 10 inches; and B, BA, CA, F, G16–1/2, G–25, G30, S, or M–14 lamps (as defined in ANSI C79.1–2002 and ANSI C78.20–2003) of 40 watts or less. 16 CFR 305.3(l), (n)(3)(ii)(R)–(T).

<sup>18</sup> NEMA noted that EPCA provides a mechanism for DOE to impose efficiency standards for specialty lamps, such as rough or vibration service lamps, if the sales volumes of these products increase. 42 U.S.C. 6295.

<sup>19</sup> 42 U.S.C. 6294(a)(6).

<sup>20</sup> 42 U.S.C. 6294(a)(2)(D).

<sup>21</sup> See 16 CFR 305.15(b)(5). The current Rule’s compressed label contains the same content as the standard label, but in a smaller format. NEMA explains that this compressed label is still too large, and thus requests a smaller label.

<sup>22</sup> See 16 CFR 305.15(b)(7).

<sup>23</sup> NEMA further proposed that the Rule allow manufacturers to self-certify and forgo reporting for these products given their low energy usage and the fact that neither Congress nor DOE has included them in the DOE energy conservation standards program.

purchasing decisions.<sup>24</sup> The proposal sets specific thresholds for wattage and light output for bulbs that must bear the label and excludes bulbs with shapes or uses not generally sought by typical consumers (e.g., mine service bulbs). It includes special marking provisions for some bulb types and provides a smaller, single-label option for the smaller packages often used for specialty bulbs. For consumer light bulbs not covered by the proposed requirements, the proposal allows manufacturers to use the Lighting Facts label if they follow the Rule's content and format requirements. Finally, to avoid confusion, the Commission proposes implementing the expanded coverage by adding the term "specialty consumer lamp" to the Rule instead of amending the Rule's definition of "general service lamp."

Under EPCA, the Commission can require labeling for any consumer product if such labeling is "likely to assist consumers in making purchasing decisions."<sup>25</sup> Therefore, the Commission may look beyond EPCA's specific lamp definitions, which generally circumscribe the coverage for DOE's efficiency standards.<sup>26</sup> This expansive authority is further demonstrated by EPCA's direction that the FTC issue labeling requirements that "enable consumers to select the most energy efficient lamps which meet their needs."<sup>27</sup> In addition, without specifying bulb coverage, the 2007 EPCA amendments encouraged the Commission to revise labels to help consumers "understand new high-efficiency lamp products" and allow them to choose products that meet their needs for light output, light quality, and lamp lifetime.<sup>28</sup>

Consistent with this statutory direction, the modified proposal covers lamp types with wattages and light output similar to currently covered general service bulbs. The new labels will provide a means for consumers to compare the energy use, brightness, and

other attributes of different bulb types and technologies commonly available on the market. Specifically, the modified labeling proposal applies to bulbs that: (1) Are rated at 30 watts or higher or produce 310 lumens or more; (2) have a medium, intermediate, candelabra, GU-10, or GU-24 base; and (3) do not meet the definition of "general service lamp."<sup>29</sup> The Commission proposes these specific criteria because the 30-watt and 310-lumen thresholds are consistent with Congressionally-established benchmarks set in EPCA's definition of "general service lamps."<sup>30</sup> This proposal covers common product types likely to appear side-by-side on store shelves with general service bulbs.<sup>31</sup> Finally, it covers specialty bulbs that look and operate like traditional incandescent bulbs, but are currently excluded from coverage, such as vibration-service lamps, rough service lamps, appliance lamps, plant light lamps, and shatter-resistant lamps (including a shatter-proof lamp and a shatter-protected lamp).

The proposal excludes bulb types for which labeling may not provide substantial benefit to consumers, including bulbs that use less than 30 watts and produce low light output, or bulbs not typically purchased by residential consumers. It also specifically excludes uncommon bulb shapes, lamp types with little market presence, and bulbs generally used for commercial applications. The proposed exclusions are: black light lamps, bug lamps, colored lamps, infrared lamps, left-hand thread lamps, marine lamps, marine signal service lamps, mine service lamps, sign service lamps, silver bowl lamps, showcase lamps, traffic signal lamps, G-shape lamps with diameter of 5 inches or more, and C7, M-14, P, RP, S, and T-shape lamps.<sup>32</sup> The comments did not suggest that labeling for such products would help consumers with purchasing decisions.

The Commission seeks comment on whether any of these bulb types should be included and, if so, why.

In addition to the labeling requirements, the proposal requires markings (i.e., the lumen and mercury marking currently required for general service lamps) on certain bulb shapes.<sup>33</sup> For A-shape and spiral lamps, the Commission proposes requiring the same markings (i.e., lumens and mercury) that currently apply to general service lamps because the size and shape of these bulbs is similar. The proposal does not require lumen markings on the lamps themselves for decorative size bulbs, including B, BA, BA, F, and G-shapes, to avoid detracting from those products' appearance. However, the proposal would require mercury disclosures on all covered bulbs containing mercury to ensure the consumers have access to such information for cleanup and disposal.<sup>34</sup>

The Commission proposes a smaller, single label option [Figure 1] that manufacturers may use on package fronts for certain specialty use bulbs to help fit the label on small packages.<sup>35</sup> Because packaging for some specialty bulbs may consist of a blister pack on a small, single-sided card, the current rules, which require disclosures on two separate panels, may not be feasible. The proposed smaller label discloses lumens, energy cost, and bulb life, but not watts and light appearance. Under the proposal, the smaller label would not apply to certain large bulbs, such as vibration-service lamps, that resemble general service lamps in size and function and thus are likely to have packaging similar to general service bulbs. Finally, consistent with the current marking requirements for general service bulbs, bulbs containing mercury would include the Rule's mercury disclosure in a clear and conspicuous manner on the product itself.

<sup>24</sup> 42 U.S.C. 6294(a)(2)(D), (a)(6).

<sup>25</sup> 42 U.S.C. 6294(a)(6).

<sup>26</sup> 42 U.S.C. 6291(30), 6292(a)(14). Recognizing that labeling may be appropriate for some products even in the absence of an efficiency standard, the Commission has already used this general authority to cover three-way incandescent bulbs and high-efficiency LED bulbs. See 75 FR 41698.

<sup>27</sup> See 42 U.S.C. 6294(a)(2)(D)(i).

<sup>28</sup> See 42 U.S.C. 6294(a)(2)(D)(iii) (the statute also directs the Commission to consider additional labeling changes to help consumers understand light bulb alternatives).

<sup>29</sup> On December 9, 2013 (78 FR 73737), DOE initiated a proceeding to consider whether to expand the current definition of "general service lamp." The Commission will seek to ensure final labeling amendments harmonize with amended DOE definitions.

<sup>30</sup> See 42 U.S.C. 6291(30)(C)&(D).

<sup>31</sup> The following provides more specific information provided in NEMA's comments about the principal bulb types included in the proposal, including the bulb's common bases, their typical applications, and their general market volume:

*A-Shape*:—available in medium and intermediate bases; used in residential applications, including ceiling fans; used for incandescent rough service and shatter proof bulbs at high wattages;

*B-shape*:—decorative "torpedo" shaped bulbs used in residential applications; available in CFL and LED versions; NEMA comments suggest that 40-watt or fewer B-shape lamps account for about 7% of the incandescent market;

*BA and CA shape*:—bent tip decorative lamps used in residential settings; available with medium and candelabra bases; wattages as high as 60; available in incandescent and LED versions; represents between 6–7% of the incandescent market according to NEMA comments;

*F-Shape*:—decorative flame-shaped bulb; use as much as 40 watts; available in CFL and LED versions;

*G-Shape*:—often used in residential bathrooms; available in CFL and LED versions; according to comments, G16 ½ lamps represent 2.5% of the incandescent market, G25 lamps represent 5%, and G30 lamps represent about 0.5%; and

*Spiral shape*:—commonly used for CFLs with intermediate screw bases and GU-24 pin-based bulbs; increasingly used in new construction.

<sup>32</sup> See proposed section 305.3(z)(3).

<sup>33</sup> 305.15(c)(2)(iii) (proposed).

<sup>34</sup> Because mercury disclosures generally apply only to compact fluorescent technology, manufacturers should be able to place such information on the ballast, where other information is commonly printed.

<sup>35</sup> 305.15(c)(2) (proposed).

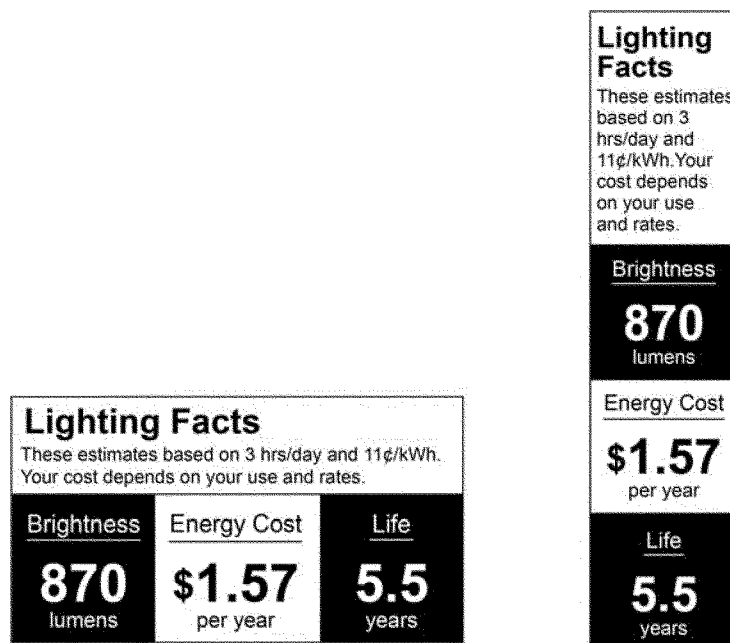


Figure 1 – Proposed Single-Panel Label Option for Specialty Bulbs

In seeking to expand coverage of the Lighting Facts label, the Commission does not propose altering the Rule's existing test procedure and reporting requirements. Under the current rule, manufacturers (or private labelers) must use DOE test procedures for lamp products covered by those DOE test procedures. If no existing DOE test procedure applies to a particular lamp, the Rule requires manufacturers to possess and rely upon a reasonable basis consisting of competent and reliable scientific tests and procedures substantiating the representation.<sup>36</sup> The Commission seeks comment on whether competent and reliable tests and procedures exist that manufacturers can use to derive the information for all the light bulbs covered by the expanded labeling proposal. Finally, because DOE has no comprehensive testing requirements for "specialty" bulbs covered by the new labeling proposal, the amendments contain no new reporting provisions.

For bulbs not covered by the proposal (e.g., consumer bulbs rated below 30 watts and below 310 lumens), the amendments would allow, but not require, manufacturers to use the Lighting Facts label.<sup>37</sup> However, all Lighting Facts labels must follow the Rule's content and formatting requirements. Whether manufacturers use the Lighting Facts label or not, the

FTC Act's general prohibition against deceptive claims requires manufacturers to substantiate any light bulb claims they make with competent and reliable scientific evidence.<sup>38</sup>

Finally, consistent with NEMA's suggestions, the proposal does not alter the definition of "general service lamp." Instead, the Commission proposes to create a new category of covered bulbs called "specialty consumer lamps" and identify the covered bulbs by shape, base, wattage, and lumen range. This approach will reduce confusion that may arise from changing the definition of "general service lamp," which is also used in DOE's efficiency standards program. Finally, the Commission proposes a change to the definition of "fluorescent lamp ballast" to conform with a new DOE definition for those products.<sup>39</sup>

The Commission seeks comment on all aspects of this proposal. In particular, comments should address whether labeling for "specialty consumer lamps" will help consumers make purchasing decisions and, if so, whether that benefit is outweighed by increased labeling costs. In addition, commenters should address whether the lower wattage limit should be 30 watts,

or a different figure.<sup>40</sup> Also, the Commission seeks comment on whether the Rule should allow, but not require, the label on products that do not meet the proposed definition of "specialty consumer lamp."<sup>41</sup> Finally, the Commission seeks comments on an appropriate compliance period for the proposed coverage.<sup>42</sup>

#### B. Online Label Database

*Background:* To streamline and consolidate the manufacturer reporting process, in January 2013, the Commission amended the Rule to permit reporting through DOE's

<sup>40</sup> The 30-watt figure is consistent with EPCA's definition of incandescent lamp (42 U.S.C. 6291(30)(C)).

<sup>41</sup> The Commission also received comments recommending additional mercury disclosures on the Lighting Facts label for CFLs, such as specific mercury content in milligrams and explicit warnings (Moore (#0004-80686) and Lee (#0007-80686)). The current label, which became effective in 2012, alerts consumers to the presence of mercury in light bulbs and directs them to the Environmental Protection Agency (EPA) Web site for more information. 16 CFR 305.15(b)(3)(viii). The Commission developed the mercury disclosures in a recent rulemaking after seeking public comment and coordinating with EPA, which has technical expertise and regulatory responsibility over mercury issues. 75 FR 41696 (July 19, 2010). Given this recent proceeding, the Commission is not proposing additional disclosures at this time. If the EPA recommends additional or different disclosures in the future, the Commission will consider changes to the label.

<sup>42</sup> In its NPRM (76 FR 45721), the Commission proposed a two-and-a-half year compliance period to minimize the likelihood that manufacturers will have to discard package inventory.

<sup>36</sup> 16 CFR 305.5(b).

<sup>37</sup> See 305.15(d) (proposed).

<sup>38</sup> 15 U.S.C. 45(a). The FTC staff has observed that the Lighting Facts label already appears widely on products that fall beyond the Rule's current coverage for general service lamps.

<sup>39</sup> See 76 FR 70548 (Nov. 14, 2011).

Compliance and Certification Management System (CCMS).<sup>43</sup> At the same time, the Commission required manufacturers to make copies of their EnergyGuide labels available on a publicly accessible Web site.<sup>44</sup> In doing so, the Commission aimed to improve the availability of online labels for retailers that sell covered products online.<sup>45</sup>

*Comments:* In response to the 2012 regulatory review notice, several commenters urged additional measures to make labels more available online. These recommendations included an online label database and the use of electronic labels in lieu of paper.

Seven energy-efficiency, environmental, and consumer advocacy organizations (#560957-00028) (“Joint Commenters”)<sup>46</sup> urged the FTC to develop an online label database maintained by the FTC or in conjunction with DOE. The Joint Commenters argued that the FTC and DOE databases<sup>47</sup> are insufficient because they contain neither copies of labels nor all the information necessary to replicate label content.

The Association of Home Appliance Manufacturers (AHAM) (#560957-00013), Whirlpool (#560957-00010), and BSH Home Appliance Corporation (BSH) (#560957-00007) urged the Commission to replace paper labeling with a publicly accessible online database. In support of this recommendation, these manufacturers reported that approximately two-thirds of consumers who purchased appliances in the prior year conducted online research prior to the purchase, and that more than 70% planned to do so for future purchases. Thus, the manufacturers concluded that having only online labels would be effective and sufficient. Whirlpool (#560957-00010) added that the FTC should create a public online version of the existing CCMS database, and expand it to consolidate FTC and DOE requirements. Whirlpool argued that label images should continue to be displayed on manufacturer and retailer Web sites, and

noted that it currently provides electronic access to label images for all current products, until the product is declared obsolete. Similarly, Alliance (#560957-00011) questioned the necessity of paper labels in today’s electronic age. Alliance supported use of the QR codes, but on a sign posted at point-of-sale instead of on a physical label.<sup>48</sup> Alliance argued that such a presentation would provide consumers quick access via smart phone to the FTC database and/or manufacturers’ Web sites.

*Discussion:* The Commission agrees that a centralized public database with easy access to labels would benefit consumers. To that end, FTC and DOE staff are considering regulatory changes to require manufacturers to submit URL links for covered product labels to the DOE CCMS database. Specifically, manufacturers may be required to post a link to the Web page displaying the label corresponding to each of their covered products.<sup>49</sup> The Commission seeks comment on such a proposal.

This proposal should benefit consumers and retailers. Consumers will have access to a single comprehensive database at the DOE Web site containing label images for covered products. Online retailers will have access to digital labels for advertising, without submitting separate requests to manufacturers. Similarly, retailers that want to replace missing labels at the points-of-sale will be able to print replacements from the CCMS database.

The proposal should not create undue burdens on manufacturers. The Rule already requires manufacturers of most covered products to submit annual reports. DOE likewise requires manufacturers to make detailed electronic submissions through CCMS.<sup>50</sup> Additionally, manufacturers must display their labels online. The inclusion of URL links in those reports should not add significant burden to those existing requirements. Under the present proposal, a manufacturer could simply add a link on CCMS from its Web page displaying the label. In other words, the only additional burden upon manufacturers would be to paste URL links to Web pages that already exist

and to delete links when removing or replacing the corresponding Web pages. Manufacturers will likely benefit by having a centralized online location through which to track and organize their web labels, which should help reduce the Rule’s burden.

Because the proposed CCMS database would link to manufacturers’ label Web pages, the Commission does not propose eliminating requirements related to such Web pages. Doing so would likely impose greater technical maintenance and coordination burdens on both DOE and manufacturers.

Finally, as explained above, the Commission does not propose abandoning physical labels at this time. Notwithstanding the growing availability of Internet access, physical labels, especially those displayed at the point-of-sale in stores, likely help a substantial number of consumers. The Commission recognizes the Internet’s potential as a comprehensive source for energy consumption information, but not all consumers have online access, and not all those who do conduct online research before making purchase decisions. Moreover, even consumers who research products online may benefit from viewing the physical labels in the store.<sup>51</sup> The Commission will continue to consider evolving buying patterns and potential changes to the Rule.

### *C. More Durable Labels for Clothes Washers, Dishwashers, and Refrigerators*

*Background:* In its March 15, 2012 NPRM, the Commission discussed the need to improve the availability of EnergyGuide labels in retailer showrooms. Evidence gathered by the FTC and the Government Accountability Office (GAO) in 2007 and 2008, respectively, demonstrated that many covered products displayed in retailer showrooms were missing the required EnergyGuide labels. For example, the FTC found labels either detached or missing on approximately 38% of the 8,500 appliances it examined across 89 retail locations in nine metropolitan areas.<sup>52</sup>

The Rule currently permits manufacturers of refrigerators, dishwashers, and clothes washers to post the required EnergyGuide labels either using adhesive labels or hang

<sup>43</sup> See 78 FR 2202-03 (amending 16 CFR 305.8).

<sup>44</sup> See 78 FR 2205 (amending 16 CFR 305.6). This amendment became effective on July 15, 2013.

<sup>45</sup> The Commission noted commentary arguing that many retailers do not use manufacturer Web sites to obtain labels. See 78 FR 2005, n.51.

<sup>46</sup> These organizations include Earthjustice, Consumers Union, Appliance Standards Awareness Project, American Council for an Energy-Efficient Economy, Natural Resources Defense Council, Alliance to Save Energy, and Public Citizen. This document shall refer to these organizations collectively as the “Joint Commenters” and to their comments as the “Joint Comments.”

<sup>47</sup> See <https://www.regulations.doe.gov/ccms>. The FTC database has been recently consolidated with the DOE site. 78 FR 2200.

<sup>48</sup> AHAM, BSH, and Whirlpool opposed requiring manufacturers to display QR codes on labels, arguing that doing so would be burdensome and unnecessary, especially if labels are available in a centralized database.

<sup>49</sup> As explained in an earlier Notice, this requirement would not apply to private labelers, but manufacturers would be allowed to arrange with third parties, including private labelers, to display the labels and to submit the required links to CCMS. See 78 FR 2205.

<sup>50</sup> 10 CFR 429.12.

<sup>51</sup> 42 U.S.C. 6294(c)(3) (the Commission may require the label to be displayed in a manner that the Commission determines is likely to assist consumers in purchasing decisions).

<sup>52</sup> 77 FR 1300.

tags.<sup>53</sup> As part of its examination of more than 8,500 appliances sold by retailers, FTC staff found that products labeled with hang tags appear more likely to have detached or missing labels than those labeled with adhesives.<sup>54</sup> Additionally, comments received during the recent television rulemaking indicated that hang tags often become twisted or dislodged in stores, which supports the FTC staff's findings. Concerned that hang tags may be less secure and more prone to detachment than adhesive labels, the Commission, in its March 15, 2012 NPRM, proposed prohibiting hang tags for clothes washers, dishwashers, and refrigerators, and instead requiring adhesive labels.<sup>55</sup> The Commission sought comments on its proposal.

*Comments:* The comments were mixed. The Joint Commenters (#560957-00028) supported the proposal. They presented findings from a yearlong in-store labeling investigation, during which they visited 48 appliance showrooms and observed more than 2,500 displayed appliances across six product categories and 347 television units. Their investigation confirmed that "'hang tag' style" labels become detached much more frequently than adhesive labels.<sup>56</sup> At the same time, they observed that labels attached by plastic cable ties or by strings with reinforced punch holes were more likely to remain attached. Accordingly, the Joint Commenters recommended that the Commission specify that labels be attached with more durable materials, such as adhesive-backed paper or with multiple strips of tape.

Like the Joint Commenters, three Western energy utilities recommended prohibiting hang tags.<sup>57</sup> However, they urged the Commission to require that adhesive labels leave no or minimal adhesive residue when peeled from the product, and that any adhesive residue

be easy to clean using common household products.

Three manufacturers opposed an adhesive label-only requirement.<sup>58</sup> They argued that adhesive labels applied directly to products might leave marks or residual matter, especially on stainless steel products, which comprise nearly a third of major home appliances. They noted that affixing an adhesive to the protective film that covers products would be counterproductive because retailers likely would remove the film from display models, and may not reattach the label before displaying the product. They also explained that temperature and humidity might cause adhesive labels on products in storage or transit to become too sticky or lose their adhesive qualities. They also raised concerns about the anticipated additional capital and labor costs associated with a transition to adhesive labels. Finally, they explained that since many manufacturers display both U.S. and Canadian labels on a single double-sided hang tag, a transition to adhesive labels would force manufacturers to print two separate labels.

Manufacturers proposed several alternatives. As discussed in Section B, they recommended that the Commission abandon physical labels altogether. Arguing that physical labels are no longer relevant because consumers research product information online, they proposed that the Commission create an online database through which consumers can research products' energy efficiency.<sup>59</sup> If the Commission retains a physical label requirement, manufacturers argued that labels should be required only on showroom models.

However, manufacturers did not recommend prohibiting adhesive labels. Instead, they recommended retaining both the adhesive and hang tag options. Additionally, Whirlpool recommended requiring two strings for hang tags to reduce missing labels. AHAM proposed amending the Rule to allow hang tags on product exteriors, in addition to interiors.<sup>60</sup> AHAM argued that such an

amendment would afford manufacturers greater flexibility in choosing hang tag placement to maximize consumer readability, providing a potential equivalent to adhesive labels affixed to product exteriors. Finally, manufacturers argued that if the Commission prohibits hang tags in favor of adhesive labels, it should permit smaller adhesive labels for clothes washers and dishwashers.

*Discussion:* The commenters raise compelling arguments against requiring only adhesive labels for clothes washers, dishwashers, and refrigerators. The Commission wants to avoid imposing labeling requirements that could lead to the damage of stainless steel products, causing significant costs to manufacturers. However, the Rule will retain adhesive labels as an option, allowing manufacturers to choose between adhesives (including flap tags) and improved hang tags. The Commission may reconsider requiring adhesive labels in the future if the proposed hang tag improvements do not sufficiently reduce the incidence of missing labels.

The Commission proposes amending the Rule (Section 305.11(d)(2)) to require that hang tags be affixed to products using cable ties (*i.e.*, "zip ties"), double strings with reinforced punch holes, or material with equivalent or greater strength, connected with reinforced punch holes. These methods should improve label resilience, which in turn should reduce the incidence of missing labels. Additionally, they should not pose an undue burden for manufacturers, as suggested by Whirlpool's receptiveness to the double-string approach. The Commission invites additional comments on this proposal, including suggestions of other effective label attachment methods.

The Commission does not propose amending the Rule to allow hang tags to be affixed to products' exteriors because it is concerned about the heightened risk of detachment with exterior hang tags. The Commission prohibited exterior hang tags in 2007 to "minimize the chance that labels will become dislodged from products."<sup>61</sup> At that time, AHAM supported the prohibition, explaining that hang tags affixed to products' exteriors "can be damaged or accidentally removed during distribution and therefore may be absent when products reach retail."<sup>62</sup> The

<sup>53</sup> 16 CFR 305.11(d)-(e). Because the Rule does not allow hang tags on the exterior of appliances, manufacturers must use adhesive labels for products with no accessible interior (*e.g.* water heaters).

<sup>54</sup> See 77 FR 15300 & n.24.

<sup>55</sup> 77 FR 15299-15300. EPCA permits the Commission to prescribe the manner in which EnergyGuide labels are displayed 42 U.S.C. 6294(c)(3), (c)(9).

<sup>56</sup> Specifically, the Joint Commenters found that label attachment by string, plastic bobby pin, or directly onto a prong in the front of dishwasher top racks exhibit higher rates of detachment. They also found that labels attached with single strips of adhesive tape or strings connected to single strips of tape hung from the inside of products were more likely to be loose or missing.

<sup>57</sup> Comments of the Pacific Gas and Electric Company (PG&E), Southern California Gas Company (SCGC), and San Diego Gas and Electric (SDG&E) (#560957-00009).

<sup>58</sup> Whirlpool Corporation (#560957-00010) and BSH Home Appliance Corporation (#560957-00007), as well as AHAM (#560957-00013). On the other hand, Alliance Laundry Systems LLC (#560957-00011) supported the proposed transition to adhesive labels, arguing that adhesive labels should reduce the incidence of missing labels on display models.

<sup>59</sup> AHAM, Whirlpool, and BSH Home Appliance Corporation argued that consumers' ability to research products online has diminished the usefulness of in-store information, citing 2012 research findings that nearly two-thirds of consumers who made major appliance purchases researched the products in advance and more than 70% plan to do so for future purchases.

<sup>60</sup> 16 CFR 305.11(e)(2) currently allows hang tags to be affixed to the interior of a product.

<sup>61</sup> 72 FR 49948 (Aug. 29, 2007).

<sup>62</sup> AHAM (#527896-00006). Despite AHAM's suggestion, the Commission is reluctant to undo the Rule's prohibition on exterior hang tags and rely solely on the Rule's catch-all provision ("as long as



Commission plans to pursue its current proposal for improved hang tag attachment methods before reconsidering its recent decision to prohibit exterior hang tags.

Finally, the Commission does not propose amending the Rule to include additional provisions suggested by the comments. First, the Commission does not propose prescribing more specific types of adhesive labels. Absent evidence of widespread problems caused by deficient adhesion methods, the Commission is reluctant to prescribe additional specific label attachment requirements that would reduce flexibility and may impose costs. Still, manufacturers should remain mindful that labels “should be applied with an adhesive with an adhesion capacity sufficient to prevent their dislodgment during normal handling throughout the chain of distribution to the retailer or consumer.”<sup>63</sup> Second, the Commission does not propose permitting smaller sized adhesive labels for clothes washers and dishwashers. Given the proposed retention of hang tags as an option, a smaller adhesive label size does not appear necessary. Third, the Commission does not propose limiting labels to display models. As the Commission explained in its recent television rulemaking, retailers may not receive specific products designated for display.<sup>64</sup> In addition, the appearance of labels on non-display models provides consumers useful energy consumption information after the purchase to help them understand the estimated energy use of their product. Finally, the Commission does not propose abandoning physical labels altogether in favor of online resources, as discussed in Section B above.

#### D. Labels on Room and Portable Air Conditioner Boxes

*Background:* In the 2012 Regulatory Review NPRM, the Commission proposed to require manufacturers to print or affix EnergyGuide labels on room air conditioner boxes instead of adhering them to the units themselves.<sup>65</sup> FTC staff has observed that retailers often display these products in boxes stacked on shelves or on the showroom floor, preventing consumers from examining the label before purchase. The proposed box label would address this problem.<sup>66</sup> The Commission

proposed to provide manufacturers with at least two years to implement this change to minimize the burdens associated with package changes. In seeking comments, the Commission asked whether retailers typically display room air conditioners in, or out of, the box, and whether the proposal would accomplish the Commission’s goal of consistently providing energy disclosures to consumers.

*Comments:* The comments offered conflicting views. Industry members, including AHAM (# 560957–00013) and Whirlpool (# 560957–00010), opposed the proposal. They asserted that box labeling is unnecessary because retailers usually display at least one unit of each model outside of the box to allow consumers to view and compare the models offered for sale. Furthermore, consumers viewing an unboxed display unit would have to locate the matching box to read the model’s EnergyGuide label. Industry members also argued that the proposal would create an inconsistency with Canadian requirements, which require the label on the unit itself. This would decrease harmonization between the two programs and add significant cost by requiring manufacturers to use two labels.

AHAM also took issue with the proposal’s complexity. It noted that the Commission would have to allow for black and white labels because many boxes are not printed in color. It also indicated that the label may not be visible to consumers if the box is stacked in a way that obscures the label. These comments also noted that the label may not easily fit on boxes for smaller room air conditioners, some of which are about a foot high. AHAM argued that, were the Commission to require box labels, it should allow manufacturers to use an adhesive sticker rather than printing the label directly on the box. Finally, AHAM asked whether the label would have to appear in multiple languages if other information on the box appeared in languages other than English.

In contrast, the Joint Commenters (# 560957–00015) urged the Commission to require labels on both boxes and the products themselves. In support, they cited store visit results indicating that retailers display units as often inside the box as outside. The Joint Commenters also recommended that the Commission follow the same approach for compact refrigerators and water heaters, noting that many stores they visited displayed these products in boxes while others

displayed them only out of the box.<sup>67</sup> However, the store results provided by the Joint Commenters suggested that more compact refrigerator models were displayed outside the box than in. Additionally, the comments did not provide comparative information on the number of water heater models displayed outside of the box.<sup>68</sup>

Finally, AHAM requested that the Commission revise the label to require a new efficiency rating disclosure, noting that DOE has changed the energy efficiency metric for room air conditioners from energy efficiency ratio (EER) to a combined energy efficiency ratio (CEER).<sup>69</sup> The CEER accounts for the product’s energy use in “standby” and “off” modes in addition to the “active” mode, whereas the EER only reflects the product’s energy use in “active” mode. The new DOE rules that become mandatory on June 1, 2014 provide instructions for converting CEER ratings to estimated annual energy cost. According to AHAM, the change stemming from the CEER ratings is small.

*Discussion:* After considering the comments, the Commission proposes requiring the labels on room air conditioner boxes. The Commission does not propose changing existing labeling requirements for compact refrigerators and freezers and water heaters because these products do not appear to be predominantly displayed in boxes. Though some comments stated that retailers usually display at least one air conditioner model unit outside of the box, the store visit information from the Joint Commenters suggests that is not always the case. To follow up on these comments, the FTC staff visited more than 40 retail stores from six major retail chains in eight cities across the country and found that, in those locations, room air conditioner models are usually displayed either in the box only (50% of models observed) or both

<sup>67</sup> The current Rule requires that EnergyGuide labels for these products be affixed to the products themselves, not the box. 16 CFR 305.11(d).

<sup>68</sup> In addition, PG&E (# 560957–00009) recommended that the Commission require water heater energy factor (EF) and central air conditioner seasonal energy efficiency ratio (SEER) information on packaging to help consumers and aid in compliance with state building code standards. For central air conditioners, the Commission recently required EnergyGuide labels, which include SEER information, on product packaging as part of the regional standards rulemaking. 78 FR 8362 (Feb. 6, 2013). For water heaters, it is unclear whether the benefits of including EF information on packaging justify its inclusion on packages because it is unlikely most consumers are familiar with the term. In addition, state code enforcers can easily obtain such EF information from DOE’s Compliance Certification Management System (CCMS) database. See <https://www.regulations.doe.gov/ccms>.

<sup>69</sup> See 10 CFR 430.23(f)(5).

the label will not become dislodged”), since this provision has not to date eliminated missing and obscured hang tags.

<sup>63</sup> 16 CFR § 305.11(d)(1).

<sup>64</sup> See 76 FR 1038, 1042 (Jan. 6, 2011).

<sup>65</sup> 77 FR 15300.

<sup>66</sup> The Commission has followed this approach with ceiling fan labels, which must appear on the

principal display panel of packages. See 16 CFR 305.13(a)(3).



in the box with a few display units located on or near those boxes (29% of models observed).<sup>70</sup>

Under the proposal, manufacturers would have the flexibility to choose a background color for the label to avoid requiring some manufacturers to redesign their boxes. Manufacturers could also use stickers in lieu of printing the label on the box itself. This would allow them to update their labels in response to test procedure or range changes without creating new packaging. With sufficient lead-time, manufacturers should be able to incorporate the label on packaging with little or no additional burden.<sup>71</sup> Under the proposal, the labels must appear on the package's primary display panel, that part of a label that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.<sup>72</sup>

Accordingly, commenters should address whether this approach raises complications for routine label revisions due to range changes, cost updates, or test procedure amendments. Also, the Commission seeks comment on the amount of time necessary to effect these changes and the efficacy and burdens of requiring the label on the box.

The Commission is not proposing to require labels on both the product and the box. The burden of requiring physical labels in multiple locations likely outweighs the benefits from such additional disclosures, particularly given new provisions increasing the labels' availability to consumers online.<sup>73</sup>

Finally, the Commission proposes two changes related to recent DOE regulatory actions. First, it proposes to change the room air conditioner label to replace EER ratings with CEER ratings consistent with upcoming DOE changes for these products. According to commenters, the differences between EER and CEER should be minor. Therefore, the Commission only proposes a simple name change in Section 305.7 and sample label 4, which change the label's capacity description

<sup>70</sup> Only 21% were displayed solely out of boxes. These results are based on FTC staff's review of more than 160 models (not individual units) offered for sale at a variety of stores in eight different metropolitan areas. The results are not necessarily nationally representative.

<sup>71</sup> Consistent with existing requirements for light bulb packaging, the proposed rule would not require bilingual labels for room air conditioners.

<sup>72</sup> See, e.g., 15 U.S.C. 1459(f) (Fair Package and Labeling Act).

<sup>73</sup> Such measures include new requirements to ensure the label's presence on retailer and manufacturer Web sites published last year (78 FR 2200 (Jan. 10, 2013)) and, as proposed in this document, the inclusion of EnergyGuide labels on DOE's Web site.

for these products. Second, the Commission proposes requiring EnergyGuide labels for portable air conditioners, in light of a recent DOE proposal to designate portable air conditioners as covered products under EPCA.<sup>74</sup> Given the similarity of portable air conditioners to room air conditioners, the Commission expects the Rule would require the same or similar labeling for the two products. The Commission would not require labeling until DOE completes a test procedure. Commenters should address whether portable air conditioners should be treated differently from room air conditioners for labeling purposes, and, if so, why.

#### E. Improved Ceiling Fan Labels

*Background:* The current label, which appears on product boxes and bears the title "Energy Information," provides information on airflow (cubic feet per minute), energy use in watts, and energy efficiency (cubic feet per minute per watt) at high speed. In the March 2012 NPRM, the Commission proposed to require estimated annual energy cost information as the primary disclosure on the ceiling fan label.<sup>75</sup> As the Commission has stated in the past, consumer research suggests energy cost "provides a clear, understandable tool to allow consumers to compare the energy performance of different models."<sup>76</sup> As with the EnergyGuide label for appliances, the new ceiling fan label would emphasize that "Your cost depends on rates and use." The proposed yellow label features the familiar "EnergyGuide" logo. The Commission proposed using six hours and eleven cents per kWh/hour to calculate the label's cost disclosure.<sup>77</sup> To minimize the burden associated with this change, the Commission proposed

<sup>74</sup> 78 FR 40403 (July 5, 2013). Portable air conditioners are movable units, unlike room air conditioners, which are permanently installed on the wall or in a window. If the Commission decides to require labels for these products, it will amend the Rule's coverage (and associated language) in a manner consistent with any final DOE determination.

<sup>75</sup> 77 FR 15302.

<sup>76</sup> 72 FR 49948, 49959 (Aug. 29, 2007) (appliance labels); see also 75 FR 41696 (July 19, 2010) (light bulb labels); 76 FR 1038 (Jan. 6, 2011) (television labels).

<sup>77</sup> The six hour duty cycle estimate is consistent with ceiling fan research conducted in California. See Davis Energy Group (Prepared for Pacific Gas & Electric), Analysis of Standards Options For Ceiling Fans, May 2004 ([http://www.energy.ca.gov/appliances/2003rulemaking/documents/case\\_studies/CASE\\_Ceiling\\_Fan.pdf](http://www.energy.ca.gov/appliances/2003rulemaking/documents/case_studies/CASE_Ceiling_Fan.pdf)). The eleven cent electricity cost figure, which is based on DOE information, also appears on recently amended light bulb labels and television labels. See 75 FR 41696 and 75 FR 12470.

providing manufacturers two years to change their packaging.

*Comments:* In response, two comments generally supported the proposed changes, but offered specific suggestions. Fanimation (#560957-00024) recommended label statements about energy savings from ceiling fans. It also recommended label usage and rate assumptions of one hour per day and ten cents per kWh or, alternatively, the same assumptions used on the Lighting Facts label (*i.e.*, three hours per day and eleven cents per kWh). Progress Lighting (# 560957-00022) recommended a usage assumption of three hours per day and urged the Commission to format the label to resemble the Lighting Facts label. Both Fanimation and Progress Lighting recommended that the Commission merge its label with that of the California Energy Commission (CEC) to provide consumers the range of costs to operate the fan on low, medium, and high speeds.<sup>78</sup>

*Discussion:* The Commission proposes changing the ceiling fan label as described in the NPRM. The proposed label continues to include a daily use assumption of six hours. Commenters offered no basis for alternative assumptions. In addition, the Commission proposes using an energy rate of twelve cents per kWh consistent with recent DOE national data used for other EnergyGuide labels.<sup>79</sup>

The proposed label follows the EnergyGuide label format, consistent with other products displayed in showrooms, such as refrigerators and clothes washers.<sup>80</sup> The suggested Lighting Facts format would require a new title, such as "Energy Facts," reducing the consistency of FTC's energy labels. In addition, although fans often contain lights, they serve different functions and the current label excludes the energy use of any light bulbs attached to the fan. The Commission,

<sup>78</sup> See <http://www.energy.ca.gov/2010publications/CEC-400-2010-012/CEC-400-2010-012.PDF>.

<sup>79</sup> 78 FR 17648 (Mar. 22, 2013). The Commission does not propose including energy savings information on the label because it could confuse consumers and would be inconsistent with other FTC energy labels. Nothing in the Rule prohibits manufacturers from making substantiated energy savings claims elsewhere on the package.

<sup>80</sup> The proposed amendment will also have the effect of clarifying that ceiling fan manufacturers must post a copy of their product labels online pursuant to Section 305.6. That section currently directs manufacturers to post their "EnergyGuide" labels, and does not specifically mention the current "Energy Information" label for ceiling fans. The proposed amendment to Section 305.13 would require ceiling fan manufacturers to use EnergyGuide labels, thereby triggering the online-posting requirement of Section 305.6.

therefore, has not identified a reason to treat the two products similarly.

Finally, the Commission does not propose including disclosures required by the CEC, which include energy information at multiple speeds. Such information is likely to complicate the label by providing three sets of disclosures for CFM, energy cost, and energy use. In addition, the label's current high-speed disclosures should provide adequate information for consumers to compare the relative energy cost and performance of competing fans.<sup>81</sup> The Commission seeks further comment on the proposed label, including its content, and the necessary compliance time for manufacturers.

#### F. Consolidated Refrigerator Ranges

**Background:** The current rule organizes refrigerator comparability ranges by configuration (e.g., models with top-mounted freezers), designating eight separate range categories for refrigerators and three for freezers.<sup>82</sup> The ranges disclose the energy costs of the most and least efficient model in each category. These categories allow consumers to compare the energy use of similarly configured units. Specifically, for automatic-defrost refrigerator-freezers, which populate the bulk of showroom floors, the Rule contains five categories (or styles): side-by-side door models with and without through-the-door ice service; top-mounted freezer models with and without through-the-door ice service; and bottom-mounted freezer models.<sup>83</sup>

**Comments:** AHAM opposed changes to the current range categories, arguing that consolidation of the ranges would cast fully-featured products, which generally use more energy, in an unfavorable light. AHAM also pointed to data suggesting that consumers usually replace their existing refrigerators with similarly configured models. However, AHAM acknowledged that it had no information addressing whether

consumers shop with a specific configuration in mind.<sup>84</sup>

The Joint Commenters urged the Commission to consolidate the comparability ranges.<sup>85</sup> They reasoned a single range would allow consumers to easily compare energy performance across models. They argued that the FTC's current approach to refrigerator ranges focuses consumer attention on small differences in energy efficiency and operating costs while obscuring large differences across categories.<sup>86</sup> They also asserted that the current ranges rest on arbitrary classifications devised for purposes other than consumer communication (e.g., implementation of DOE efficiency standards), rather than on any evidence the label classifications are "likely to assist consumers with their purchasing decisions." The Joint Commenters also noted that labels for many models, such as French door refrigerators, have no comparison information at all.

According to the Joint Commenters, many consumers consider refrigerators with different configurations (and likely different features) when making purchasing decisions. To support this assertion, the commenters pointed to data demonstrating that, in 2012, 40% of the visitors to Consumer Reports' online refrigerator ratings reviewed multiple refrigerator-freezer configurations. The Joint Commenters also reasoned that those who examined only one configuration probably considered models with, and without, through-the-door ice dispensers, and may have looked at an additional configuration on a subsequent visit. In addition, the Joint Commenters pointed to AHAM information demonstrating that more than half of side-by-side refrigerator-freezer owners buy replacement units with a different configuration. The commenters contended that this was probably a conservative estimate because it does not include owners who bought similarly configured replacement units with different features. Finally, the Joint Commenters submitted the results of a survey of Earthjustice members showing that more than two thirds of respondents indicated that a label that compared across subcategories would be

more likely to assist them in making their purchasing decision.

Finally, the Joint Commenters further argued that, even if some consumers initially limit themselves to a certain product subcategory, an EnergyGuide label illustrating the energy cost range over all subcategories may spur them to consider other configurations. They contend that, although the ENERGY STAR program continues to use separate categories for rating products, "the mere fact that ENERGY STAR labels refrigerators in a way that obscures the impacts of configurations and features does not justify" the maintenance of those categories for EnergyGuide labeling.

**Discussion:** The Commission proposes consolidating most of the ranges for certain types of refrigerator models. The comments suggest that a substantial number of consumers consider different model configurations when shopping. The consolidation of ranges will facilitate such comparison shopping, simplify the range categories, and alert consumers to the relative energy efficiency of various refrigerator types. As the Commission has previously explained, the EnergyGuide label permits consumers to compare the energy costs of competing appliances and to weigh this attribute against other product features in making their purchasing decisions. The Commission expects that consolidation of refrigerator categories will promote this goal by helping consumers to weigh energy cost considerations across different refrigerator configurations.

Specifically, the Commission proposes to consolidate the ranges for refrigerators into three categories: automatic defrost refrigerator-freezers (currently Appendices A4–A8), manual or partial manual refrigerators and refrigerator-freezers (currently Appendices A2–A3, which cover mostly small-sized models), and refrigerators with no freezer (currently Appendix A1). The proposed approach would consolidate ranges for automatic defrost models purchased by the vast majority of residential consumers, while maintaining separate categories for less common models.<sup>87</sup> The Rule would maintain separate size classifications within the three categories because shoppers are unlikely to compare

<sup>81</sup> In limiting the current label's disclosures to high speed operation, the Commission explained that "inclusion of information for other speed settings would clutter the label with few additional benefits" and noted comments indicating high-speed measurements reflect the "the true unregulated performance of the fan." 71 FR 78057, 78059 (Dec. 28, 2006).

<sup>82</sup> The Rule further divides each model category into several size classes (e.g., 19.5 to 21.4 cubic feet), each with its own comparability range.

<sup>83</sup> See 16 CFR Part 305, Appendices A and B. The Rule also has other range categories for less common models, including those with manual and partial defrost, and refrigerator-only models. In addition, the freezer categories include upright models with automatic defrost, upright models with manual defrost, and chest freezers.

<sup>84</sup> AHAM comments (Sept. 11, 2012) (# 560957–00025) available at <http://www.ftc.gov/os/comments/energylabelamend/560957-0002-84112.pdf>.

<sup>85</sup> Joint Comments (#560957–00015) available at <http://www.ftc.gov/os/comments/energylabelamend/00015-83010.pdf>.

<sup>86</sup> Joint Comments (#563707–00005) available at <http://www.ftc.gov/os/comments/energylabelrangers/index.shtm>.

<sup>87</sup> Given the different characteristics of these latter models, the Commission expects that typical consumers do not consider such models alongside automatic defrost refrigerator-freezers because of significant differences in the performance of these models (e.g., manual defrost vs. automatic defrost). For automatic defrost refrigerator freezers, the label would state, "Cost range based on all automatic-defrost refrigerator-freezers regardless of features or configuration."

models of widely different sizes. The proposal also maintains the three freezer categories for upright manual defrost models (Appendix B1), upright automatic defrost models (Appendix B2), and chest freezers (Appendix B3) because there is no evidence that consumers typically compare models across these categories when shopping. Under the proposal, the Commission would require such changes after the receipt of new model data following the implementation of DOE's new standards and test procedures in September 2014.

The Commission seeks comment on this proposal. Among other things, comments should address whether the consolidation of range categories would impact the DOE and EnergyStar programs, which continue to follow DOE's multiple configuration categories.<sup>88</sup>

#### G. Updates to Heating and Cooling Equipment Labels

*Background:* On February 6, 2013, the Commission published new labeling requirements for heating and cooling equipment, some of which have been postponed due to ongoing DOE litigation.<sup>89</sup> The new labels, directed by Congress, provide industry members and consumers with information about regional efficiency standards recently issued by DOE.<sup>90</sup> These new DOE requirements impose regional efficiency standards for four product categories: split-system air conditioners, single-package air conditioners, non-weatherized gas furnaces, and mobile home gas furnaces. For all other covered heating and cooling equipment (e.g., oil furnaces, boilers, and electric furnaces), the updated standards remain nationally uniform. The new labels require the inclusion of model number and capacity information on labels for all furnaces and central air conditioners. The Commission explained that this information would help consumers access DOE-generated cost information referenced on the label. In addition, for split systems, the model number and capacity allows consumers to obtain efficiency rating and energy cost information of varying condenser-coil combinations.

In its February 6, 2013 Notice, the Commission tied implementation of the new labeling requirements for all

<sup>88</sup> The proposed changes to the ranges would require extensive conforming amendments to sections 305.11, section 305.20, and Appendices A and B. In the interest of brevity, the Commission has not included specific language in this document.

<sup>89</sup> 78 FR 8362.

<sup>90</sup> 16 CFR 305.12 & App. L, Prototype Label 3, Sample Labels 7A, 7B, 9.

heating and cooling equipment (including products not subject to uniform standards) to the DOE compliance dates for the regional standards.<sup>91</sup> However, as part of ongoing litigation, the DC Circuit Court of Appeals stayed the implementation of the DOE regional furnace standards in 2013.<sup>92</sup> That stay effectively postponed FTC label updates for all furnace products subject to DOE standards, as well as some products, including oil furnaces, boilers, and electric furnaces not subject to the regional standards.

In addition, on April 24, 2014, the Court approved a settlement in the DOE litigation, which vacates and remands DOE's regional standards for non-weatherized natural gas and mobile home furnaces and set a two-year time table for DOE to propose new standards. The settlement does not affect other DOE standards, including the regional standards for split system and single package central air conditioners scheduled to become effective on January 1, 2015. However, as part of the settlement, DOE has agreed to issue a policy statement establishing an 18-month enforcement grace period for any air conditioner units manufactured before January 1, 2015.<sup>93</sup>

*Comments:* Given the uncertainties raised by the DOE regional standards litigation, AHRI (#563707-00010) urged the Commission to modify the Rule's provisions to establish a new compliance date for boilers and oil-fired furnaces, separate from the regional standards' implementation. These product categories do not have regional standards and are not part of the ongoing DOE litigation. AHRI, therefore, recommended a November 1, 2014 compliance date for boiler and oil furnace disclosures. It also requested that FTC staff provide template labels for these products, consistent with the templates provided for other covered products.<sup>94</sup>

In addition, AHRI (#563707-00010) raised concerns about the required capacity disclosure on the new labels. It explained that, for split-system air conditioners, capacity depends on the actual condenser-coil combination installed on site. The EnergyGuide label

<sup>91</sup> DOE scheduled two compliance dates for the new standards: May 1, 2013, for non-weatherized gas furnaces, mobile home gas furnaces, and non-weatherized oil furnaces; and January 1, 2015, for weatherized gas furnaces and all central air conditioners and heat pumps.

<sup>92</sup> *American Public Gas Ass'n v. DOE*, No. 11-1485 (D.C. Cir. filed Dec. 23, 2011) (DE.#1433580, May 1, 2013).

<sup>93</sup> *Id.* (DE.# #1489805, April 24, 2014).

<sup>94</sup> See FTC templates at <http://www.business.ftc.gov/documents/energyguide-labels-template>.

only appears on the condensing unit. Because manufacturers cannot predict which coil will be paired with a particular condenser, they cannot predict the system's capacity rating. Similarly, for oil furnaces, the unit's ultimate capacity depends on the input set by the installer.

Thus, in AHRI's view, the inclusion of capacity information on these products is unnecessary and could mislead consumers. In lieu of capacity ratings, AHRI suggested that the FTC allow manufacturers to print basic model numbers on their EnergyGuide labels, which can be used to access cost information on DOE's database.

*Discussion:* The Commission proposes November 1, 2014 as the effective date for boilers and oil-furnace labels and ranges. Furthermore, because DOE is not likely to issue revised regional furnace standards for at least two years, the Commission proposes to update the labels and ranges for all furnaces consistent with the Commission's February 6, 2013 Notice (see Figures 2 and 3).<sup>95</sup> These updates would not include regional standards information.<sup>96</sup> However, as explained in the 2013 Notice, the updates would include new ranges and a prominent link to an online energy cost calculator provided by a DOE Web site ([productinfo.energy.gov](http://productinfo.energy.gov)). This calculator provides a clear, understandable tool to compare energy performance.<sup>97</sup> The Commission also proposes to make these revised labels effective on January 1, 2015 for gas furnaces, to coincide with new efficiency standards for those products. Finally, the Commission seeks comment on whether it should eliminate existing Rule language related to regional furnace standards until DOE issues revised standards in the future.

In response to AHRI's capacity concerns, the Commission proposes eliminating capacity on EnergyGuide labels for heating and cooling

<sup>95</sup> The proposed rule language in this document contains conforming changes to the range tables for heating and cooling products in Appendices G1 through G8. However, to minimize the length of this document, the proposed rule language does not include conforming changes to all sample labels in the Rule. Should the Commission issue final amendments consistent with this proposal, the final Notice will contain conforming sample label changes.

<sup>96</sup> This proposal would not alter the January 1, 2015 compliance date for central air conditioners established in the February 6, 2013 notice. 78 FR 8362. However, consistent with DOE's enforcement policy for existing stock of central air conditioners (attached to the regional standards settlement), the Commission does not expect manufacturers to place the new regional standards label on units manufactured before January 1, 2015.

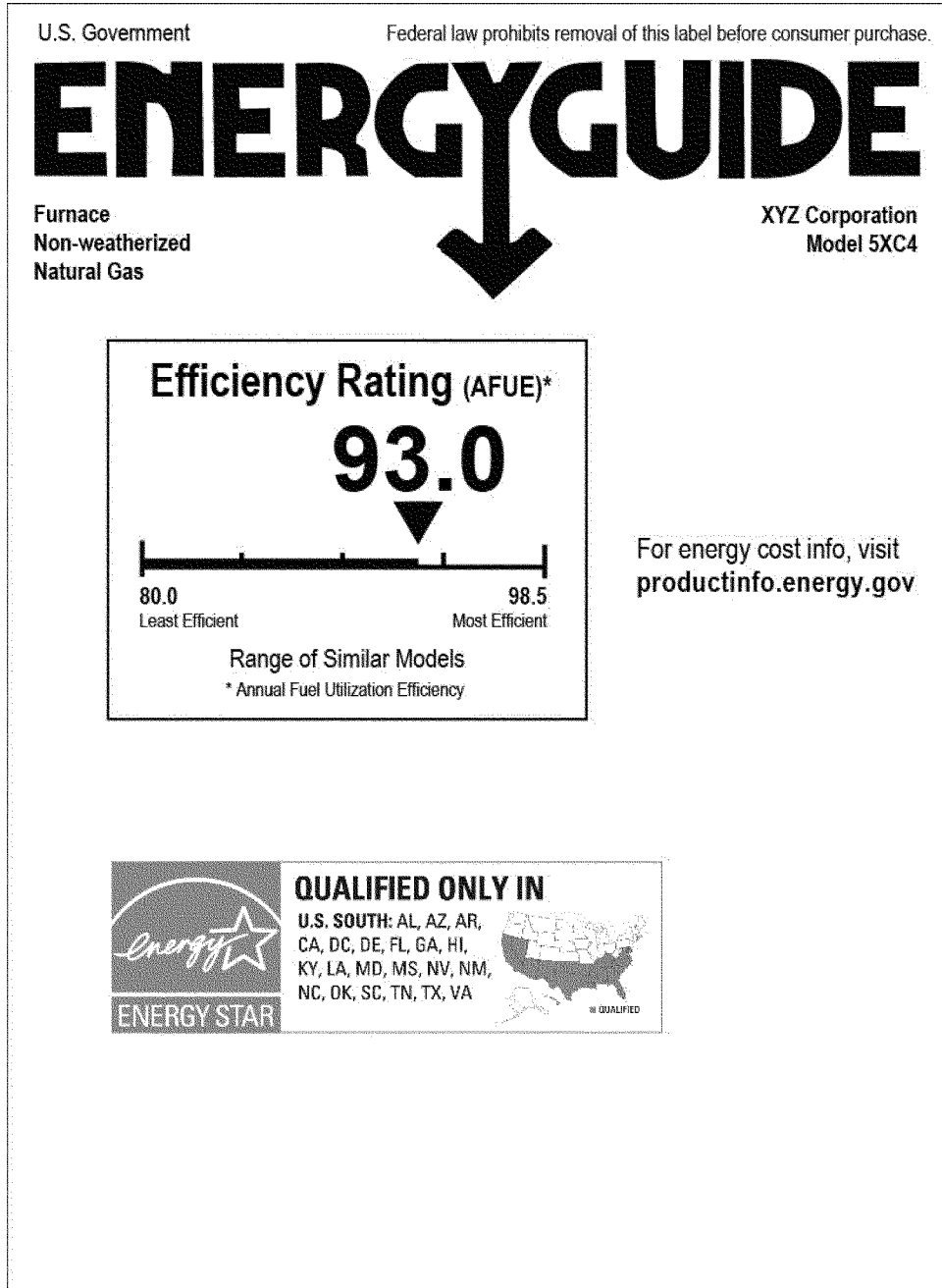
<sup>97</sup> 78 FR 8365.

equipment, but maintaining model numbers. As AHRI explained, the installed capacity of many of these products will vary depending, for example, on the condenser-coil combination for split-systems. Accordingly, a capacity requirement

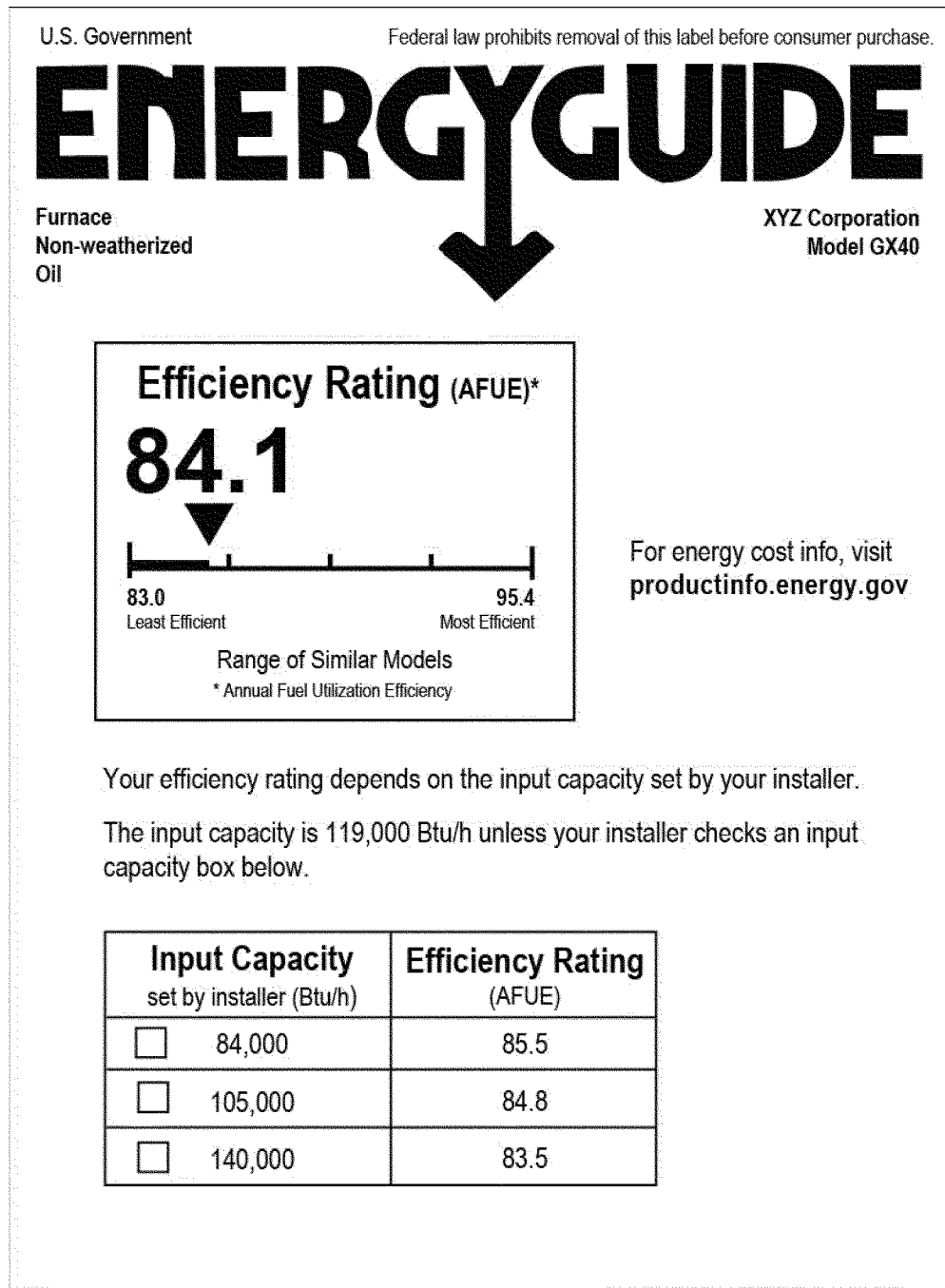
raises implementation problems and could mislead consumers. Under the proposal, consumers would be able to use model numbers from the labels to access specific cost information for various products, including condenser-coil combinations, through the DOE

Web site. As with other covered products, manufacturers may print multiple model numbers on labels for models sharing the same efficiency ratings. The Commission seeks comment on this proposal.

BILLING CODE 6750-04-P



**Figure 2 – Proposed Sample Revised Gas Furnace Label For Models Manufactured Before the Effective Date of Regional Standards (ENERGY STAR qualified model)**



**Figure 3 – Proposed Sample Revised Oil Furnace Label For Models Manufactured Before the Effective Date of Regional Standards**

**BILLING CODE 6750-04-C**

*H. QR Codes*

*Background:* In the NPRM, the FTC sought comment on whether to require QR (“Quick Response”) codes on EnergyGuide labels. QR codes are black and white matrix barcodes that provide access to a Web site through a mobile phone equipped with scanning

software. A QR code could connect consumers to energy use information, including the broad energy impacts and greenhouse gas emissions associated with a product’s use, through government Web sites or other source information.

*Comments:* Most commenters, particularly industry members, raised concerns about the feasibility and utility

of the QR code proposal. AHRI (#560957-00020), AHAM (#560957-00020), and A.O. Smith (#560957-00003) warned the codes might inundate consumers with confusing information.<sup>98</sup> AHRI and AHAM added that the EnergyGuide label provides

<sup>98</sup> See also Bradford White (# 560957-00004) and BSH (# 560957-00007).

adequate information to consumers, rendering the addition of a QR code, with its associated burden, unnecessary. AHAM further explained that a QR code requirement is premature because DOE has not developed information on broad energy use impacts and greenhouse gas emissions. AHAM also noted the difficulty in judging the efficacy of QR codes without more information about their linked content. Panasonic (#560957–00014) added that prescriptive rules could be premature for this evolving technology. AHAM and Panasonic also warned that QR codes could create space limitations, particularly for the television label, and diminish the marketing benefits of separate manufacturer created QR codes located elsewhere on the packaging. AHRI urged the Commission to make any QR code optional and to allow manufacturers to link the code to their own Web sites.

In contrast, Southern Cal Edison (#560957–00008) and PG&E (#560957–00009) supported the inclusion of such codes on the label because they would facilitate innovative practices for communicating useful consumer information to help purchasing decisions. In their view, QR codes would complement a growing market trend and allow consumers to conduct “on the go” research with their smart phones. It would also provide an opportunity for utility programs and third party rebate programs to inform interested buyers about rebates for efficient products.

The comments also offered differing views on label information for full fuel cycle and greenhouse gas impacts. PG&E urged the FTC to work with DOE to inform consumers about the broad energy impacts and greenhouse gas emissions of covered products and to display such information on the EnergyGuide label. In contrast, Whirlpool asserted that consumers do not find data on greenhouse gases and full fuel cycle information relevant to their purchase decision.

*Discussion:* The Commission does not propose requiring QR codes on labels. Until the development of Web site content to supplement information already on the EnergyGuide label, it is premature to propose any specific vehicle for linking consumers to that content. For now, manufacturers should not include their own QR codes on the EnergyGuide label, except for the limited purpose of conveying model numbers or similar product identification. Of course, manufacturers may use their own QR codes in other locations.

The FTC staff will continue to consider full-fuel cycle and greenhouse gas information for consumers and keep track of DOE’s efforts to incorporate full-fuel cycle analysis into their decisionmaking.<sup>99</sup> To aid that process, the Commission invites comments on these issues, including the overall usefulness of such information in consumer purchasing decisions.

#### I. Bilingual Issues

*Background:* The current Rule allows, but does not require, bilingual Lighting Facts labels on packaging for general service light bulbs.<sup>100</sup> The Commission previously sought comment on whether the Rule should mandate non-English labels when manufacturers make claims in a foreign language.<sup>101</sup> Specifically, the Commission asked about the prevalence and content of non-English claims on light bulb packages, the sufficiency of labels in conveying information to non-English speakers, and the impacts of mandatory bilingual labels on packaging.

*Comments:* NEMA opposed a triggered bilingual labeling requirement, citing space limitations on packages and the confusion multiple languages may cause. NEMA observed that bilingual packaging is common, though not uniform throughout the market, with Spanish and French used most often.<sup>102</sup> The type of information typically conveyed in non-English languages includes performance (lumens, watts), warnings, and application information. According to NEMA, the use of non-English claims depends on the packaging strategies of individual manufacturers and their retail business partners.

NEMA argued that a bilingual label will not fit on all packages and, as a result, a mandatory, triggered bilingual label could discourage manufacturers from providing any bilingual information. In addition, NEMA suggested that a bilingual label may not be necessary for energy labeling because the FTC-required label displays data mostly in numbers.

*Discussion:* The Commission does not propose mandating bilingual light bulb labels. As discussed in the NPRM, Commission rules and guidance require certain non-English disclosures in advertisements and sales material if the language principally used in such

material is not English. For several decades, the Commission has maintained that clear and conspicuous information disclosures mandated by rules, guides, and cease-and-desist orders should be displayed in the language principally used in the advertisement or sales material in question.<sup>103</sup>

The comments offered no evidence that packages for products labeled with the FTC’s energy labels convey consumer information principally in a language other than English. Although some packages present information in both English and another language, it appears that English remains the principal language on packaging. Additionally, the prominence of numerical disclosures on the energy labels (e.g., energy cost in dollars) should decrease the need for mandatory bilingual energy labels. The Commission is also concerned that triggered bilingual labels could dissuade manufacturers from providing bilingual information elsewhere on packaging. Accordingly, the Commission does not propose changing the Rule’s current requirements. The Commission may revisit this issue should new concerns or information arise.

#### J. Television Labels Comparison Ranges

*Issue:* In the January 6, 2013 NPRM, the Commission sought comment on whether to retain energy cost range information on television labels.<sup>104</sup> In earlier comments, the Consumer Electronics Association (CEA) recommended eliminating television ranges, arguing that the data underlying the ranges quickly become obsolete.<sup>105</sup>

<sup>103</sup> 16 CFR 14.9 (policy statement entitled, “Requirements concerning clear and conspicuous disclosures in foreign language advertising and sales materials”) (see 38 FR 21494 (Aug. 4, 1973)); see also 16 CFR 610.4(a)(3)(ii) (mandatory disclosures about free credit reports must be made in same language as that principally used in the advertisement); 16 CFR 308.3(a)(1) (mandatory disclosures about pay-per-call services must be made in same language as that principally used in advertisement); 16 CFR 455.5 (where used car sale conducted in Spanish, mandatory disclosures must be made in Spanish); 16 CFR 429.1(a) (in door-to-door sales, failure to furnish completed receipt or contract in same language as oral sales presentation is an unfair and deceptive act or practice).

<sup>104</sup> 16 CFR 305.17(f).

<sup>105</sup> CEA comments (May 16, 2012) (#560957–00012) available at <http://www.ftc.gov/os/comments/energylabellamend/560957-00012-83006.pdf>. EPCA grants the Commission discretion to include (or exclude) range information for television labels. 42 U.S.C. 6294(c)(9). However, given recent issuance of a new DOE test procedure, manufacturers must submit energy data whether or not the label displays a range. 42 U.S.C. 6296(b)(4); see also 79 FR 19464 (Apr. 9, 2014). CEA also asserted that the FTC labels should serve as the model for energy use disclosures in the North

<sup>99</sup> See, e.g., 77 FR 49701 (Aug. 17, 2012).

<sup>100</sup> See 16 CFR 305.15. EPCA neither mandates nor prohibits multilingual disclosures on labels and packages.

<sup>101</sup> 76 FR 45715 (Aug. 1, 2011).

<sup>102</sup> However, NEMA did not state that any light bulb packaging in the U.S. displays a language other than English as the predominant language.

As a result, the estimated energy costs for many models fall outside the range depicted on the label, reducing utility. CEA also noted that consumers can rely on other sources, including consumer and trade publications and product reviews, to obtain comparative energy information.

*Comments:* In response to the January 6, 2013 NPRM, the Joint Commenters (#563707–00005) opposed CEA's recommendation and strongly supported maintaining television ranges. According to the Joint Commenters, EPCA requires the Commission to provide range information on the label and no applicable statutory exemption exists to allow elimination of such information.<sup>106</sup> They further argued that the ranges, even if narrowed due to improved efficiency, still help consumers compare the energy costs of competing recent models and understand that television usage affects energy costs. The Joint Commenters urged the Commission to address perceived problems with television labels by consolidating the range categories or updating the ranges more frequently.

The Joint Commenters also recommended an increase in the size and prominence of the arrow indicating the model's relative location along the comparability range. The arrow denotes placement on the range and allows consumers to quickly gauge whether a model is efficient compared to similar models.

*Discussion:* The Commission does not propose eliminating the television ranges or otherwise altering the label at this time.<sup>107</sup> The Rule has required the television label for only a few years. It is premature to abandon the ranges

American market, including Mexico and Canada. However, CEA did not request that the FTC take any particular action with regard to this issue.

<sup>106</sup> The Joint Commenters argued that ranges for televisions are mandatory under EPCA, citing a provision that requires labels that disclose "information respecting the range of estimated annual operating costs for covered products to which the rule applies." 42 U.S.C. 6294(c)(1). They asserted that, even if FTC were to interpret EPCA as providing authority to eliminate range information, it would be arbitrary to eliminate the range information because FTC has previously acknowledged its value in requiring online retailers to include it among their disclosures. 77 FR 15301.

<sup>107</sup> Contrary to the commenter assertions, EPCA grants the Commission discretion to include (or exclude) range information for television labels. Section 324(c)(9), titled "Discretionary application," clearly states that the Commission may apply range information requirements to labels for certain covered products, including televisions. 42 U.S.C. 6294(c)(9) ("(9) Discretionary application.—The Commission may apply paragraphs (1), (2), (3), (5), and (6) of this subsection to the labeling of any product covered by paragraph (2)(I) or (6) of subsection (a)").

without strong evidence supporting such a change and without further experience and information, including updated energy data. In addition, as commenters explained, the ranges continue to provide benefits by illustrating how individual models compare to others on the range, even if efficiency improvements have shifted those ranges somewhat. Likewise, the Commission does not propose enlarging the arrow on the label's comparability range. Unlike other EnergyGuide labels, the TV range graph resembles a thermometer, shaded black up to the point marking the model's energy cost. This graph's depiction, coupled with the arrow, clearly identifies where the model falls on the range. Accordingly, additional graphic enhancements are not necessary.<sup>108</sup>

#### K. Schedule for Range Revisions

*Background:* In the NPRM, the Commission sought comment on whether to update range and cost information more frequently than the five years required by 16 CFR 305.10(a). In earlier comments, several energy efficiency organizations suggested that the FTC adopt a three-year schedule to update national average energy cost and the comparison ranges for most products.<sup>109</sup> They also recommended a two-year schedule for products with rapidly changing efficiencies and quicker sell-through periods, such as televisions. These commenters argued that the current schedule fails to keep pace with efficiency improvements. In January 2013, the Commission explained that the five-year schedule strikes a reasonable balance by providing appropriate updates without imposing overly frequent changes that lead to inconsistencies between showroom labels.<sup>110</sup>

*Comments:* In response to the NPRM, the comments presented conflicting views on the current update schedule. The efficiency groups (#560957–00015) asserted that the five-year schedule results in labels that "depict a false picture of the market." They argued the schedule violates EPCA's directive to include "information respecting the range of estimated annual operating costs for covered products" as well as EPCA's requirement that the labels be

<sup>108</sup> On April 9, 2014 (79 FR 19464), the Commission announced changes to its Rules, including reporting requirements, to conform to a new DOE test procedure. After the Commission reviews the new data, it will consider issuing updated comparability ranges for television labels.

<sup>109</sup> Joint Comments from Energy-Efficiency and Consumer Organizations (May 16, 2012) (#560957–00015).

<sup>110</sup> See 78 FR 1779, 1781 (Jan. 6, 2013).

"likely to assist consumers in making purchasing decisions."<sup>111</sup> They also noted that that FTC annual data collection allows for more frequent updates.<sup>112</sup>

In lieu of the current five-year schedule, the efficiency groups recommended that the Commission update ranges whenever: (1) Multiple new products enter the market in a product subcategory not included in an existing range category, (2) more efficient products appear on the market, and (3) efficiency standards or ENERGY STAR specifications change. In the absence of such thresholds, the Joint Commenters suggested a three-year schedule for most products and a two-year schedule for those with rapidly changing efficiencies and quicker sell-through periods. In addition, to help consumers compare labels bearing different range information, the Joint Commenters recommended the use of the transitional label recently adopted for refrigerators and clothes washers to address range and cost changes.<sup>113</sup> Finally, should the Commission retain the current schedule, the Joint Commenters recommended disclosing the year the range information was collected and lengthening the range's endpoint (*i.e.*, "most efficient" model) to provide space on the range for newer, more efficient models introduced in the future.

In contrast, industry commenters supported the current approach. AHAM emphasized the need to minimize frequent label changes because inconsistent cost and range information can lead to consumer confusion and erode consumer confidence in the label. AHAM agreed with the Commission that a five-year schedule appropriately balances the need for consistent disclosures and the need for updates, while minimizing the burdens associated with frequent changes. AHRI argued that any revisions at this point would be premature, because the current schedule has been in place for only a few years. According to AHRI, industry members and consumers have not conveyed any significant concerns to its members about the EnergyGuide label ranges. AHRI further asserted that consumers recognized that the EnergyGuide label serves primarily as a comparative tool. In its view, the label's comparative information does not

<sup>111</sup> See 42 U.S.C. 294(c)(1)(B) and 6294(c)(3).

<sup>112</sup> See 16 CFR 305.8. The groups also criticized the timing of the Commission's most recent round of updates (announced in 2012 and finalized in 2013) and delays to range and cost updates pending DOE test procedure changes for refrigerators, clothes washer, and furnaces.

<sup>113</sup> 78 FR 43974 (July 23, 2013).



change so dramatically over a five-year period that it warrants more frequent label changes. It also suggested that consumers understand the need to consider local energy costs when weighing home heating and cooling equipment purchases. Thus, fuel rate changes do not offer a reason to revise labels more frequently.

*Discussion:* The Commission is not proposing changes to the update schedule for comparability ranges and fuel rates. In establishing the current five-year schedule, the Commission sought to strike a balance between maintaining consistent labels and providing updates to cost and range information. Though there are benefits to more frequent updates, the transition periods between such updates create inconsistent labels in the market, which can cause confusion, hamper comparison shopping, and reduce confidence in the label.<sup>114</sup>

The current five-year interval ranges is consistent with past trends in market data. Over the years, model energy use has not always changed significantly from year to year across all product types and the product range endpoints have not always moved toward higher efficiency levels from year to year.<sup>115</sup> For example, before 2007, the Commission reviewed model data every year and revised the ranges if they deviated 15% or more from the previous year. Using this approach, the Commission generally updated product ranges at about five-year intervals.<sup>116</sup>

In addition, frequent fuel cost updates for the label can significantly impact label information during transition periods, making it difficult for consumers to compare new and old labels. Frequent fuel cost updates not

only alter the range information but also the product's energy cost (the label's primary energy disclosure), and can inhibit comparisons with older labeled products generated with previous fuel rates.

Though the Commission does not propose to alter the current schedule, the Rule gives the Commission discretion to change ranges and fuel rates more frequently. If parties identify ranges or fuel rate information that should be updated before the five-year period ends, they should alert the Commission so that it may consider whether to update the range.<sup>117</sup>

Finally, the Commission declines to adopt the recommendation to change ranges whenever a more efficient product enters the market, whenever DOE standards or test procedures change, or whenever a new product subcategory (e.g., a new refrigerator model type) enters the market. Doing so could lead to unnecessary updates and associated confusion during transition periods. Specifically, a trigger based on the introduction of more efficient products might yield insignificant range changes in cases where a single, slightly more efficient product arrives on the market. In addition, DOE test procedure amendments do not always yield significant changes in measured energy use. Lastly, new product subcategories do not necessarily warrant range changes because such new products may have little market presence or may have energy costs within existing ranges.<sup>118</sup>

#### L. Retailer Responsibility

*Background:* Currently, the Rule prohibits retailers from removing labels or rendering them illegible,<sup>119</sup> but does not otherwise require retailers to display labels at the points-of-sale. In 2011,

when the Commission issued new label requirements for televisions, it declined to impose new retailer obligations, noting that the amendments for labels (both in stores and online) created a network of measures calculated to keep labels attached and visible on display models.<sup>120</sup> The Commission, however, expressed willingness to revisit the issue at a later date.

*Comments:* In response to the 2012 regulatory review notice, the Joint Commenters (#560957–00028) urged the Commission to hold retailers responsible for ensuring the label's presence on covered products sold in their stores. Their year long investigation found that labels on 55% of the appliances they observed were either missing, detached, obstructed, or otherwise not affixed in accordance with the Rule. They also found that, despite the Commission's recent measures to ensure the presence of television labels in showrooms, 50% of the televisions observed were missing labels. Accordingly, they recommended that the Commission hold retailers responsible for ensuring that labels are present on the products they sell.

The Joint Commenters further opined that compliance with such a requirement is feasible. They argued that retailers would not face extraordinary obstacles matching EnergyGuide labels with the intended products, noting that retailers already manage point-of-sale materials for specific products, such as price and rebate information and Energy Star labels. Additionally, the Joint Commenters observed during site visits that some retailers appear to attach, reattach, or reprint missing labels. Indeed, the Joint Commenters argued that retailers are better situated than manufacturers to remedy lost, missing, or non-compliant labels. In addition, citing a "preliminary analysis" of their investigative results, they argued that the identity of the retailer is most closely correlated with the rate of label compliance.

AHAM also encouraged the Commission to address retailer responsibility, although it stopped short of supporting a new mandate (#563707–00003). AHAM explained that manufacturers lose control over products after they leave the factory, and that retailers own the products they sell to consumers. Accordingly, AHAM argued that manufacturers should not be held responsible for missing labels on showroom floors.

*Discussion:* The Commission plans to pursue improvements in label design to

<sup>114</sup> See 72 FR 49948, 49959 (Aug. 29, 2007) (discussing potential problems associated with frequent updates). In the past, the Commission has issued routine range updates without seeking comments. See, e.g., 67 FR 65310 (Oct. 24, 2002). However, as noted by commenters, the Commission has recently delayed range updates for several products types to synchronize new range and cost updates with other ongoing regulatory changes and avoid multiple label changes in a short time period. For example, the Commission coupled new ranges for dishwashers, room air conditioners, and water heaters with several label content changes, which required an opportunity for comment and thus additional time to promulgate. 78 FR 43974 (July 23, 2013). In addition, the Commission plans to issue new ranges for refrigerators and clothes washers when the new DOE standards and test procedures become effective to avoid publishing short-lived ranges based on many models likely to become obsolete with the arrival of the new DOE standards. 78 FR 8362 (Feb. 6, 2012).

<sup>115</sup> For example, from 2007 to 2012, the range for standard-size clothes washers changed year to year as follows (normalized using 12 cents per kWh): \$11–\$80 (2007), \$13–\$60 (2008), \$10–\$75 (2009), \$9–\$74 (2010), \$9–\$60 (2011), and \$10–\$61 (2012).

<sup>116</sup> 72 FR 49952.

<sup>117</sup> The comments also suggest that the Commission deploy labels with special language to mitigate confusion during these transition periods. Although the Commission has created such labels in extraordinary circumstances (e.g., 78 FR 43974 (July 23, 2013) (refrigerator and clothes washer transition labels in response to significant changes to DOE test procedures and standards)), frequent use of such "transitional" labels is likely to lead to multiple versions of such labels in the market and ultimately result in substantial confusion.

<sup>118</sup> The Commission does not propose to include the range's date on the label. Indeed, the Commission recently amended the rule to eliminate references to fuel rate vintage on the label, explaining that such disclosures could cause confusion. For instance, a "2007" reference to a range or fuel rate on the label may incorrectly suggest to some consumers that the product itself was produced in 2007. See 43 FR 7843976. In addition, the Commission does not propose adding space to the label's range bar to reserve room for more efficient models because such a change to the range scale could be confusing to consumers.

<sup>119</sup> 16 CFR 305.4(a)(2).

<sup>120</sup> 76 FR 1038, 1047 (Jan. 6, 2011).

increase label presence on showroom display models—as discussed in Section C of this document—before pursuing new responsibilities for retail stores. Recent store visits by FTC staff indicate that the new television labels, which must be adhesive, are more likely to remain on showroom models than labels on appliances. During the Spring of 2013, FTC staff observed more than 2,300 on-display televisions in 42 stores of six national retailers across nine regions.<sup>121</sup> In contrast to the Joint Commenters' earlier findings, 81% of models displayed had labels present.<sup>122</sup> Although FTC staff found that label presence varied across the retail stores visited, the variability between the observed retail chains was not large: between 75% and 87%. These findings suggest that improvements in label design and attachment methods alone, which the Commission now proposes for appliances (see Section II.C.), may be effective in significantly improving label presence.

Retailers, however, can play an important role in ensuring that labels appear on covered products at the points-of-sale. Even if retailers do not create the labels, they can identify missing or obscured labels in their showrooms and replace them. Moreover, although label design and attachment improvements can raise the rate of label presence, they cannot guarantee it.<sup>123</sup> At the same time, the burden on retailers of ensuring label presence may exceed the benefits. An affirmative retailer duty would require retailers stores to monitor product displays. Where labels are missing from display models, the retailer would have to find a properly-labeled replacement or obtain a substitute label. During the television rulemaking, the Consumer Electronics Retailers Coalition argued that requiring retailers to reattach missing labels would cause “chaos,” because retailers would be unable to quickly

match labels with products, increasing the risk of inaccurate labeling.<sup>124</sup> It is premature to impose these costs and incur these risks when better label requirements and greater availability of online labels may alleviate the problem. The Commission, therefore, seeks further comment, particularly on improved label design and other approaches that could reduce the incidence of missing labels.

#### M. Marketplace Web Sites

*Background:* The March 15, 2012 NPRM proposed requiring retail Web sites to display the full EnergyGuide or Lighting Facts label online. In January 2013, the Commission published final amendments to the Rule's catalog provision, requiring Web site sellers to display the label—either in full or as a logo icon with a hyperlink—for most covered products.<sup>125</sup> This requirement applies to “[a]ny 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.”<sup>126</sup> The 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.”<sup>127</sup>

These amendments do not cover marketplace Web sites that serve as platforms for facilitating online product purchase by performing functions such as hosting sellers' advertising, matching buyers' searches to sellers' products, and processing payment and shipment directions.<sup>128</sup> A marketplace Web site

may not fit the definition of “retailer” or “distributor” in the Rule if, for example, it does not take delivery or sale of the consumer products advertised and sold on its online platform. The Rule does not require such marketplace Web sites to either display or ensure the display of labels for covered products sold by third parties to consumers through their platforms. However, the Rule continues to apply to those third parties (retailers, manufacturers, distributors, and private labelers) that sell their products on such marketplace Web sites. The Rule also applies to the marketplace Web sites if they sell products as retailers through their own Web sites.<sup>129</sup>

*Comments:* The Joint Commenters (#560957–00028) urged the Commission to amend the Rule to address marketplace Web sites. The Joint Commenters presented several arguments for this proposal. First, they contend that noncompliance with the Rule's labeling requirements is “rampant” on marketplace Web sites.<sup>130</sup> Second, they argued that marketplace Web sites exercise ultimate control over the listings for products sold by third party sellers on their platforms, and should therefore be responsible for ensuring labeling. According to the Joint Commenters, marketplace Web sites generally require sellers to allow them to make any modifications to the listing, or remove it altogether, as a condition of selling products on their platforms. Sellers may submit proposed content (including price and shipping information) or seek removal of the listing, but the marketplace Web sites retain final authority over what appears in the listing. Third, the Joint Commenters argued that in light of marketplace Web sites' substantial control over listings, they are capable, if not best situated, to ensure label compliance for the products on their platforms. They noted that some marketplace Web sites already police other types of labeling and require listing preapproval for particular product categories. Therefore, they can

U.S.C. 6291(12)–(15). The Rule's definitions of “manufacturer,” “distributor,” “retailer,” and “private labeler” are consistent with EPCA's definitions. See 16 CFR 305.2.

<sup>129</sup> Taking physical possession of the product would likely render the marketplace Web site a “retailer” or “distributor” under EPCA and the Rule. See fn. 128, *supra*. Therefore, a product's delivery to a marketplace Web site's warehouse for temporary storage before proceeding in shipment to the consumer may trigger the marketplace Web site's responsibility for displaying the product's label online under the current Rule.

<sup>130</sup> They presented findings from 2011 and 2012 product searches on two prominent marketplace Web sites, demonstrating noncompliance of over 90%.

<sup>121</sup> Although the staff visited a variety of stores and locations, the results of these visits are not necessarily nationally representative.

<sup>122</sup> Another one percent had a label that was not properly affixed or was otherwise unreadable.

<sup>123</sup> EPCA authorizes the Commission to “prescribe labeling rules under this section applicable to all covered products,” including rules governing label disclosures “at the point of sale.” See 42 U.S.C. 6294(a)(1), (c)(3), and (c)(4); see also 42 U.S.C. 6298 (authorizing the Commission to issue rules it “deems necessary to carry out” the law's provisions). The Commission imposes upon retailers affirmative obligations to display labels to customers for particular product categories. See, e.g., 16 CFR 305.14(b)(2)(ii) (requiring retailers to show consumers the labels for covered central air conditioners, heat pumps, or furnaces prior to purchase); 16 CFR 305.19 (requiring retailers to make written disclosures at point-of-sale).

<sup>124</sup> See 76 FR 1047 (Jan. 7, 2011).

<sup>125</sup> See 78 FR 2209 (amending 16 CFR 305.20; effective January 15, 2014). A limited set of covered products—showerheads, faucets, water closes, urinals, general service fluorescent lamps, fluorescent lamp ballasts, and metal halide lamp fixtures—can disclose specified information instead of displaying the EnergyGuide or Lighting Facts label. See *id.* (amending 16 CFR 305.20(a)(ii)).

<sup>126</sup> 16 CFR 305.20(a).

<sup>127</sup> 16 CFR 305.2(h).

<sup>128</sup> EPCA states that if a “manufacturer or any distributor, retailer, or private labeler of such product advertises such product in a catalog from which it may be purchased, such catalog shall contain all information required to be displayed on the label, except as otherwise provided by rule of the Commission.” 42 U.S.C. 6296(a). EPCA defines a “retailer” as “a person to whom a consumer product is delivered or sold, if such delivery or sale is for purposes of sale or distribution in commerce to purchasers who buy such product for purposes other than resale,” and a “distributor” as “a person (other than a manufacturer or retailer) to whom a consumer product is delivered or sold for purposes of distribution in commerce.” It defines “manufacturer” as “any person who manufactures a consumer product,” and “private labeler” as “an owner of a brand or trademark on the label of a consumer product, which bears a private label.” 42

play the same gatekeeping function with energy labeling. Fourth, the Joint Commenters argued that it makes little sense to hinge liability for labeling compliance on whether a marketplace Web site takes delivery of a product. This distinction, according to the commenters, is irrelevant to EPCA's purpose of assisting consumers in making purchasing decisions. Finally, the Joint Commenters argued that neither EPCA nor the Communications Decency Act ("CDA") prohibits the creation of a separate requirement for marketplace Web sites.<sup>131</sup>

The Joint Commenters also requested that the Commission clarify that (i) the Rule applies to sellers who list covered products for sale on Web site catalogs, but do not take physical possession of products, and (ii) the Rule's term "catalog" includes: online product listings that require an additional click or mouse-over to reveal the product's retail price; product Web pages that allow the consumer to select different product options, such as color, before moving on to complete the purchase; and marketplace Web site listings that contain the terms of sale, retail price, and instructions for ordering, but that require consumers to click through to another Web site to complete the order.

*Discussion:* The Commission is not proposing additional marketplace Web site requirements.<sup>132</sup> The Rule already requires retailers, manufacturers, distributors, and private labelers that sell covered products on marketplace Web sites to display labels for those products. Therefore, an additional requirement aimed at marketplace Web sites would create a secondary layer of coverage. To be sure, such added coverage may improve the availability of label information to consumers. But it is not clear whether that potential benefit to consumers outweighs the potential burdens on marketplace Web sites, such as monitoring label presence and/or compliance. To aid its efforts to improve the Rule in the future, the Commission seeks further comments on the need for, and the burdens and benefits of, requiring marketplace Web sites to

ensure label display for products sold on their platforms. Comments should address the current state of affairs for label presence among marketplace Web sites, the projected consumer benefits of requiring marketplace Web sites to ensure label display on their platforms, the projected costs, and the anticipated impact of this document's proposed requirement to list all electronic label images for public display on the DOE's CCMS online database.

#### *N. Clothes Dryer Labels*

*Background:* When the Commission initially issued the energy labeling requirements in the 1979 Rule, it declined to label dryers, citing their limited annual energy cost range.<sup>133</sup> At that time, the maximum annual energy cost difference between dryers was only \$5. Therefore, the Commission concluded that the costs of testing and labeling would "far outweigh the potential benefits" of labeling.<sup>134</sup>

*Comments:* The Joint Commenters (#563707-00005) urged the Commission to require clothes dryer labels because three basic requirements for labeling now exist. First, DOE has established a test procedure. Second, clothes dryer labeling is "just as economically and technically feasible as labeling other white goods, such as clothes washers, dishwashers and refrigerators." Finally, clothes dryer labels will assist consumers in making purchasing decisions. Specifically, the commenters explained that labeling will help consumer decisions because clothes dryers use significantly more energy than the majority of products in the labeling program, including about two to three times the energy as clothes washers. In addition, in their view, the absence of dryer labels creates the misimpression that dryer energy use is not significant. The commenters argued that a dryer label would help consumers by leading some to forgo or delay a dryer purchase (or washer and dryer) and instead hang-dry their clothes or use a laundromat; choose a less expensive unit to offset the energy costs; or use their dryer more efficiently. They also suggested that labels will help consumers by revealing significant energy cost differences between gas and electric models.

The Joint Commenters acknowledged the small difference in energy costs between similar dryer models. However, they noted recent DOE amendments associated with an updated test

procedure suggest a broader range of energy use among dryers than previously thought. In addition, the adoption of heat-pump dryers will lead to significantly more efficient models in the future. In both absolute and relative terms, they predicted efficiency differences among clothes dryer models will be greater than efficiency differences among existing subcategories for televisions and refrigerators.

Alliance Laundry Systems (#563707-00012) disagreed, arguing that the FTC should not require labels for a covered product simply because it uses large amounts of energy. Alliance explained that the range of energy use among competing dryers is narrow. Thus, labels would not aid consumer purchasing decisions. The Alliance also noted that the high purchase price for the new heat-pump clothes dryers will discourage consumers from purchasing such products even if they are more efficient than other models.

*Discussion:* The Commission is not proposing to require labels for clothes dryers at this time. Recent DOE dryer information suggests that dryer efficiency varies little across available models. In fact, DOE testing indicates the difference in annual energy costs between the most efficient and least efficient electric models currently available is at most \$11 per year.<sup>135</sup> Although electric dryers using heat-pump technology will be more efficient than current models, few, if any, such models are currently available in the U.S.<sup>136</sup>

Absent meaningful variation in energy usage, the Commission doubts that labeling would significantly aid consumer choices. Although some comments suggest that labels could induce consumers to hang dry their

<sup>131</sup> The CDA provides that "[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider." 47 U.S.C. 230(c).

<sup>132</sup> In addition, the Commission is not proposing changes to the catalog provisions because it is not clear such amendments are necessary to improve current requirements. Indeed, as part of the regulatory review, the Commission (78 FR 2200 (Jan. 10, 2013)) recently amended the Rule to require online retailers to post the labels "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." 16 CFR 305.20(a)(2).

<sup>133</sup> Under EPCA, the Commission must prescribe labels for dryers unless it finds labeling would not be technologically or economically feasible. 42 U.S.C. 6294(a)(1).

<sup>134</sup> 44 FR 66469 (Nov. 19, 1979).

<sup>135</sup> See U.S. DOE, *Technical Support Document (TSD) for Energy Conservation Program: Energy Conservation Standards for Residential Clothes Dryers and Room Air Conditioners*; Direct Final Rule TSD, Table 8.2.26, available at <http://www.regulations.gov#!documentDetail;D=EERE-2007-BT-STD-0010-0053>. The table indicates that the difference in annual energy use between the baseline model and the most efficient non-heat-pump dryer is 89 kWh. At energy prices of \$0.12 per kWh, this is approximately \$11 per year. Considering inflation, this spread is even smaller than the cost range identified by the Commission in 1979. In addition, DOE's data suggests that annual operating costs for these dryers is generally lower than \$80.

<sup>136</sup> Further, while not dispositive to Commission's decision, we note that both heat-pump models and more efficient conventional models are significantly more expensive to manufacture and install. DOE estimates that, based on current costs, it would take decades (surpassing the likely product life) for the energy savings from an efficient dryer to cover its higher purchase price. TSD, Tables 8.3.1-8.3.6.

clothes, it seems unlikely that labels will convince many consumers, already shopping for a clothes dryer, to hang dry their clothes instead of making a purchase. In addition, although a label would disclose the dryer's energy cost in absolute terms and perhaps illustrate the relative cost of different fuels, there is no evidence that such information would impact consumer decisions to purchase a model using a particular fuel type. Accordingly, consistent with the Commission's earlier conclusion with regard to dryers, labeling costs are likely to outweigh benefits to consumers. However, heat-pump or other more efficient electric dryers may become available in the U.S. market and offer a broader range of energy efficiency. In addition, as suggested by commenters, changes to the DOE test procedure may reveal greater differences among models not demonstrated by current testing methods. Should these or other developments occur, the Commission may revisit the issue.

#### O. Plumbing Products

The Commission proposes two minor changes related to plumbing products. First, it proposes amendments to clarify that retail Web sites may hyperlink to flow rate information for the covered plumbing products they sell. Recent amendments to Section 305.20 allow online retailers to use a hyperlink to connect consumers to EnergyGuide and Lighting Facts labels for specific products, but do not specify how online sellers may link to required plumbing disclosures.<sup>137</sup> The proposed amendment would allow sellers to connect consumers to flow rate information using a hyperlink labeled "Water Usage."

Second, the Commission proposes routine conforming changes to the Rule in response to DOE test procedure changes. On October 23, 2013, DOE announced changes to the testing procedures for residential plumbing products and amended some product definitions.<sup>138</sup> In response, the Commission proposes a conforming change to the definition of "showerhead" in Part 305.

### III. Request for Comment

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before August 18, 2014. Write "Energy Labeling Regulatory Review (16 CFR Part 305) (Matter No. R611004)" on your comment. Your comment—including your name and your state—will be

placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at <http://www.ftc.gov/os/publiccomments.shtm>. As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, such as anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, do not include any "[t]rade secret or any commercial or financial information which is . . . privileged or confidential," as discussed in § 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c). Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublic.commentworks.com/ftc/energyguidereview>, by following the instruction on the web-based form. If this document appears at <http://www.regulations.gov>, you also may file a comment through that Web site.

If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC-5610 (Annex B), Washington, DC 20580, or deliver your comment to the following address: Federal Trade

Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex B), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at <http://www.ftc.gov> to read this document and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before August 18, 2014. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

Because written comments appear adequate to present the views of all interested parties, the Commission has not scheduled an oral hearing regarding these proposed amendments. Interested parties may request an opportunity to present views orally. If such a request is made, the Commission will publish a document in the **Federal Register** stating the time and place for such oral presentation(s) and describing the procedures that will be followed. Interested parties who wish to present oral views must submit a hearing request, on or before July 8, 2014, in the form of a written comment that describes the issues on which the party wishes to speak. If there is no oral hearing, the Commission will base its decision on the written rulemaking record.

### IV. Paperwork Reduction Act

The current 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). OMB has approved the Rule's existing information collection requirements through May 31, 2017 (OMB Control No. 3084 0069). The proposed amendments make changes in the Rule's labeling requirements that will increase the PRA burden as detailed below.<sup>139</sup>

<sup>139</sup> Several proposed labeling changes, including changes to label attachment methods, refrigerator ranges, URL links for labels, ceiling fan labels, and room air conditioners, should impose no additional burden beyond existing estimates because such changes either impose no or *de minimis* additional burdens or manufacturers should be able to

<sup>137</sup> 78 FR 2200 (Jan. 10, 2013).

<sup>138</sup> 78 FR 62970 (Oct. 23, 2013).

Accordingly, the Commission will submit this Notice of proposed rulemaking and associated Supporting Statement to OMB for review under the PRA.<sup>140</sup>

**Package and Product Labeling (expanded lamp coverage):** The proposed amendments require manufacturers to label several new bulb types. Accordingly, manufacturers will have to amend their package and product labeling to include new disclosures. The new requirements impose a one-time adjustment for manufacturers. The Commission estimates that there are 50 manufacturers making approximately 3,000 of these newly covered products. This adjustment will require an estimated 600 hours per manufacturer on average.<sup>141</sup> Annualized for a single year reflective of a prospective 3-year PRA clearance, this averages to 200 hours per year. Thus, the label design change will result in cumulative annualized burden of 10,000 hours (50 manufacturers × 200 hours). In estimating the associated labor cost, the Commission assumes that the label design change will be implemented by graphic designers at an hourly wage rate of \$23.85 per hour based on Bureau of Labor Statistics information.<sup>142</sup> Thus, the Commission estimates annual labor cost for this adjustment will total \$238,500 (10,000 hours × \$23.85 per hour).

**Labeling (portable air conditioners):** The proposed amendments require manufacturers to create and affix labels on these portable products.<sup>143</sup> The amendments specify the content, format, and specifications of the required labels. Manufacturers would add only the energy consumption

incorporate the proposed changes into their normally scheduled package or label revisions.

<sup>140</sup> The PRA analysis for this rulemaking focuses strictly on the information collection requirements created by and/or otherwise affected by the amendments. Unaffected information collection provisions have previously been accounted for in past FTC analyses under the Rule and are covered by the current PRA clearance from OMB.

<sup>141</sup> The Commission has increased its estimate of the hours required to make this change from earlier estimates given recent concerns raised about the burden of implementing label changes. See 75 FR 81943 (Dec. 29, 2010).

<sup>142</sup> The above mean hourly wage and those that follow are drawn from Bureau of Labor Statistics, U.S. Department of Labor, Occupational Employment and Wages—May 2013, Table 1 (National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2013), available at: <http://www.bls.gov/news.release/ocwage.t01.htm>.

<sup>143</sup> Though the Rule allows manufacturers to incorporate the label onto their packaging (a less expensive labeling method), the Commission, for the purposes of this analysis, assumes conservatively that manufacturers will affix individual labels to packaging.

figures derived from testing and other product-specific information. Consistent with past assumptions regarding appliances, FTC staff estimates that it will take approximately six seconds per unit to affix labels. Staff also estimates that there are 1,000,000 portable air conditioner units distributed in the U.S. per year. Accordingly, the total disclosure burden per year for refrigeration products would be 1,667 hours (1,000,000 × 6 seconds). Assuming that product labels will be affixed by electronic equipment installers at an hourly wage of \$23.50 per hour, cumulative associated labor cost would total \$39,175 per year.

**Testing (expanded lamp coverage):** The Commission assumes conservatively that manufacturers will have to test 3,000 basic light bulb models out of an estimated 6,000 covered products. The Commission also assumes conservatively that testing will require 14 hours for each model for a total of 42,000 hours. In calculating the associated labor cost estimate, the Commission assumes that this work will be implemented by electrical engineers at an hourly wage rate of \$44.89 per hour. Thus, the Commission estimates that the proposed label design change will result in associated labor costs of approximately \$1,885,380 (42,000 hours × \$44.89 per hour).

**Testing (portable air conditioners):** Manufacturers need not test each basic model annually; they must retest only if the product design changes in such a way as to affect energy consumption. Staff believes that the frequency with which models will be tested every year ranges roughly between 10% and 50%. It is likely that only a small portion of the tests conducted will be attributable to the proposed Rule's requirements. Nonetheless, given the lack of specific data on this point, the Commission conservatively assumes that all of the tests conducted would be attributable to the Rule's requirements and will apply to that assumption the high-end of the range noted above for frequency of testing. Based on an informal review of products offered on Web sites as well as consultation with DOE staff, staff estimates that there are approximately 150 basic models, that manufacturers will test two units per model, and that testing would require one hour per unit tested. Given these estimates and the above-noted assumption that 50% of these basic models would be tested annually, testing would require 150 hours per year. Assuming further that this testing will be implemented by electrical engineers, and applying an associated hourly wage rate of \$44.89

per hour, labor costs for testing would total \$6,734.

**Recordkeeping (expanded lamp coverage):** Pursuant to Section 305.21 of the proposed amended Rule, manufacturers must keep test data on file for a period of two years after the production of a covered product model has been terminated. Assuming one minute per model and 3,000 basic models, the recordkeeping burden would total 50 hours. Assuming further that these filing requirements will be implemented by data entry workers at an hourly wage rate of \$15.28 per hour, the associated labor cost for recordkeeping would be approximately \$764 per year.

**Recordkeeping (portable air conditioners):** Pursuant to Section 305.21 of the proposed amended Rule, manufacturers must keep test data on file for a period of two years after the production of a covered product model has been terminated. Assuming one minute per model and 150 basic models, the recordkeeping burden would total 3 hours, rounded upward. Assuming further that these filing requirements will be implemented by data entry workers at an hourly wage rate of \$15.28 per hour, the associated labor cost for recordkeeping would be approximately \$46 per year.

**Reporting Requirements (portable air conditioners):** In addition, the proposed labeling for these products would increase the Rule's reporting requirements. Staff estimates that the average reporting burden for these manufacturers is approximately two minutes per basic model to enter information into DOE's online database. Based on this estimate, multiplied by an estimated total of 150 basic portable air conditioners models, the annual reporting burden for manufacturers is an estimated 5 hours (2 minutes × 150 models ÷ 60 minutes per hour). Assuming further that these filing requirements will be implemented by data entry workers at an hourly wage rate of \$15.28 per hour, the associated labor cost for recordkeeping would be approximately \$76 per year. Any non-labor costs associated with the reporting amendments are likely to be minimal. The Commission does not expect that the proposed amendments for portable air conditioners will create any capital or other non-labor costs for such testing.<sup>144</sup>

**Catalog Disclosures (expanded light bulb coverage and portable air conditioners):** The proposed amendments would require sellers

<sup>144</sup> There are no proposed reporting requirements for the expanded light bulb coverage.

offering covered products through catalogs (both online and print) to disclose energy use for each light bulb and portable air conditioner model offered for sale. Because this information is supplied by the product manufacturers, the burden on the retailer consists of incorporating the information into the catalog presentation. FTC staff estimates that there are 200 online and paper catalogs for these products that would be subject to the Rule's catalog disclosure requirements. Staff additionally estimates that the average catalog contains approximately 100 such products and that entry of the required information takes one minute per covered product. The cumulative disclosure burden for catalog sellers is thus 1,000 hours (200 retailer catalogs  $\times$  300 products per catalog  $\times$  1 minute each per product shown). Assuming that the additional disclosure requirement will be implemented by data entry workers at an hourly wage rate of \$15.28, associated labor cost would approximate \$15,280 per year.

*Estimated annual non-labor cost burden (expanded lamp coverage):* The Commission estimates that the annualized capital cost of expanding the light bulb label coverage is \$1,535,000. This estimate is based on the assumptions that manufacturers will have to change 3,000 model packages over an approximate three-year period to meet the new requirements<sup>145</sup> and that package label changes for each product will cost \$1,335.<sup>146</sup> Manufacturers place information on products in the normal course of business. Annualized in the context of a 3-year PRA clearance, these non-labor costs would average \$1,335,000 (3,000 model packages  $\times$  \$1,335 each over 3 years). As for product labeling, the Commission assumes that the one-time labeling change will cost \$200 per model for an annualized estimated total of \$200,000 (3,000 models  $\times$  \$200 over 3 years). Annualized in the context of a 3-year PRA clearance, these non-labor costs would average \$1,535,000.

*Estimated annual non-labor cost burden (portable air conditioners):* Manufacturers are not likely to require any significant capital costs to comply with the proposed portable air

conditioner amendments. Industry members, however, will incur the cost of printing labels for each covered unit. The estimated label cost, based on estimates of 1,000,000 units and \$.03 per label, is \$30,000 (1,000,000  $\times$  \$.03).

*Total Estimate:* Accordingly, the revised estimated total hour burden of the proposed amendments is 54,875 with associated labor costs of \$2,185,955 and annualized capital or other non-labor costs totaling \$1,565,000.

Pursuant to Section 3506(c)(2)(A) of the PRA, the FTC invites comments on: (1) Whether the proposed information collection is necessary, including whether the information will be practically useful; (2) the accuracy of our burden estimates, including whether the methodology and assumptions used are valid; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before August 18, 2014. Comments on the proposed recordkeeping, disclosure, and reporting requirements subject to review under the PRA should additionally be submitted to OMB. If sent by U.S. mail, they should be addressed to Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Federal Trade Commission, New Executive Office Building, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503. Comments sent to OMB by U.S. postal mail, however, are subject to delays due to heightened security precautions. Thus, comments instead should be sent by facsimile to (202) 395-5167.

#### 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), if any, 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. See 5 U.S.C. 603-605.

The Commission does not anticipate that the proposed rule will have a significant economic impact on a substantial number of small entities. The Commission recognizes that some of the affected manufacturers may qualify as small businesses under the relevant thresholds. However, the Commission does not expect that the

economic impact of the proposed amendments will be significant.

The Commission estimates that the amendments will apply to about 75 light bulb manufacturers and an additional 150 online and paper catalog sellers of covered products. The Commission expects that approximately 150 qualify as small businesses.

Accordingly, this document serves as notice to the Small Business Administration of the FTC's certification of no effect. To ensure the accuracy of this certification, however, the Commission requests comment on whether the proposed rule will have a significant impact on a substantial number of small entities, including specific information on the number of entities that would be covered by the proposed rule, the number of these companies that are small entities, and the average annual burden for each entity. Although the Commission certifies under the RFA that the rule proposed in this document 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 IRFA in order to inquire into the impact of the proposed rule on small entities. Therefore, the Commission has prepared the following analysis:

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

The Commission is proposing expanded product coverage and additional improvements to the Rule to help consumers in their purchasing decisions for high efficiency products.

#### B. Statement of the Objectives of, and Legal Basis for, the Proposed Rule

The objective of the rule is to improve the effectiveness of the current labeling program. The legal basis for the Rule is the Energy Policy and Conservation Act (42 U.S.C. 6292 *et seq.*)

#### C. Small Entities to Which the Proposed Rule Will Apply

Under the Small Business Size Standards issued by the Small Business Administration, appliance manufacturers qualify as small businesses if they have fewer than 1,000 employees (for other household appliances the figure is 500 employees). Catalog sellers qualify as small businesses if their sales are less than \$8.0 million annually. The Commission estimates that there are approximately 150 entities subject to the proposed rule's requirements that qualify as small

<sup>145</sup> This assumes that manufacturers will change packages for one third of their products in the normal course of business each year. The multi-year compliance period (two and a half years) and the notice provided by this proceeding should minimize the likelihood that manufacturers will have to discard package inventory. In addition, manufacturers may use stickers in lieu of discarding inventory.

<sup>146</sup> See 75 FR 41712 n. 149 and accompanying text.

businesses.<sup>147</sup> The Commission seeks comment and information with regard to the estimated number or nature of small business entities for which the proposed rule would have a significant economic impact.

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

The changes under consideration would slightly increase reporting or recordkeeping requirements associated with the Commission's labeling rules as discussed above. The amendments likely will increase compliance burdens by extending the labeling requirements to new types of light bulbs and air conditioners. The Commission assumes that the label design change will be implemented 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. The Commission invites comment and information on this issue.

#### *F. Significant Alternatives to the Proposed Rule*

The Commission seeks comment and information on the need, if any, for alternative compliance methods that, consistent with the statutory requirements, would reduce the economic impact of the rule on small entities. For example, in proposing to extend the bulb coverage, the Commission is currently unaware of the need to adopt any special provision for small entities to be able to take advantage of the proposed extension or exemption, where applicable. However, if such issues are identified, the Commission could consider alternative approaches such as extending the effective date of these amendments for catalog sellers to allow them additional time to comply beyond the labeling deadline set for manufacturers. Nonetheless, if the comments filed in response to this document identify small entities that are affected by the rule, as well as alternative methods of compliance that would reduce the economic impact of the rule on such entities, the Commission will consider the feasibility of such alternatives and determine whether they should be incorporated into the final rule.

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

Written communications and summaries or transcripts of oral

communications respecting the merits of this proceeding, from any outside party to any Commissioner or Commissioner's advisor, will be placed on the public record. See 16 CFR 1.26(b)(5).

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

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

For the reasons discussed above, the Commission proposes to amend 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. In § 305.3, revise paragraph (j) and (r), and add paragraph (z) to read as follows:

#### **§ 305.3 Description of covered products.**

(j) *Fluorescent lamp ballast* means a device which is used to start and operate fluorescent lamps by providing a starting voltage and current and limiting the current during normal operation.

(r) *Showerhead* means a component or set of components distributed in commerce for attachment to a single supply fitting, for spraying water onto a bather, typically from an overhead position, excluding safety shower showerheads.

(z) *Specialty consumer lamp* means:

- (1) Any lamp that—
  - (i) Is not included under the definition of general service lamp in this part;
  - (ii) Has a lumen range between 310 lumens and no more than 2,600 lumens or a rated wattage between 30 and 199;
  - (iii) Has one of the following bases:
    - (A) A medium screw base;
    - (B) An intermediate screw base;
    - (C) A candelabra screw base;
    - (D) A GU-10 base; or
    - (E) A GU-24 base; and
  - (iv) Is capable of being operated at a voltage range at least partially within 110 and 130 volts.

(2) *Inclusions.* The term *specialty consumer lamp* includes, but is not limited to, the following lamps if such lamps meet the conditions listed in paragraph (z)(1) of this section:

- (i) Vibration-service lamps as defined at 42 U.S.C. 6291(30)(AA);
- (ii) Rough service lamps as defined at 42 U.S.C. 6291(30)(X);
- (iii) Appliance lamps as defined at 42 U.S.C. 6291(30)(T);
- (iv) Plant light lamps; and
- (v) Shatter-resistant lamps (including a shatter-proof lamp and a shatter-protected lamp) as defined in 42 U.S.C. 6291(30)(Z).

(3) *Exclusions.* The term *specialty consumer lamp* does not include:

- (i) A black light lamp;
  - (ii) A bug lamp;
  - (iii) A colored lamp;
  - (iv) An infrared lamp;
  - (v) A left-hand thread lamp;
  - (vi) A marine lamp;
  - (vii) A marine signal service lamp;
  - (viii) A mine service lamp;
  - (ix) A sign service lamp;
  - (x) A silver bowl lamp;
  - (xi) A showcase lamp;
  - (xii) A traffic signal lamp;
  - (xiii) A G-shape lamp with diameter of 5 inches or more;
  - (xiv) A C7, M-14, P, RP, S, or T shape lamp.
- 3. In § 305.7, revise paragraph (d) and (f) to read as follows:

#### **§ 305.7 Determinations of Capacity**

(d) *Water heaters.* The capacity shall be the first hour rating (for storage-type models) and gallons per minute (for instantaneous-type models), as determined according to appendix E to 10 CFR part 430, subpart B.

(f) *Room air conditioners.* The capacity shall be the cooling capacity in Btu's per hour, as determined according to appendix F to 10 CFR part 430, subpart B, but rounded to the nearest value ending in hundreds that will satisfy the relationship that the value of CEER used in representations equals the rounded value of capacity divided by the value of input power in watts. If a value ending in hundreds will not satisfy this relationship, the capacity may be rounded to the nearest value ending in 50 that will.

■ 4. In § 305.8, paragraph (a)(3) is revised to read as follows:

#### **§ 305.8 Submission of data.**

(a) \* \* \*

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

■ 5. In § 305.11, paragraphs (c), (d) introductory text, and (d)(2) are revised,

<sup>147</sup> See 75 FR 41712.



and paragraph (d)(3) is added to read as follows:

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

\* \* \* \* \*

(c) *Colors.* Unless otherwise stated in this paragraph, the basic colors of all labels covered by this section shall be process yellow or equivalent and process black. The label shall be printed full bleed process yellow. All type and graphics shall be print process black. Room air conditioner labels printed on packaging may be printed with a color contrasting background other than yellow.

(d) *Label types.* Except as indicated in (d)(3) of this section, the labels must be affixed to the product in the form of an adhesive label or a hang tag as follows:

\* \* \* \* \*

(2) *Hang Tags.* Labels may be affixed to the product in the form of a hang tag using cable ties, double strings connected through reinforced punch holes, or material with equivalent or greater strength. The paper stock for hang tags shall have a basic weight of not less than 110 pounds per 500 sheets (25 1/2 "x30 1/2 " index). When materials are used to attach the hang tags to appliance products, the materials shall be of sufficient strength to insure that if gradual pressure is applied to the hang tag by pulling it away from where it is affixed to the product, the hang tag will tear before the material used to affix the hang tag to the product breaks.

(3) *Labels for room air conditioners.* Labels for room air conditioners shall be printed on or affixed to the principal display panel of the product's packaging.

\* \* \* \* \*

■ 6. Amend § 305.12, to revise paragraph (f) to read as follows, remove paragraph (i)(4), and redesignate paragraphs (i)(5) through (i)(14) as (i)(4) through (i)(13):

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

\* \* \* \* \*

(f) *Content of labels for furnaces.* Content of labels for non-weatherized furnaces, mobile home furnaces, electric furnaces, and boilers manufactured before the compliance date of regional efficiency standards issued by the Department of Energy in 10 CFR part 430 for non-weatherized, and mobile home furnaces and content of labels for weatherized furnaces manufactured before the compliance date of regional efficiency standards for split-system air

conditioners issued by the Department of Energy in 10 CFR part 430.

(1) Headlines and texts, as illustrated in the prototype and sample labels in appendix L to this part.

(2) Name of manufacturer or private labeler shall, in the case of a corporation, be deemed to be satisfied only by the actual corporate name, which may be preceded or followed by the name of the particular division of the corporation. In the case of an individual, partnership, or association, the name under which the business is conducted shall be used. Inclusion of the name of the manufacturer or private labeler is optional at the discretion of the manufacturer or private labeler.

(3) The model's basic model number.

(4) The annual fuel utilization efficiency (AFUE) for furnace models as determined in accordance with § 305.5.

(5) Ranges of comparability consisting of the lowest and highest annual fuel utilization efficiency (AFUE) ratings for all furnaces of the model's type consistent with the sample labels in appendix L.

(6) Placement of the labeled product on the scale shall be proportionate to the lowest and highest annual fuel utilization efficiency ratings forming the scale.

(7) The following statement shall appear in bold print on furnace labels adjacent to the range(s) as illustrated in the sample labels in appendix L: For energy cost info, visit *productinfo.energy.gov*.

(8) The following statement shall appear at the top of the label as illustrated in the sample labels in appendix L: Federal law prohibits removal of this label before consumer purchase.

(9) No marks or information other than that specified in this part shall appear on or directly adjoining this label except that:

(i) A part or publication number identification may be included on this label, as desired by the manufacturer. If a manufacturer elects to use a part or publication number, it must appear in the lower right-hand corner of the label and be set in 6-point type or smaller;

(ii) The energy use disclosure labels required by the governments of Canada or Mexico may appear directly adjoining this label, as desired by the manufacturer;

(iii) The manufacturer may include the ENERGY STAR logo on the label for certified products in a location consistent with the sample labels in appendix L. The logo must be no larger than 1 inch by 3 inches 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 qualifying 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) Manufacturers of boilers shipped with more than one input nozzle to be installed in the field must label such boilers with the AFUE of the system when it is set up with the nozzle that results in the lowest AFUE rating.

(11) Manufacturers that ship out boilers that may be set up as either steam or hot water units must label the boilers with the AFUE rating derived by conducting the required test on the boiler as a hot water unit.

(12) Manufacturers of oil furnaces must label their products with the AFUE rating associated with the furnace's input capacity set by the manufacturer at shipment. The oil furnace label may also contain a chart, as illustrated in sample label 9B in appendix L, indicating the efficiency rating at up to three additional input capacities offered by the manufacturer. Consistent with paragraph (f)(9)(iii) of this section, labels for oil furnaces may include the ENERGY STAR logo only if the model qualifies for that program on all input capacities displayed on the label.

\* \* \* \* \*

■ 7. In § 305.13, revise paragraph (a) to read as follows:

**§ 305.13 Labeling for ceiling fans.**

(a) *Ceiling fans.* (1) *Content.* Any covered product that is a ceiling fan shall be labeled clearly and conspicuously on the package's principal display panel with the following information on the label consistent with the sample label in Appendix L to this part:

(i) Headlines, including the title "EnergyGuide," and text as illustrated in the sample labels in Appendix L to this part;

(ii) The product's estimated yearly energy cost based on 6 hours use per day and 12 cents per kWh;

(iii) The product's airflow at high speed expressed in cubic feet per minute and determined pursuant to § 305.5 of this part;

(iv) The product's energy use at high speed expressed in watts and determined pursuant to § 305.5 of this part as indicated in the sample label in appendix L of this part;

(v) The statement "Your cost depends on rates and use";

(vi) The statement "All estimates at high speed, excluding lights";

(vii) The statement “the higher the airflow, the more air the fan will move;”  
 (viii) The statement “Airflow Efficiency:      Cubic Feet Per Minute Per Watt”;

(ix) The address *ftc.gov/energy*;

(x) For fans fewer than 49 inches in diameter, the label shall display a cost range for 36” to 48” ceiling fans of \$2 to \$53.”;

(xi) For fans 49 inches or more in diameter, the label shall display a cost range for 49” to 60” ceiling fans of \$3 to \$29.”; and

(xii) The ENERGY STAR logo as illustrated on the ceiling fan label illustration in Appendix L for qualified products, if desired by the manufacturer. 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 qualifying covered products; such manufacturers may add the ENERGY STAR logo to labels only on those products that are covered by the Memorandum of Understanding;

(2) *Label size, color, and text font.* The label shall be four inches wide and three inches high. The label colors shall be process black text on a process yellow background. The text font shall be Arial or another equivalent font. The label’s text size, format, content, and the order of the required disclosures shall be consistent with ceiling fan label illustration of appendix L of this part.

(3) *Placement.* The ceiling fan label shall be printed on or affixed to the principal display panel of the product’s packaging.

(4) *Additional information.* No marks or information other than that specified in this part shall appear on this label, except a model name, number, or similar identifying information.

\* \* \* \* \*

■ 8. In § 305.15, redesignate paragraphs (c), (d), (e), and (f) as paragraphs (e), (f), (g), and (h); add new paragraphs (c) and (d); and revise paragraph (b) introductory text and newly redesignated paragraphs (f)(1) and (4) to read as follows:

**§ 305.15 Labeling for lighting products.**

\* \* \* \* \*

(b) *General service lamps.* Except as provided in paragraph (f) of this section, any covered product that is a general service lamp shall be labeled as follows:

\* \* \* \* \*

(c) *Specialty consumer lamps.* (1) Any specialty consumer lamp that is a vibration-service lamp as defined at 42 U.S.C. 6291, rough service lamp as defined at 42 U.S.C. 6291(30), appliance

lamp as defined at 42 U.S.C. 6291(30), plant light lamp; or shatter resistant lamp (including a shatter proof lamp and a shatter protected lamp) must be labeled pursuant to the requirements in paragraph (b).

(2) *Specialty Lighting Facts Label*

*Content.* All specialty consumer lamps not covered by paragraph (c)(1) of this section shall be labeled either in accordance with paragraph (b) of this section or as follows:

(i) The principal display panel of the product package shall be labeled clearly and conspicuously with the following information consistent with the Prototype Label      in Appendix L:

(A) The light output of each lamp included in the package, expressed as “Brightness” in average initial lumens rounded to the nearest five; and

(B) The estimated annual energy cost of each lamp included in the package, expressed as “Estimated Energy Cost” in dollars and based on usage of 3 hours per day and 11 cents (\$0.11) per kWh.

(C) The life, as defined in § 305.2(w), of each lamp included in the package, expressed in years rounded to the nearest tenth (based on 3 hours operation per day);

(ii) If the lamp contains mercury, the principal display panel shall contain the following statement:

“Contains Mercury For more on clean up and safe disposal, visit *epa.gov/cfl*.”

The manufacturer may also print an “Hg[Encircled]” symbol on package after the term “Contains Mercury.”

(iii) If the lamp contains mercury, the lamp shall be labeled legibly on the product with the following statement: “Mercury disposal: *epa.gov/cfl*” in minimum 8 point font.

(4) *Standard Lighting Facts label format.* Information specified in paragraph (c)(3) of this section shall be presented on covered lamp packages in the format, terms, explanatory text, specifications, and minimum sizes as shown in Prototype Labels      in appendix L and consistent in format and orientation with Sample Labels in appendix L. The text and lines shall be all black or one color type, printed on a white or other neutral contrasting background whenever practical.

(i) The Lighting Facts information shall be set off in a box by use of hairlines and shall be all black or one color type, printed on a white or other neutral contrasting background whenever practical.

(ii) All information within the Lighting Facts label shall utilize:

(A) Arial or an equivalent type style;

(B) Upper and lower case letters;

(C) Leading as indicated in Prototype Label      in appendix L;

(D) Letters that never touch;

(E) The box and hairlines separating information as illustrated in Prototype Labels      in appendix L; and

(F) The minimum font sizes and line thicknesses as illustrated in Prototype Label      in appendix L.

(4) *Bilingual labels.* The information required by paragraphs (c) of this section may be presented in a second language either by using separate labels for each language or in a bilingual label with the English text in the format required by this section immediately followed by the text in the second language. All required information must be included in both languages. Numeric characters that are identical in both languages need not be repeated.

(d) For lamps that do not meet the definition of general service lamp or specialty consumer lamp, manufacturers and private labelers have the discretion to label with the Lighting Facts label as long as they comply with all requirements applicable to specialty consumer lamps.

\* \* \* \* \*

(f)(1) The required disclosures of any covered product that is a general service lamp or specialty consumer lamp shall be measured at 120 volts, regardless of the lamp’s design voltage. If a lamp’s design voltage is 125 volts or 130 volts, the disclosures of the wattage, light output, energy cost, and life ratings shall in each instance be:

\* \* \* \* \*

(4) For any covered product that is a general service lamp or specialty consumer 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.

\* \* \* \* \*

■ 9. Revise paragraph (a)(1)(ii) introductory text of § 305.20 to read as follows:

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

(a) \* \* \*

(1) \* \* \*

(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. For plumbing products, the Web site may hyperlink to the disclosures using a prominent link labeled "Water Usage."

\* \* \* \* \*

■ 10. Revise Appendices G1, G2, G3, G4, G5, G6, G7, and G8 to read as follows:

**Appendix G1 to Part 305—Furnaces—Gas**

Furnace type	Range of annual fuel utilization efficiencies (AFUEs)	
	Low	High
Non-Weatherized Gas Furnaces—All Capacities .....	80.0	98.5
Weatherized Gas Furnaces Manufactured Before the Compliance Date of DOE Regional Standards—All Capacities .....	78.0	96.6
Weatherized Gas Furnaces Manufactured After the Compliance Date of DOE Regional Standards—All Capacities .....	—*	—*

\* to be announced.

**Appendix G2 to Part 305—Furnaces—Electric**

Type	Range of annual fuel utilization efficiencies (AFUEs)	
	Low	High
Electric Furnaces—All Capacities .....	100.0	100.0

**Appendix G3 to Part 305—Furnaces—Oil**

Type	Range of annual fuel utilization efficiencies (AFUEs)	
	Low	High
Non-Weatherized Oil Furnaces—All Capacities .....	83.0	95.4
Weatherized Oil Furnaces Manufactured Before the Compliance Date of DOE Regional Standards—All Capacities .....	78.0	86.1
Weatherized Oil Furnaces Manufactured After the Compliance Date of DOE Regional Standards—All Capacities .....	—*	—*

\* to be announced

**Appendix G4 to Part 305—Mobile Home Furnaces—Gas**

Type	Range of annual fuel utilization efficiencies (AFUEs)	
	Low	High
Mobile Home Gas Furnaces—All Capacities .....	80.0	96.5

**Appendix G5 to Part 305—Mobile Home Furnaces—Oil**

Type	Range of annual fuel utilization efficiencies (AFUEs)	
	Low	High
Mobile Home Oil Furnaces—All Capacities .....	75.0	86.6

**Appendix G6 to Part 305—Boilers (Gas)**

Type	Range of annual fuel utilization efficiencies (AFUEs)	
	Low	High
Gas Boilers—All Capacities .....	80.0	98.0

**Appendix G7 to Part 305—Boilers (Oil)**

Type	Range of annual fuel utilization efficiencies (AFUEs)	
	Low	High
Oil Boilers Manufactured—All Capacities .....	82.0	96.0

**Appendix G8 to Part 305—Boilers (Electric)**

Type	Range of annual fuel utilization efficiencies (AFUEs)	
	Low	High
Electric Boilers .....	100	100

■ 11. Amend appendix L by adding the image “Sample Ceiling Fan Label” to the end of the appendix to read as follows:

**ENERGYGUIDE**

Estimated Yearly Energy Cost  
**\$15**

Airflow  
**5,109**  
Cubic Feet Per Minute

Cost Range of Similar Models (49" – 60")  
\$3 | | \$29

- Based on 12 cents per kWh and 6 hours use per day
- Your cost depends on rates and use
- Energy Use: 58 Watts

The higher the airflow, the more air the fan will move  
Airflow Efficiency: 84 Cubic Feet Per Minute Per Watt

ENERGY STAR

All estimates at high speed, excluding lights

[ftc.gov/energy](http://ftc.gov/energy)

Sample Ceiling Fan Label

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 2014-14058 Filed 6-17-14; 8:45 am]

BILLING CODE 6750-01-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Chapter I

[Docket No. FDA-2013-N-0590]

RIN 0910-AG97

#### Implementation of the Food and Drug Administration Food Safety Modernization Act Amendments to the Reportable Food Registry Provisions of the Federal Food, Drug, and Cosmetic Act; Reopening of Comment Period

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

**ACTION:** Advance notice of proposed rulemaking; reopening of comment period.

**SUMMARY:** The Food and Drug Administration (FDA or we) is reopening the comment period for the advance notice of proposed rulemaking that appeared in the **Federal Register** of March 26, 2014. In the advance notice of proposed rulemaking, FDA solicited comments, data, and information to assist the Agency in implementing the FDA Food Safety Modernization Act (FSMA), which added new provisions to the Reportable Food Registry (RFR) requirements of the Federal Food, Drug, and Cosmetic Act (the FD&C Act). We are taking this action in response to a request for an extension to allow interested persons additional time to submit comments.

**DATES:** Submit either electronic or written comments by August 18, 2014.

**ADDRESSES:** You may submit comments, identified by Agency name, Docket No. FDA-2013-N-0590 and/or Regulatory Information Number (RIN) 0910-AG97, by any of the following methods:

#### Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

#### Written Submissions

Submit written submissions in the following way:

- *Mail/Hand delivery/Courier (for paper submissions):* Division of Dockets

Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

**Instructions:** All submissions received must include the Agency name, Docket No. FDA-2013-N-0590, and RIN 0910-AG97 for this advance notice of proposed rulemaking. All comments received may be posted without change to <http://www.regulations.gov>, including any personal information provided. For additional information on submitting comments, see the "Request for Comments" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

**Docket:** For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Ted Elkin, Center for Food Safety and Applied Nutrition (HFS-008), Food and Drug Administration, 5100 Paint Branch Pkwy, College Park, MD 20740, 240-402-2428; or April Hodges, Center for Veterinary Medicine (HFV-230), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240-276-9237.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

In the **Federal Register** of March 26, 2014 (79 FR 16698), we published an advance notice of proposed rulemaking with a 75-day comment period to request comments to assist us in implementing FSMA, which added new provisions to the RFR requirements of the FD&C Act. Interested persons were originally given until June 9, 2014, to comment on the advance notice of proposed rulemaking.

We have received a request for a 60-day extension of the comment period for the advance notice of proposed rulemaking. The request conveyed concern that the 75-day comment period did not allow sufficient time to develop a meaningful or thoughtful response to the advance notice of proposed rulemaking particularly in light of other FSMA-related rulemakings for which the Agency is also requesting comments.

We have considered the request and are reopening the comment period for the advance notice of proposed rulemaking for 60 days, until August 18, 2014. We believe that reopening the comment period an additional 60 days

allows adequate time for interested persons to submit comments without significantly delaying rulemaking on these important issues.

#### II. Request for Comments

Interested persons may submit either electronic comments regarding this document to <http://www.regulations.gov> or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at <http://www.regulations.gov>.

Dated: June 13, 2014.

**Leslie Kux,**

*Assistant Commissioner for Policy.*

[FR Doc. 2014-14213 Filed 6-17-14; 8:45 am]

BILLING CODE 4164-01-P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 301

[REG-121542-14]

RIN 1545-BM24

#### Participation of a Person Described in Section 6103(n) in a Summons Interview Under Section 7602(a)(2) of the Internal Revenue Code

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking by cross-reference to temporary regulations.

**SUMMARY:** In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations to modify existing regulations (TD 8091, amended by TD 9195) promulgated under section 7602(a) of the Internal Revenue Code to clarify that persons with whom the Internal Revenue Service or the Office of Chief Counsel contracts for services described in section 6103(n) and its implementing regulations may be included as persons designated to receive summoned books, papers, records, or other data and to take summoned testimony under oath. The text of the temporary regulations also serves as the text of these proposed regulations.

**DATES:** Written or electronic comments and requests for a public hearing must be received by September 16, 2014.