AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
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# FEDERAL REGISTER

Vol. 76 Thursday

No. 4 January 6, 2011

Part IV

## Federal Trade Commission

16 CFR Part 305

Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act (Appliance Labeling Rule); Final Rule

**FEDERAL TRADE COMMISSION**

**16 CFR Part 305**

**RIN 3084–AB15**

## Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act (Appliance Labeling Rule)

**AGENCY:** Federal Trade Commission.

**ACTION:** Final rule.

**SUMMARY:** The Federal Trade Commission (FTC or Commission) is adopting final amendments to its Appliance Labeling Rule, to implement section 325 of the Energy Independence and Security Act of 2007. The amendments establish labeling requirements for televisions.

**DATES:** The amendments published in this document will become effective on May 10, 2011, with the exception of the amendments to § 305.20, which will become effective on July 11, 2011. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 10, 2011.

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

**FOR FURTHER INFORMATION CONTACT:** Hampton Newsome, (202) 326–2889, Attorney, or Maura Dundon, (202) 326–3311, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Room M–8102B, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

**SUPPLEMENTARY INFORMATION:**

### I. Introduction

Section 325 of the Energy Independence and Security Act of 2007 (EISA), Public Law 110–140, which amends the Energy Policy and Conservation Act (EPCA), 42 U.S.C. 6291 *et seq.,* authorizes the Commission to require energy cost disclosures for televisions and certain other consumer electronics, including personal computers, cable or satellite set-top boxes, stand-alone digital video recorder boxes, and personal computer monitors. Pursuant to this authority, the Commission issued a Notice of Proposed Rulemaking (NPRM) seeking comment on proposed energy labels for televisions.[1] Although the NPRM did not propose requirements for other consumer electronics, it requested comment on whether such disclosures would assist consumers. On April 16, 2010, the Commission held a public meeting to augment the written comments.

Having reviewed the written and oral comments, the Commission now publishes the final amendments to the Appliance Labeling Rule, 16 CFR part 305.[2] The amendments require manufacturers to affix an EnergyGuide label to televisions. The label will disclose the unit's estimated annual energy cost and a comparison of energy costs to similar units. The amendments also require paper catalogs and Web sites to disclose the energy information for the televisions they offer for sale. These new requirements will help consumers who want to purchase energy efficient televisions.

This Notice provides background on the Commission's statutory authority, discusses the public comments received in response to the NPRM and at the public hearing, describes the amendments to the Appliance Labeling Rule and the Commission's reasons for promulgating the amendments, and analyzes the impact of those amendments pursuant to the Paperwork Reduction and Regulatory Flexibility Acts.

### II. Background

The current Appliance Labeling Rule requires energy disclosures for a variety of home appliances ("covered products"), such as refrigerators and dishwashers. The Rule requires manufacturers to affix a distinctive yellow and black EnergyGuide label to most covered products. For most covered products, the EnergyGuide labels disclose the products' estimated annual energy cost based on Department of Energy (DOE) test procedures, as well as an energy cost comparison to similar products. Energy cost disclosures must also appear in paper catalogs and on Internet sites offering the products for sale. The Rule allows manufacturers to place the U.S. Government ENERGY STAR logo on labels for products that qualify for that program.[3]

Televisions are covered products under EPCA. However, in 1979, the Commission determined not to require labeling because there was little variation in energy use between models and energy costs per model were generally low.[4] In 2007, the Commission revisited labeling televisions as part of a broad review of the EnergyGuide label's effectiveness.[5] Commenters urged the Commission to require television labels because many modern televisions use as much, or more, electricity than products labeled under the current Rule, and energy use varies significantly between similarly sized models. The Commission therefore concluded that energy labeling for televisions likely would assist consumers in purchasing decisions, but noted that DOE test procedures dating from the 1970s were outdated and inapplicable to most modern televisions.[6] Absent an applicable DOE test procedure, the Commission had no authority to require an alternate procedure.

In late 2007, Congress amended EPCA, giving the Commission discretion to require energy disclosures for televisions and four other consumer electronic products[7] even if DOE has not published its own test procedures.[8] Specifically, the Commission may require disclosures if it identifies adequate non-DOE test procedures and finds that disclosures will likely assist consumers to make purchasing decisions.[9] However, the Commission cannot require disclosures if it finds they would not be technically or economically feasible.[10] The amended law also empowers the Commission to consider alternatives to traditional product labels for these consumer electronics.[11] Finally, the amendments

[1] 75 FR 11483 (Mar. 11, 2010).

[2] The Appliance Labeling Rule's full title is "Rule Concerning Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act."

[3] ENERGY STAR is a voluntary government labeling program that identifies high-efficiency products. The Environmental Protection Agency (EPA) administers the ENERGY STAR program. *See http://www.energystar.gov.*

[4] The NPRM discusses the statutory and administrative background of television labeling in greater detail. 75 FR at 11483–84.

[5] 72 FR 49948, 49962 (Aug. 29, 2007); 72 FR 6836, 6857–58 (Feb. 13, 2007).

[6] *Id.* Until October 2009, DOE's regulations contained a test procedure created for analog cathode-ray tube (CRT) products and relied on a black and white static test pattern. DOE repealed that television test procedure. 74 FR 53640 (Oct. 20, 2009).

[7] The four products are personal computers, cable or satellite set-top boxes, stand-alone digital video recorder boxes, and personal computer monitors. 42 U.S.C. 6294(a)(2)(I)(i).

[8] *Id.* § 6294(a)(2)(I)(ii). If DOE publishes applicable test procedures for the specified consumer electronics, the labeling requirements are no longer discretionary: the Commission must issue disclosure requirements using the DOE procedures within 18 months of their publication. *Id.* § 6294(a)(2)(I)(i).

[9] *Id.* § 6294(a)(2)(I)(ii).

[10] *Id.* § 6294(a)(2)(I)(iv).

[11] Specifically, EPCA empowers the Commission to "prescribe labeling *or other disclosure*

provide the Commission with authority to require labeling or other disclosures for any other consumer product not specifically listed in the statute if the FTC determines such labeling is likely to assist consumers in making purchasing decisions.[12]

In response to the EPCA amendments, on March 16, 2009, the Commission published an Advance Notice of Proposed Rulemaking (ANPR) seeking comment on the need for television energy disclosures.[13] Given the lack of an applicable DOE test procedure, the ANPR proposed requiring a recently developed test procedure adopted by the ENERGY STAR program. The ANPR also sought comment on the format of the television disclosures and the need for disclosures for other consumer electronics.

## III. Notice of Proposed Rulemaking

After reviewing the ANPR comments, the Commission published an NPRM on March 11, 2010, which proposed a label with energy disclosures derived from the ENERGY STAR test.[14] The label would disclose the television's annual energy cost in dollars, its annual energy use in kilowatt hours, and an energy cost comparison with televisions of similar screen sizes. The proposed label would employ a black-on-yellow design, similar to EnergyGuide labels currently in use for other products. Manufacturers would affix the labels to the front of televisions, so that they are visible to consumers looking at models displayed in retail stores. The NPRM provided three choices for the label shape and attachment: a rectangular horizontal adhesive label affixed to the bezel (the rim bordering the screen); a vertical rectangular label essentially identical to the horizontal label; and a triangular static cling label affixed to the bottom right-hand corner of the screen. The NPRM sought comment on whether the bezel labels should be affixed in a consistent location, whether some televisions were too small for the proposed labels, and whether the label disclosures should appear on television packaging.

In addition, the NPRM proposed requiring paper catalogs and Web sites selling televisions to include either a copy of the EnergyGuide label or a text statement of the product's annual energy cost. Paper catalogs and Web sites choosing the latter option would not have to include the energy cost comparison.

Finally, the NPRM sought comments on labeling other consumer electronics, but did not propose requiring labels for those products.

## IV. Public Comments and Final Rule

Twenty-three commenters responded to the NPRM, and the Commission received further public comment during an April 16, 2010, public meeting.[15] The Commission's responses to those comments are detailed below.

### *A. The Need for Television Disclosures*

In its NPRM, the Commission explained that television labels are likely to assist consumers in their purchasing decisions because televisions consume large amounts of electricity, energy use varies considerably among competing models, and consumers are likely to use energy information in their purchasing decisions.[16] No commenter challenged these facts or opposed a disclosure requirement. Indeed, although there were disagreements on implementation details, commenters from all sectors supported disclosure, including manufacturers, retailers, private individuals, utilities, consumer groups, and environmental groups.[17] In light of these comments and the reasons given in the NPRM, the Commission reaffirms its determination that television energy disclosures are likely to assist consumers in making purchasing decisions.

### *B. Test Procedure for Determining Energy Usage*

As discussed below, the final amendments adopt the NPRM's proposal to use the EPA's ENERGY STAR test procedure to provide data for the disclosure.

*Background:* Where no "applicable" DOE test exists, EPCA authorizes the Commission to use "adequate non-Department of Energy test procedures" to obtain information for energy disclosures.[18] DOE does not currently have a test procedure for televisions.[19] Accordingly, the NPRM proposed using the EPA's ENERGY STAR test procedure, which is based on the International Electrotechnical Commission (IEC) procedure.[20]

The NPRM noted two additional issues related to test procedures. First, DOE was planning to develop a test procedure and energy efficiency standards for televisions. Second, CEA was developing its own test procedure, although it was unclear if CEA had finalized its protocol. Accordingly, the Commission sought comments on whether it should wait to finalize disclosure rules until DOE, CEA, or both, completed their work.[21]

*Comments:* No commenters identified any inadequacy with the ENERGY STAR test procedure. However, CEA urged the use of its own standard, CEA–2037, which it published in March 2010.[22] According to CEA, this standard covers all necessary measurements and is also fully consistent with ENERGY STAR's testing criteria.

Sharp, Sony, and Mitsubishi also supported using CEA–2037. Sharp characterized CEA–2037 as the "clearest,

*requirements* for the energy use of" the covered consumer electronic products. *Id.* § 6294(a)(2)(I) (emphasis added). EPCA also allows discretionary application of the label content required for other covered products (*e.g.,* energy cost comparison ranges). *Id.* § 6294(c)(9).

[12] Under EPCA, a "consumer product" means any article which consumes energy and is distributed in commerce for personal use or consumption by individuals. *Id.* § 6291(1).

[13] 74 FR 11045 (Mar. 16, 2009). The comments received in response to the ANPR can be found at *http://www.ftc.gov/os/comments/tvenergylabels/index.shtm.*

[14] 75 FR 11483.

[15] The written comments and a transcript of the April 16 public meeting are online at: *http://www.ftc.gov/os/comments/tvenergylabelsnprm/index.shtm.* Unless otherwise stated, the citations for comments in this Notice are: American Council for an Energy-Efficient Economy (ACEEE), #547194–00030; Adamo, #547194–00005; Bang & Olufsen, #547194–00012; People's Republic of China (China), #547194–00031; Consortium for Energy Efficiency (CEE), #547194–00026; Consumer Electronics Association (CEA), #547194–00021; Consumer Electronics Retailers Coalition (CERC), #547194–00015; Consumers Union, #547194–00013; Dabney, #547194–00004; Earthjustice, #547194–00020, #547194–00022, #547194–00023, #547194–00024, #547194–00025; Edison Electric Institute, #547194–00017; Heizer, Mark, #547194–00003; Jarvis, Eric, #547194–00002; Miles, Christopher, #547194–00006; Mitsubishi Digital Electronics America (Mitsubishi), #547194–00019; National Cable & Telecommunications Association, #547194–00018; Natural Resources Defense Council (NRDC), #547194–00011; Northeast Energy Efficiency Partnerships (NEEP), #547194–00014; Pacific Gas and Electric Company, Sacramento Municipal Utility District, Northwest Efficiency Alliance (PG&E), #547194–00027; Panasonic Corporation of North America (Panasonic), #547194–00029; Rollins, Matthew, #547194–00009; Sharp Laboratories of America (Sharp), #547194–00028; Sony Electronics Inc. (Sony), #547194–00016. Citations to the Commission's public meeting are to the transcript page number (Meeting Tr. at x).

[16] 75 FR at 11484–11485.

[17] *See, e.g.,* Mitsubishi; CERC; Miles, Christopher; Rollins, Matthew; PG&E; Consumers Union; and Earthjustice.

[18] 42 U.S.C. 6294(a)(2)(I)(ii).

[19] 74 FR at 53641 (DOE notice repealing its obsolete standard and stating that "DOE will soon begin a rulemaking process to establish a new Federal test procedure * * *").

[20] 74 FR at 11485 ("[T]he ENERGY STAR tests seek to reflect the manner in which consumers are likely to use the product in their homes.").

[21] *Id.*

[22] CEA submitted a copy of CEA–2037, which is copyright protected, as a confidential attachment to its comment. The full procedure is available for purchase on CEA's Web siteWeb site at *http://www.ce.org/Standards/browseByCommittee_7559.asp.*

least ambiguous measurement method" and "harmonious" with the ENERGY STAR program. Sony noted that CEA–2037 was developed by CEA's standards committee with industry input and is consistent with IEC and ENERGY STAR test procedures. Sony also stated that CEA–2037 will provide "additional details to assure that measurements are consistent and repeatable." Mitsubishi noted that the recent version of the ENERGY STAR test references CEA–2037 for some measurement procedures.

Two commenters, NRDC and NEEP, urged the Commission to use the ENERGY STAR test.[23] NRDC noted that manufacturers already use the IEC procedures incorporated into ENERGY STAR and, thus, should be able to adapt quickly within the proposed six month effective date. Moreover, NRDC viewed the CEA standard as "overly restrictive" because it does not let the tester use any mode other than the home (standard) mode. Similarly, PG&E commented that the procedure adopted should be able to adapt to new television features, such as Internet connectivity, as they emerge.

NRDC also raised concerns that the development process for CEA–2037 lacked transparency and did not include all stakeholders.[24] CEA disagreed, stating that "the claim that somehow the CEA standard was not done in an open and transparent way is simply untrue."[25]

Finally, without commenting on the relative merits of CEA–2037, ACEEE and Earthjustice urged the Commission to adopt the ENERGY STAR standard rather than delaying rulemaking for the DOE standard.

*Discussion:* The final amendments require manufacturers to use the test procedure in the ENERGY STAR program requirements (Version 4.2).[26] For the reasons stated in the NPRM, the ENERGY STAR test procedure is adequate to test televisions as they are typically used by consumers, fulfilling EPCA's requirement that the Commission select an adequate non-DOE test.[27] Moreover, using the ENERGY STAR procedure would provide uniformity across the U.S. government, allowing manufacturers to use a single test for ENERGY STAR and the EnergyGuide label. In light of the unchallenged adequacy of the ENERGY STAR test and the uniformity it would provide, the Commission sees no compelling reason to depart from its proposal.

When DOE completes its own rulemaking to develop a television test procedure for use in that agency's efficiency standards program, the Commission will issue conforming amendments consistent with EPCA's requirement that the labels use information from DOE test procedures when such procedures are available.[28]

*C. Content*

The final amendments require two primary label disclosures: (1) The television's product-specific estimated annual energy cost, calculated using a standard electricity rate and an estimate of daily hours of television use; and (2) a comparison with the annual energy cost of other televisions with similar screen sizes.

1. Product-Specific Estimated Annual Energy Cost

*Background:* Under EPCA, the Commission may require the energy disclosure to include estimated annual energy cost or another useful measure of energy consumption.[29] In its NPRM, the Commission proposed that the label list the television's estimated annual energy cost in dollars and its annual energy use in kWh.

To calculate these disclosures using the ENERGY STAR test, the NPRM proposed a standard electricity cost and a standard "duty cycle" (an estimate of the hours the television is on and in standby mode per day). Specifically, the NPRM proposed a standard rate of 11 cents per kWh, which incorporates 2009 DOE cost data rounded to the nearest cent, and a duty cycle of 5 hours on and 19 hours standby per day ("the 5/19 duty cycle").[30] The NPRM proposed the 5/19 duty cycle because the ENERGY STAR program uses that duty cycle to provide annual energy use estimates.[31] The NPRM further reasoned that regardless of actual average usage, the 5/19 duty cycle would establish consistent energy use and cost figures, allowing consumers to compare products.

The NPRM did not propose that the amount of energy consumed by integrated functions, such as a built-in DVD player or Internet connectivity, be included in the annual energy use and cost disclosed on the label. However, the NPRM requested comment on whether the label should inform consumers that the annual energy cost does not include the operation of integrated functions.

*Comments:* Multiple commenters supported the proposal to calculate annual energy cost and use based on the assumptions of 11 cents per kWh and a 5/19 duty cycle.[32] Consumers Union, however, suggested using an 8/16 duty cycle, arguing that 5 hours underestimates total on-time. Consumers Union also asked the Commission to investigate usage patterns for smaller televisions, which consumers may use for less time because they are placed in secondary locations, like kitchens. Similarly, EEI proposed using a 2/22 or 3/21 duty cycle for televisions smaller than 27″ because consumers use them less than larger televisions.

With the exception of China, no commenter argued that the label's energy use and costs calculations should include the energy consumed by integrated functions. Commenters had varying views, however, regarding whether the label should disclose that it does not include the energy use of those integrated functions. CEE recommended that the label state that integrated functions are not included. On the other hand, Consumers Union opposed such a disclosure, reasoning that integrated functions do not significantly add to energy consumption. It added, however, that the Commission should revisit this issue if new integrated functions increase energy usage.[33] Mitsubishi took

[23] While NEEP did not specifically address the energy test procedure, it incorporated NRDC's positions. *See* NEEP at 1 ("[W]e would like to express our explicit support for the comments submitted by * * * Natural Resources Defense Counsel.").

[24] NRDC; Meeting Tr. at 22, 33.

[25] Meeting Tr. at 23–24, 40–41.

[26] The test procedure comprises the ENERGY STAR Program Requirements, Product Specification for Televisions, Eligibility Criteria Version 4.2 (Adopted April 30, 2010); the Test Method (Revised Aug, 2010); and the CEA Procedure for DAM Testing: For TVs, Revision 0.3 (Sept. 8, 2010).

[27] 75 FR at 11485. Although some commenters argued in favor of the CEA–2037 test, neither they nor other commenters suggested that the ENERGY STAR procedure is inadequate. The Commission does not make any conclusions about the adequacy of CEA–2037 or the transparency of its development.

[28] *See* 42 U.S.C. 6293(c) and 6294(a)(2)(I)(i). The switch to the DOE test procedure will trigger EPCA's requirement that television manufacturers submit annual energy reports to the Commission derived from DOE test procedures. 42 U.S.C. 6296(b)(4); 16 CFR 305.8. At that time, the Commission will set an annual reporting date for television manufacturers. However, both before and after the switch to the DOE test, manufacturers must retain their test data until at least two years after production of the model has terminated. 16 CFR 305.21(a). The Commission may request this data with 30 days notice. *Id.* § 305.21(b).

[29] 42 U.S.C. 6294(c)(1). EPCA gives the Commission discretion to choose the content of television disclosures. 42 U.S.C. 6294(a)(2)(I)(ii), (c)(9).

[30] 5 FR at 11488 (citing DOE energy data published at 74 FR 26675 (June 3, 2009)).

[31] The NPRM also reasoned that the 5/19 duty cycle was within the range of usage provided by ANPR commenters.

[32] *See, e.g.,* Mitsubishi and Panasonic.

[33] Consumer Union also noted that while 20% of televisions sold in the United States in 2010 are forecasted to include Internet connectivity, it is too early to determine if consumers will use this function in a way that significantly increases energy

no position on the disclosure, but asked that any such requirement only apply to models with an integrated function.

Finally, Consumers Union raised an issue about which there was no specific proposal in the NPRM. Specifically, it voiced concern about retesting a television model's energy use, arguing that manufacturers should be required to retest their models whenever "a product design is changed" in order to determine whether the energy information on the label is still accurate.

*Discussion:* The final amendments adopt the NPRM's proposal to use 11 cents per kWh and a 5/19 duty cycle to calculate annual estimated energy cost and use.[34] No commenters objected to the 11 cents per kWh energy rate.[35]

As some commenters noted, consumers may use their televisions for more or less than five hours per day, but the 5/19 duty cycle provides uniformity between the EnergyGuide and ENERGY STAR's publicly available use estimates, reducing potential consumer confusion. Moreover, the uniform 5/19 duty cycle allows consumers to compare costs between products even if the estimate over or underestimates actual usage. Finally, using different duty cycles based on screen size as suggested by EEI and Consumers Union would prevent consumers from easily comparing the energy use of larger televisions to smaller ones. The Commission, therefore, declines to use a different duty cycle.

The final amendments do not require the label's annual energy calculations to include the energy consumed by integrated functions, nor do they require a disclosure that the integrated functions' energy use is not included. Neither including the energy consumed by integrated functions nor disclosing that those functions' energy use is excluded is likely to assist consumers because the functions currently consume little additional electricity. Moreover, an additional disclosure about the exclusion of integrated functions' energy use would crowd the label. If evidence indicates that integrated functions, especially Internet connectivity, implicate significant new energy use, the Commission may consider amending the Rule.[36]

Lastly, the amended Rule does not specify when manufacturers must retest their models to determine whether the energy information on the label remains accurate. Manufacturers are in the best position to determine when a design change could alter energy consumption, and therefore, when retesting is needed. Manufacturers whose labels do not contain accurate energy information because of design changes will violate 16 CFR 305.4.

2. Comparative Information

*Background:* Under EPCA, the Commission may require disclosure of comparative energy consumption information for similar products.[37] The NPRM, therefore, proposed requiring a scale on the label comparing televisions of similar diagonal screen sizes in categories of 10" increments. The categories would not separate products by display technology (*e.g.,* they would not compare plasma screens only to other plasma screens). The endpoints of each scale would represent the highest and lowest energy consumption of models on the market in that category, using ENERGY STAR energy data.[38] This data appeared to cover most products on the market, providing ranges that reasonably reflect the energy use of currently available models.[39]

*Comments:* Commenters generally favored including comparative information on the label, and agreed that screen size, rather than display technology or other factors, should be the basis of comparison.[40] However, many commenters (ACEEE, CEA, CEE, CERC, Consumers Union, Mitsubishi, NRDC, PG&E, Sharp, and Sony) noted that the NPRM's proposed 10″ increments were too large because each proposed category would include several common screen sizes.[41] Mitsubishi and a Natural Resources Canada representative explained that consumers tend to shop by screen size, so the Commission's categories would prevent them from easily comparing the products they were considering.[42]

Many commenters, including CEA, Consumers Union, NRDC, Panasonic, PG&E, and Sony, presented specific proposals for grouping televisions into smaller categories of approximately 4″–5″ increments, which place only one or two commonly sold screen sizes in each category.[43] NRDC additionally cautioned that the ranges should not allow manufacturers to game the system by slightly increasing their screen size to get into the next higher category, thus appearing more energy efficient in comparison to larger screens. CEE, however, voiced concern that the smaller proposed categories would be "too granular" and would prevent consumers from realizing that they could save energy costs by choosing a smaller screen size.

*Discussion:* The final amendments require the labels to compare televisions of similar screen sizes. The Commission agrees that the comparison categories should facilitate consumers' easy comparison of similar products, which reflects how they shop in practice. Accordingly, the final amendments adopt the commenters' proposals to reduce the size of the categories to 4–5″ in order to place only one or two commonly sold screen sizes in each category.[44] Most of the common screen sizes fall towards the beginning or middle of each category, which should reduce any incentive for "gaming" the

use. However, China commented that Internet Protocol Television ("IPTV") has substantially different energy consumption and usage patterns from other televisions. Therefore, China recommended either exempting IPTVs from the labeling rule, including a disclosure about IPTVs on the proposed label, or creating a separate label for such televisions.

[34] The final amendments also adopt the NPRM's proposal to include additional information on the label consistent with other EnergyGuide labels, including manufacturer name, model number, and the ENERGY STAR logo (where applicable). The label excludes other information, such as the model's screen size or type, because manufacturers routinely provide this information elsewhere and its inclusion would clutter the label.

[35] China requested that the Commission provide a formula to determine the annual energy cost. The ENERGY STAR test and amended Rule sections 305.5(d) and 305.17(f) provide the information necessary to calculate the annual energy cost. The Commission will provide further written guidance to business as necessary to help them comply with the Rule, and Commission staff are also available to discuss compliance directly with manufacturers.

[36] The Commission is not exempting or treating IPTVs differently at this time. There is insufficient information on the record concerning how consumers use IPTV and whether it differs from their use of other televisions.

[37] 42 U.S.C. 6294(c)(1), (c)(9).

[38] The data were submitted voluntarily by manufacturers to qualify their models for ENERGY STAR certification under ENERGY STAR 3.0.

[39] *See, e.g.,* Steven Castle, Stricter Energy Star Standards for TVs Coming—Again, Electronic House, May 28, 2009, *http://www.electronichouse.com/article/stricter_energy_star_standards-for-tvs-coming-again/* ("Most TVs on the market can meet the [ENERGY STAR 3.0] spec.").

[40] *See e.g.,* ACEEE, CEA, CEE, CERC, Consumers Union, Mitsubishi, NRDC, PG&E, Sharp and Sony.

[41] The majority of sales tend to cluster around fixed screen sizes: 19″, 22″, 26″, 32″, 37″, 40″, 42″, 46″, 55″, and 65″. *See* CEA and PG&E. An analysis of the data submitted by commenters also shows a cluster of sales around the 15″ screen size. The NPRM's proposal would have grouped two or three of these screen sizes into most categories.

[42] Mitsubishi; Meeting Tr. at 67–68. The Canadian regulators also are engaged in a process to require energy labels for televisions.

[43] The commenters offered slightly different proposals for each category size. The one significant difference among the proposals, however, involved smaller televisions. CEA, Panasonic, Sony, and PG&E proposed keeping televisions from 0–20″ in one cagtegory, whereas NRDC proposed dividing these televisions into three categories.

[44] The amended Rule includes a table with the ranges at 16 CFR 305.17(f)(5). The final amendments divide smaller televisions into separate categories, thereby keeping the commonly sold screen sizes of 19″ and 15″ in their own categories. Given the apparent paucity of smaller television models covered by the amended Rule, the 15″ category covers models from 0–16″.

system by slightly increasing screen size in order to move up into the next category.

CEE's concern that smaller screen size increments will prevent consumers from comparing smaller screens to larger screens is not persuasive. Because consumers tend to shop by screen sizes, categories allowing them to easily compare energy costs for the same screen sizes should help them choose among the models that interest them. Moreover, the estimated annual energy cost, which is the label's primary disclosure, allows for easy comparisons across all categories for those consumers who wish to compare different screen sizes.

The comparison ranges are derived from ENERGY STAR data, as proposed in the NPRM. If a model's energy cost falls outside the high or low end of the comparability range, manufacturers must place the product on the very end of the scale (the high or low end as appropriate).[45]

*D. Coverage*

As detailed below, the final amendments: (1) Require a label visible from the front of all televisions, except for battery-powered models; and (2) do not require labels on boxes.

1. Labels Visible From the Front of All Televisions; Battery Powered Excluded

*Background and Comments:* The NPRM proposed that all televisions bear the EnergyGuide label on the screen or bezel.[46] The Commission reasoned that these labels would be easily visible to consumers and would assist them in comparing energy consumption. Bang & Olufsen argued that "label[ing] every single product is inappropriate" because many of the labels will not be visible to consumers before they purchase the item. Instead, it argued that only televisions used in displays should have a label. Sony likewise commented that only display models should bear physical labels because labeling all televisions would be "very labor intensive and costly." However, at the Commission's public meeting, CERC indicated that manufacturers do not designate certain televisions as display models.[47]

CEA and Sharp argued that the Commission should exempt battery-powered televisions. CEA explained that battery-powered televisions are unlike standard televisions in design, energy consumption, and consumer use. Unlike standard televisions, battery-powered models are mobile, can operate on battery power without being connected to the local mains (*i.e.,* into the wall socket), and consume little electricity in order to extend battery life and facilitate mobility. CEA also explained that unlike standard televisions, consumers routinely consider battery life when purchasing a battery-powered television.

*Discussion:* The final amendments require that all televisions bear a label, not just display models. In practice, retailers do not receive units designated for display by manufacturers. Therefore, limiting the labeling requirements to only certain display models would necessitate the development of a separate regulatory scheme to, among other things, ensure that manufacturers label a sufficient number of models and send those models to retailers, and that retailers display only those particular models. Further, labeling each model provides useful energy consumption information to consumers after they purchase the televisions. Given the need to develop numerous regulations for display models and the benefits that labeling each model provides to consumers, the Commission has determined to require the labeling of all covered units.

The final amendments do not cover battery-powered televisions. This rulemaking has focused on standard televisions, which are designed to be powered exclusively by being plugged directly into a wall outlet. Battery-powered televisions differ significantly from standard televisions: they may be powered by a rechargeable, built-in battery; a supplementary external power supply connected directly to a wall outlet (*e.g.,* an AC adapter); or disposable inserted batteries (*e.g.,* AA alkaline batteries). Although adequate tests may exist to measure these factors, no commenters identified which tests would provide useful energy information to consumers.[48] Accordingly, the Commission declines to cover battery-powered televisions at this time.

2. Boxes Not Labeled

*Background and Comments:* The NPRM sought comment on whether manufacturers should be required to label product packaging, as well as the televisions themselves, because some retailers place boxes in showrooms. Five commenters (Consumers Union, Earthjustice, ACEEE, CEE, and NEEP) advocated labeling boxes, arguing that box labels provide a back-up source of information in case the label is not visible on the product itself.[49] Earthjustice argued that labeling boxes would help consumers ensure that the model they purchased matched the energy efficiency of the model displayed. It also suggested that retailers may display boxes in addition to or rather than unboxed display models. Similarly, ACEEE stated that retailers may display boxes in a different location from the display models.

Several commenters disagreed, asserting that labeling boxes would not provide useful information. CEA, Mitsubishi, and Sharp argued that the box label would be duplicative. They observed that retailers usually display a television out-of-the-box, and consumers would usually examine a labeled display model or online model before purchase. Sony, Mitsubishi, and Panasonic added that many consumers never see the box prior to purchase, or may never see the box at all if the television is delivered and assembled for them.[50] Additionally, five commenters (CEA, Mitsubishi, Panasonic, Sharp, and Sony) explained that manufacturers print boxes many months before obtaining final test results of the model's energy consumption. Given this practice, a box labeling requirement, in their view, would likely force manufacturers to affix adhesive labels to the boxes after they are printed, rather than printing the disclosure on the box directly.

[45] NRDC reasserted its preference for a one through five star ranking system, stating that ranking systems in other countries have motivated manufacturers to produce efficient models. The Commission's prior studies of the EnergyGuide and light bulb labels, however, suggested that the five-star rating system was more likely to cause confusion with ENERGY STAR than other methods of communicating energy use. *See* 74 FR 57950, 57956 (Nov. 10, 2009); 72 FR 6836, 6844–46 (Feb. 13, 2007). The final amendments, therefore, do not employ such a rating system.

[46] EPCA gives the Commission discretion to chose the location of television disclosures. 42 U.S.C. 6294(a)(2)(I)(ii), (c)(3), (c)(9).

[47] Meeting Tr. at 126.

[48] The ENERGY STAR television test covers battery-powered models, but it specifies that the unit must be "connected to a mains power source" during the test (*i.e.,* plugged into the wall outlet, rather than using the battery). ENERGY STAR Program Requirements, Product Specification for Televisions, Eligibility Criteria Version 4.2 (Adopted April 30, 2010), *supra* note 26, ¶¶ 2.1.1 and 1.G.1. That test does not measure the energy required to recharge the battery itself, nor can it account for the use of disposable alkaline batteries. The commenters did not address whether other tests exist to measure these factors. In addition, any label for a battery-powered television would need to avoid the possibility of consumers misinterpreting cost disclosures as representations about battery life or the cost of disposable batteries.

[49] CEE, however, stated that the Commission should require box labeling only if costs are not unduly burdensome.

[50] CERC commented that labeling both the television and the box may cause "inconsistent or erroneous messaging," but did not elaborate on the nature of the problem.

According to commenters, this would be labor and cost intensive.

*Discussion:* The final amendments do not require box labels. Although retailers may in some cases display boxes to consumers pre-purchase, the comments indicate that consumers typically examine a display model before purchase. Rather than impose additional cost, substantial in the manufacturers' opinions, to label boxes, the amended Rule relies on labeled models to convey energy cost information. Should this approach prove inadequate, the Commission may revisit the requirement.[51]

*E. Label Format*

The final amendments require that all covered televisions bear a physical EnergyGuide label that is visible from the front of the product. Additionally, as detailed below, the final amendments increase the size of the comparison scale and require a black-on-yellow color scheme; require a uniform label size; allow a choice between three label formats, including rectangular labels, triangular labels, and an alternate format not affixed directly to the front of the television; do not allow an electronic label in lieu of a physical label; and provide guidance on the label's location to promote uniformity.

1. Size of Comparison Scale and Color Scheme

*Background and Comments:* The NPRM proposed presenting comparative energy cost information via a scale similar to that used on appliance labels. While commenters generally supported this approach, ACEEE, Consumers Union, Earthjustice, NEEP, NRDC, and PG&E voiced concern about the scale's visibility. Two commenters (Earthjustice and NRDC) noted that televisions are routinely displayed high on showroom walls, and that consumers could not read the comparative information on the proposed labels at that distance. Consumers Union added that larger font sizes would also assist consumers who may have poor eyesight.

*Discussion:* In response to these concerns, the Commission has for all three label formats increased the comparison information's size and changed its design to improve visibility. The overall size of the labels will not increase significantly.[52] Figure 1 below compares the proposed label on the left and the new label on the right:

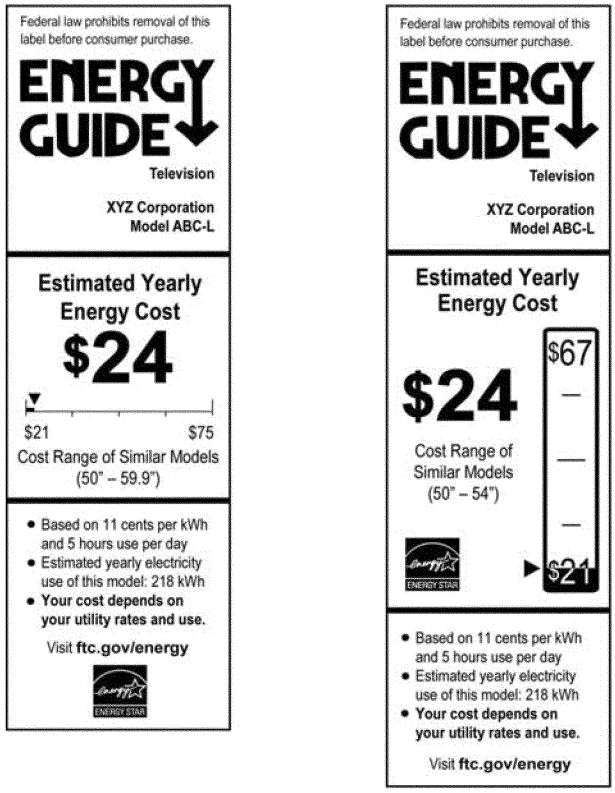



**Figure 1: Proposed label (left); New label (right)**

Sharp and CEA proposed yellow type on black background, which reverses the standard EnergyGuide scheme. They argued that such an approach would interfere less with the aesthetics of the screen while retaining visibility. The final Rule, however, continues to require the familiar black-on-yellow EnergyGuide design. This uniform color scheme is likely to help consumers already familiar with EnergyGuide

[51] As discussed below in section IV.E.2, manufacturers have the option of labeling the boxes of televisions smaller than 9".

[52] The triangular label's legs increase from 4.2″ to 4.5″. The horizontal label's width increases from 4.7″ to 5.23″. The vertical label's height increases from 4.7″ to 5.5″.

labels better recognize and use the label's information.

2. Uniform Label Size

*Background and Comments:* The NPRM proposed one size for the rectangular labels and one for the triangular label. The Commission requested comment on whether some models were too small for the proposed label. In response, the Commission received varying comments. Four commenters (NRDC, NEEP, CEA, and Sony) proposed scaling the label size to screen size. Specifically, NRDC proposed that screens larger than 32″ (measured diagonally) should have larger labels than those proposed in the NPRM, and CEA stated that televisions smaller than 22″ should have smaller labels than those proposed. Additionally, the government of China recommended exempting televisions smaller than the label, and CERC stated that "[i]t would not be practical" to require screen labels for televisions smaller than 9.″ CERC noted that such units are usually sold in boxes carried by the consumer to the counter, and thus should be labeled on the box rather than the screen.

*Discussion:* The final amendments maintain uniform label size regardless of television size. The label need not be enlarged because the graphic component of the redesigned cost comparison scale will be visible even on larger televisions displayed on walls, and a larger label might unnecessarily interfere with the consumer's view of the television screen. The label cannot be reduced for smaller televisions without compromising visibility. However, in light of China's concerns about small televisions and CERC's comment that televisions smaller than 9" are usually sold in boxes carried by consumers to a register, manufacturers may chose to label the boxes of these products, rather than the televisions themselves.[53]

3. Label Format

*Background:* Under EPCA, the Commission may prescribe the manner in which the label is displayed.[54] The NPRM proposed two formats for television labels: A small rectangular adhesive label affixed either vertically or horizontally on the product's bezel, or a triangular static cling label affixed to the bottom right-hand corner of the screen. Manufacturers would have the flexibility to chose which label to use, as well as the exact placement of the rectangular adhesive, which would allow them to take into consideration the configuration of their particular products. The NPRM also noted that some manufacturers already provide descriptive information (*e.g.,* screen resolution, sound features, and high definition capability) through similar labels on the bezel or screen. The NPRM proposed prohibiting hang tags because they can easily fall off.

*Comments:* Several commenters observed that many newer models, which have narrow or no bezels, would have to use the on-screen cling labels under the proposed Rule. Sony, Panasonic, Mitsubishi, and Bang & Olufsen, however, voiced concern that cling labels could damage television screens, especially newer technologies with delicate optical coatings, or that consumers would damage the screen trying to remove the labels.[55] In contrast, ACEEE expressed support for the labels, stating that 3M, an adhesive manufacturer, concluded that labels could be made safe for use on television screens. Finally, CEA favored both the adhesive and cling label options, but noted manufacturers' and retailers' concerns about damage.

In light of these concerns, four commenters (Sony, Mitsubishi, Sharp, and CEA) urged the Commission to give manufacturers the flexibility to display the label in a way that does not require them to affix the label directly to the screen or bezel. At the public meeting, Sharp demonstrated a design currently used in Canada which attaches to the back of the television and folds over the television, so that the information is visible from the front of the screen.[56]

Commenters largely supported prohibiting hang tags. CERC, NRDC, and Sony (in its capacity as a retailer) agreed that hang tags should not be permitted because they may become dislodged or twisted.[57] However, CEA stated that the Commission had not presented any evidence about why hang tags are unacceptable, and Consumers Union suggested that hang tags could be used on televisions too small to be labeled.

*Discussion:* In response to commenter concerns about screen damage, the final amendments allow manufacturers to affix the label anywhere on the television, as long as the label itself is visible to someone viewing the front of the television. Accordingly, the final amendments give manufacturers the choice of using either a rectangular adhesive label adhered to the horizontal or vertical bezel; a triangular cling label affixed to the lower right-hand corner of the screen; or a rectangular or triangular label affixed using an alternate method anywhere on the television. Whichever format is used, manufacturers must ensure that the label is fully and prominently visible to consumers from the front of the television, will not become dislodged during normal handling throughout the distribution chain, and will not become obscured or dislodged under normal retail conditions. The amended Rule does not permit hang tags, defined as a label affixed "using string or similar material,"[58] because they may become dislodged.[59]

Thus, the final amendments require an effective disclosure, but give manufacturers the flexibility to affix the label in a way that avoids any potential damage to the product and works for products with different configurations. The final amendments also accommodate evolving technology if televisions' physical shape and screen composition change over time.

4. Electronic Labeling Not Allowed To Satisfy the Amended Rule

*Background and Comments:* Sony, Panasonic and Sharp proposed an electronic or virtual label programmed to appear on the screen in the television's "retail mode."[60] In their view, the electronic label would reduce the costs of printing and affixing physical labels. Sony added that an electronic label would also reduce the risk of mislabeling.

ACEEE and NEEP, however, opposed the electronic label. They noted that Australian regulators rejected a similar proposal for several reasons. First, the regulators were concerned that continuously displaying the electronic

[53] Because most televisions smaller than 9″ are battery-powered and thus not covered by the final amendments, the Commission anticipates that few televisions boxes will be labeled.

[54] 42 U.S.C. 6294(c)(3), (c)(9).

[55] At the Commission's public meeting, CEE stated that one retailer in a voluntary television labeling project reported that cling labels damaged screens. Meeting Tr. at 50–52. However, a representative from the Collaborative Labeling and Appliance Standards Program (CLASP) clarified that the damage in that case was due to defective labels. Meeting Tr. at 52–53.

[56] *Id.* at 62–63.

[57] CERC discussed hang tags at the public meeting. *Id.* at 11. The other commenters discussed the matter in their written submissions.

[58] 16 CFR 305.11(d)(2).

[59] The restriction is consistent with the Commission's current prohibition against exterior hang tags on other covered appliances. *See* 72 FR at 49960–61 (discussing the Association of Home Appliance Manufacturers comment stating that hang tags can become dislodged). The Commission currently allows interior hang tags for some products with interiors often examined by consumers, such as refrigerators. Because interior hang tags are obviously inappropriate for televisions, the Commission prohibits hang tags entirely here.

[60] The NPRM did not propose an electronic label. Commenters first proposed the electronic label at the April 16, 2010 public meeting, followed by written comments in support.

disclosure could damage the screen, and therefore the label would only be intermittently displayed. Second, Australian regulators worried that retail staff would turn off the retail mode to display an unobstructed image to customers. Finally, they expressed concern that the electronic label would require retailers to operate showroom models continuously, which would waste energy.

CEA suggested further study of the electronic label, but cautioned that too many technological issues (such as font, access, layout, and rendering) remain unexplored for a timely decision. CEA urged that consideration of the electronic label not delay the present rulemaking.

*Discussion:* The amended Rule does not permit electronic labels to satisfy its requirements. As CEA noted, the method for implementing an electronic label is unclear. Furthermore, the concerns noted by the Australian regulators suggest significant pitfalls, including the fact that the electronic image might appear only periodically. These potential problems could significantly reduce the labels' ability to assist consumers in their purchasing decisions. Moreover, although an electronic label would save the costs associated with the physical label, the television would have to be on continuously to display the label, which may offset those savings. Given these uncertainties, the Commission declines to allow electronic labels at this time.

5. Location

*Background:* The Commission's NPRM proposed requiring manufacturers to affix the labels directly to the front of the screen. The triangular label would appear on the lower right-hand corner of the screen, and the rectangular label would be placed on the horizontal or vertical bezel. The Commission sought comment on whether manufacturers should be given discretion on the precise placement of the rectangular label on the bezel.

*Comments:* Sony and Panasonic argued that a physical label affixed to the screen will interfere with customers' view of the screen. As discussed above, they proposed providing the information in an electronic label. Panasonic suggested labeling the television's side or back in addition to the electronic label, and Sony suggested labeling a non-viewing surface, such as the television stand. China likewise commented that the label should be placed on the side or back in order not to interfere with "normal use," especially for smaller screens. In contrast, five commenters (ACEEE, CEE, NEEP, NRDC and PG&E) advocated a physical label on the front of the television so consumers can see the label while shopping. With respect to the rectangular label's precise location on the bezel, CEE and Consumers Union favored requiring a uniform location for easy comparison.

*Discussion:* The final amendments require that all labels be visible from the front of the television so that consumers can easily see them on display models. Consumers are not likely to see a label attached to the side or back, and as discussed above, the Commission rejected the proposal to display an electronic label. The labels are small enough not to interfere with consumers' view, which should assuage commenters' concern that the label will block the screen.

The final amendments specify the label's location on the television because a uniform location will help consumers to more easily find the label. However, given that televisions have varying configurations, the Rule provides manufacturers flexibility in placement of the rectangular and alternative labels. The rectangular label should be located on a bezel in the bottom right-hand corner of the television. Specifically, the horizontal rectangular label shall be located on the far right of the bottom bezel and the vertical rectangular label shall be located on the bottom of the right-hand bezel. However, if the television's configuration prevents such placement (*e.g.,* if the model has buttons on the bottom right-hand bezel), manufacturers may adhere the rectangular label to another location on the bezel. Similarly, the alternative label should be visible from the front of the television, near the bottom right-hand corner. However, manufacturers may use another prominent location visible from the front of the television if the product's configuration or the alternative label's design prevents such placement.[61]

The final amendments do not give flexibility in the location of the triangular cling label, which must be placed on the lower right-hand corner of the screen. There is no indication that varying configurations require flexibility for the labels placed directly on the screen.

[61] The alternative label presented at the Commission's public meeting was designed to hang over the top of the television. Meeting Tr. at 62–63. If this label meets the rest of the Rule's requirements, its location would be in compliance with the amended Rule because its design requires it to appear at the top of the television rather than the bottom.

*F. Catalog Disclosures*

The final amendments require catalogs (*i.e.,* publications, including those on the Internet, from which a consumer can order merchandise) to display EnergyGuide information for televisions offered for sale. The amendments specify different disclosures for paper and online catalogs. Additionally, to facilitate compliance, the amendments require manufacturers to provide copies of the EnergyGuide labels online.

*Background:* The NPRM proposed requiring catalogs that sell televisions to either: (1) Display an image of the full EnergyGuide label for each product; or (2) state the product's annual energy cost derived from the label, along with a generic disclosure that energy costs will vary with utility rates and use. Sellers choosing the latter option would not need to publish the comparative information found on the label. This proposal is consistent with current Commission requirements for covered appliances sold through catalogs.[62] The NPRM did not distinguish between paper and online catalogs.

*Comments:* Some commenters sought clarification concerning the scope of the disclosure requirements. Specifically, CERC asked the Commission to clarify that "circulars and flyers" are not subject to the disclosure requirements, and that manufacturers must provide the labels to retailers for use in their catalogs. NRDC asked the Commission to clarify that Web sites of brick-and-mortar stores must meet the catalog disclosure requirement, and that the Rule does not apply only to retailers that sell exclusively online.

The commenters also discussed the proposed disclosures for both paper and online catalogs. Two commenters specifically addressed paper catalog disclosures. Earthjustice objected to the Commission's proposal to allow paper catalog sellers the option of disclosing the television's annual energy cost without the comparative information. It argued there is no legal or rational basis to allow catalog sellers to disclose less information than what appears on the label. Earthjustice contended that consumers cannot be expected to collect cost information for each television and

[62] 16 CFR 305.20. This provision implements EPCA's requirement that a "catalog" must "contain all information required to be displayed on the label, except as otherwise provided by the rule of the Commission." 42 U.S.C. 6296(a). The current Rule defines "catalog" as any "printed material, including material disseminated over the Internet, which contains the terms of sale, retail price, and instructions for ordering, from which a retail consumer can order a covered product" 16 CFR 305.2(h).

conduct a comparison of those energy costs themselves. It also argued that there is no evidence that printing a full label in a paper catalog would be burdensome.

CERC, however, argued that print space is at a premium in paper catalogs and that "there is also an environmental issue associated with the additional print space needed for every disclosure requirement." CERC, therefore, supported retaining the option of disclosing only the annual energy cost. CERC also recommended permitting paper catalogs to display a smaller version of the label than what appears in stores. For paper catalogs disclosing only the annual energy cost, CERC recommended allowing them to: (1) Provide the disclosure in the same font size used for the products' other descriptive information; and (2) print the generic information that accompanies the cost disclosure one time on a page, rather than multiple times with each individual product.

With respect to catalogs on the Internet, several commenters (ACEEE, CEA, CEE, Earthjustice, NEEP, NRDC, and PG&E) supported requiring sellers to include an image of the entire EnergyGuide label for each advertised television. For example, Earthjustice stated that, as with paper catalogs, consumers need the full label information and there is no evidence that displaying a full label in a Web site would be burdensome. CERC, however, argued that space is also at a premium on the Internet and, as with paper catalogs, suggested that sellers have the option to display a smaller EnergyGuide label or make energy cost disclosures with one explanatory statement per page.

The commenters also made various proposals about how sellers should display labels on the Internet. For example, Earthjustice argued that the label should appear on each webpage displaying the covered product and adjacent to the first image of the product. It further stated that sellers should not use a hyperlink to lead to the label because consumers may not find the link or understand it leads to energy information. NRDC, however, suggested using an icon that hyperlinks to the label. It proposed placing the icon on the first product screen in close proximity to the product's price and stated that consumers should not have to scroll down or switch to another tab or page to see the icon. CEA similarly suggested either posting the full label or a link to the label on the "product description page."

*Discussion:* The final amendments require energy disclosures in catalogs that offer televisions for sale. Specifically, the amended Rule applies to all publications that contain "the terms of sale, retail price, and instructions for ordering, from which a retail consumer can order a covered product." [63] Flyers and circulars meeting this definition must contain the required disclosures. Further, the definition makes no distinction between brick-and-mortar stores selling online and online-only retailers.

The final amendments depart in several respects from the NPRM proposal and the Rule's catalog disclosures for covered appliances because the amendments require different disclosures for paper and online catalogs. For paper catalogs, the final amendments allow sellers to either display the full EnergyGuide label, or a statement of the television's annual energy cost and a generic explanation that energy costs will depend on utility rates and use. Catalogs that display the text statement do not need to include the comparison scale. EPCA does not require the Commission to include comparative information on the label; rather, it gives the Commission discretion to decide the disclosure's content.[64] Print catalogs have space constraints and formats which may make it difficult to display the full label or the comparison scale. The Commission, therefore, exercises its discretion to give paper catalogs the option of stating the annual energy cost and not including the comparison scale.

Regardless of whether the paper catalog displays the full label or states the product's annual energy cost, the disclosure must appear clearly and conspicuously on each page displaying a television and its price, in close proximity to the price. These requirements should help ensure that consumers can find the energy information. The amendments do not require the use of a specific font size, however, given paper catalogs' differing formats. The amendments also state that if paper catalogs display more than one television model on a page, the seller can state that energy costs will vary once on that page rather than repeating the information for each advertised television. This information, however, must be clear and conspicuous.

Although paper catalog sellers have a choice regarding how to disclose energy information, the final amendments require Internet sellers to display the full EnergyGuide label. Based on the comments, the Commission now finds that the reasons for allowing a space saving text-only disclosure for paper catalogs do not apply to the Internet. Online catalogs have fewer space constraints than paper catalogs and can more easily include the full EnergyGuide label, and information can be condensed by linking to the label. Any such hyperlink, however, must be in the form of a distinctive icon with the EnergyGuide logo in black and yellow.[65]

The final amendments require the label or icon to appear clearly and conspicuously and in close proximity to the product price. These requirements should assist consumers by ensuring that the energy information is easy to find on the Web site and visible. Thus, consumers will not have to scroll down unreasonably or click on a tab or other link to view the label or icon. Internet sellers may scale the label and icon appropriately to accommodate their layout as long they remain readable and recognizable. In further recognition of varying layouts, the amended Rule does not require that the label or icon appear alongside every image of a television on the site. For example, if summary pages list multiple television models and consumers must click on a link to obtain more information about a particular model, the EnergyGuide label or icon does not need to appear next to each model on that webpage. Instead, the label or icon must appear clearly and conspicuously on the television's main page, where a detailed description of the television and its price appear.[66]

Finally, to facilitate catalog seller compliance with the Rule, manufacturers must make images of their labels available on a Web site for linking and downloading by both paper catalog and Internet sellers. The labels must remain available online for two years after the model ceases to be manufactured. This requirement is based on EPCA's mandate that manufacturers "provide" a label, which extends to providing the label online to catalog sellers so that those sellers may comply with the Rule's disclosure requirements.[67]

[63] 16 CFR 305.2(h).

[64] 42 U.S.C. 6296(a) (The catalog disclosure "shall contain all information required to be displayed on the label, except as otherwise provided by rule of the Commission.").

[65] Sample 13 in Appendix L displays the required icon. The icon does not include the explanatory "Click Here for EnergyGuide Text" suggested by NRDC. The meaning of the link should be clear without this text because the icon consists of the EnergyGuide logo.

[66] The Commission may consider extending the Web site disclosure requirements to all appliances covered under the Rule in the future.

[67] 42 U.S.C. 6296(a). Catalog sellers may create their own versions of the labels rather than using the images provided by the manufacturers, as long as the labels conform to all the specifications in the amended Rule.

*G. Retailer Responsibility*

The final amendments forbid retailers from removing or rendering EnergyGuide labels illegible.

*Background:* The NPRM proposed that manufacturers and private labelers bear the responsibility for affixing labels to televisions. Retailers would be prohibited from removing or rendering the labels illegible, consistent with the Rule's requirements for other covered products,[68] but would not have additional responsibilities to label the televisions themselves.

*Comments:* In response to the NPRM, Earthjustice argued that EPCA's "express statutory mandate" requires the Commission to "hold retailers accountable for ensuring that the products they display and sell are properly labeled." Earthjustice focused on EPCA's requirement that the labeling rule must "require that each covered product * * * bear a label"[69] which is "displayed in a manner * * * likely to assist consumers."[70] In Earthjustice's view, this can only be accomplished if retailers have an affirmative duty to ensure the televisions are properly labeled in stores.

Earthjustice also argued that the Commission's failure to impose retailer obligations would be arbitrary and capricious.[71] Citing a 2007 Government Accountability Office (GAO) report finding that many covered products lacked a visible label in retail stores,[72] Earthjustice argued that the Commission "cannot rationally find its rules require labels to be displayed 'in a manner * * * likely to assist consumers in making purchasing decisions' when those rules in fact allow the person selling the product to the consumer to display no label at all, or a label that is illegible or located where it cannot be viewed by the consumer."

In contrast, CERC, the retailers' trade association, argued that requiring retailers to affix or reaffix missing labels would cause "chaos." In CERC's view, the retailer would not be able to quickly or easily determine the product to which the label belongs, and as a consequence may attach the label to the incorrect product.[73]

*Discussion:* The final amendments adopt the NPRM's proposal to require only manufacturers and private labelers to affix the labels. The amendments prohibit both manufacturers and retailers from removing the label or rendering it illegible.

EPCA does not require the Commission to impose additional responsibility on retailers, as Earthjustice argues. The EPCA provisions Earthjustice cites (the labeling rule must be "applicable to all covered products"[74] and "require that each covered product * * * bear a label"[75] which is "displayed in a manner * * * likely to assist consumers"[76]) do not direct the Commission to require retailers to label products. Instead, these broadly worded passages address labeling generally, with no specific reference to retailers.

The final amendments reasonably implement EPCA, in conformance with the statutory provisions Earthjustice cites. They are applicable to all covered products and require that each covered product bear a label displayed in a manner likely to assist consumers.[77] The final amendments create a network of measures intended to keep the label on the television to allow consumers to see it on a display model in the store. First, the manufacturers or private labelers must affix an adhesive or cling label to all televisions, or choose an alternate method of attachment. They must affix the label so that it will not become dislodged in the distribution chain and will remain attached and visible in the showroom under normal retail conditions. Second, the final amendments prohibit hang tags, which the Commission has previously determined often became dislodged if attached to the exterior of appliances.[78] Hang tags were likely a major contributing factor to the problems identified in the GAO report.[79] Third, retailers may not remove the label or render it illegible. Retailers cannot, for example, display a television intended for examination by consumers in a way that obscures the label. The final amendments thus fulfill EPCA and are reasonably calculated to ensure that the labeling problems detected by the GAO do not occur with television labels.

The Commission anticipates that the labeling system created by the final amendments will result in consumers receiving energy information while avoiding the imposition of costs on retailers and the possibility that retailers will attach labels to incorrect products. If experience with implementing the final amendments suggests that improvements are necessary, the Commission can revisit the requirements at a later date.

*H. Timing*

*Background and Comments:* Under EPCA, any FTC labeling requirements for consumer electronics shall be effective "not later than" 18 months after promulgation.[80] In the NPRM, the Commission sought comment on a six-month effective date.

The commenters had different views on this proposal. Several commenters (ACEEE, CEE, Earthjustice, NRDC) supported a six-month effective date, stating that it would ensure consumers receive the benefit of the labels as soon as possible. CERC, however, proposed nine months, stating that catalog sellers need additional time to change their designs. Sony asked for a January 2012 effective date, while both Bang & Olufsen and China recommended a twelve-month effective date.

Many manufacturers were more concerned with setting the effective date at the beginning of the industry's production cycle than with the length of the compliance period. For example, Panasonic and Mitsubishi believed that six months provided sufficient lead time as long as the effective date coincided with the production cycle. The manufacturers, however, disagreed about the precise start of the production cycle. CEA, Mitsubishi, and Sharp suggested an effective date in early summer, but Panasonic suggested that March 2011 would allowed continuity with the production cycle.

*Discussion:* The final amendments provide two different effective dates: May 10, 2011 for physical labels; and July 11, 2011 for catalog disclosures. The six-month effective date balances the goals of providing manufacturers with the necessary time to comply with the new requirements and expeditiously providing consumers the benefit of the

[68] 16 CFR 305.4(a)(2).

[69] 42 U.S.C. 6294(c)(1). Earthjustice also cites an additional similar provision of EPCA requiring that the Commission's rule apply to "all covered products." 42 U.S.C. 6294(a)(1).

[70] 42 U.S.C. 6294(c)(3).

[71] In addition to arguing that EPCA expressly mandates the Commission to impose additional duties on retailers, Earthjustice argued that EPCA gives the Commission the authority to impose additional retailer duties.

[72] United States Government Accountability Office, Energy Efficiency—Opportunities Exist for Federal Agencies to Better Inform Household Consumers, GAO–07–1162, Sept. 2007, at 6.

[73] Meeting Tr. at 45–46; *see also* CERC's written comment.

[74] 42 U.S.C. 6294(a)(1).

[75] 42 U.S.C. 6294(c)(1).

[76] 42 U.S.C. 6294(c)(3).

[77] *See* 42 U.S.C. 6294(a)(1), 6294(c)(1) and (c)(3).

[78] 72 FR at 49960–61. In their comments to this NPRM, CERC, NRDC, and Sony also identified hang tags as problematic.

[79] In addition, televisions may be less likely to suffer the missing label problems identified by the GAO report, regardless of the mode of labeling. As discussed above in section IV.E.1, several commenters observed that televisions are routinely displayed high on retail store walls. Unlike the appliances at issue in the GAO report, which are displayed on the showroom floor, television labels will be often out of reach and therefore less likely to be removed by consumers viewing the products.

[80] 42 U.S.C. 6294(a)(2)(I)(iii).

labels. This effective date also should address most manufacturers' concerns about interrupting their production cycles because it occurs prior to the summer start date of most cycles. The catalog disclosure requirements become effective in eight months because catalog sellers (both online and paper) will likely require additional time to receive label information from manufacturers and redesign their catalogs. Under EPCA, the final amendments do not apply to any products manufactured before the six-month effective date.[81]

## V. Other Consumer Electronics

The NPRM sought further comment about labeling cable and satellite set-top boxes, stand-alone digital video recorder boxes, personal computers, personal computer monitors, and other consumer electronics, but did not propose any labeling requirements for those products, choosing instead to focus on televisions. The Commission received several comments in response. In order not to delay implementation of television labeling, the Commission will review these comments and consider whether to propose labeling requirements for other consumer electronics at a future date.

## VI. Section by Section Description of Final Amendments

*Definition of Television (section 305.3):* The amendments add a definition of televisions that is consistent with the definition used by the ENERGY STAR Specification.[82]

*Testing Requirements (section 305.5):* The amendments require manufacturers to follow the test procedures required by the ENERGY STAR Specification.

*Minor Conforming Changes (sections 305.8 and 305.10):* The amendments make minor, conforming changes to sections 305.8 (data submission) and 305.10 (ranges of comparability) to clarify that these sections do not apply to televisions.

*Product Labeling (section 305.17):* The amendments require manufacturers to affix EnergyGuide labels to televisions on the product's bezel in the form of a small rectangular adhesive label, on the screen in the form of a small triangular cling label, or using an alternate method of attachment that permits the label to be clearly visible from the front of the television. The primary disclosure on the label is the product's estimated annual energy cost.

*Catalog Requirements (section 305.20):* The amendments require catalogs to include energy disclosures for the televisions they offer for sale. Internet sellers must display the full EnergyGuide label, but may use a distinctive icon to hyperlink to the label. Paper catalogs must include either the full label or a text summary of only the annual cost information.

## VII. Paperwork Reduction Act

The current Rule contains recordkeeping, disclosure, and testing requirements that constitute "information collection requirements" as defined by 5 CFR 1320.3(c) under the regulations that implement the Paperwork Reduction Act (PRA).[83] OMB has approved the Rule's existing information collection requirements through May 31, 2011 (OMB Control No. 3084–0069). The amendments require television manufacturers to test and label their products with energy information and to maintain records for two years after a model is discontinued. They also require paper and Internet catalog sellers of televisions to provide energy information. Accordingly, the Commission has submitted a related clearance request to OMB for review under the PRA.

The following burden estimates for the final amendments (cumulatively, 58,867 hours for recordkeeping, testing, and disclosure at an associated labor cost of $874,179) are based on data submitted by manufacturers to the FTC under current requirements and FTC staff's general knowledge of manufacturing practices. The NPRM sought comment on these estimates, but the Commission received no comments in response. Accordingly, the final amendments adopt the NPRM's estimates. The Commission has made minor adjustments to the final burden as a result of changes implemented in the final Rule as noted below.

*Testing:* 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 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. Staff estimates that there are approximately 2,000 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 2,000 hours per year. Assuming further that this testing will be implemented by electrical engineers, and applying an associated hourly wage rate of $39.72 per hour,[84] labor costs for testing would total $79,440.

*Recordkeeping:* Pursuant to section 305.21 of the 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 2,000 basic models, the recordkeeping burden would total 33 hours. Assuming further that these filing requirements will be implemented by data entry workers at an hourly wage rate of $13.73 per hour,[85] the associated labor cost for recordkeeping would be approximately $450 per year.

*Disclosures (Product Labeling):* The final amendments required manufacturers to create and affix labels on televisions. The amendments specify the content, format, and specifications of the required labels. Manufacturers would add only the energy consumption 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 33,000,000 television units distributed in the U.S. per year.[86] Accordingly, the total disclosure burden for televisions would be 55,000 hours (33,000,000 × 6 seconds). Assuming that product labels will be affixed by electronic equipment assemblers at an hourly wage of $13.66 per hour,[87]

[81] 42 U.S.C. 6294(d).

[82] The Rule's definition excludes battery-powered televisions as well as a sentence in the ENERGY STAR definition that states: "Cathode-ray tube (CRT), liquid crystal display (LCD), and plasma display panel (PDP) are examples of common display technologies." Such a list of examples is not necessary in a regulatory definition.

[83] 44 U.S.C. 3501–3521.

[84] *See* Bureau of Labor Statistics, U.S. Department of Labor, National Compensation Survey: Occupational Earnings in the United States, 2009, Bulletin 2738, Table 3, at 3–4 (Aug. 2010), available at *http://www.bls.gov/ncs/ocs/sp/nctb1346.pdf* (National Compensation Survey).

[85] *See id.* at 3–24.

[86] *See* ENERGY STAR Unit Shipment and Market Penetration Report Calendar Year 2008 Summary, *http://www.energystar.gov/ia/partners/downloads/2008_USD_Summary.pdf,* at 5 (approximately 26 million television units shipped in 2008, constituting 79% of televisions sold; 26,000,000 ÷ 0.79 = 33,000,000).

[87] *See* National Compensation Survey, *supra* note 84 at 3–30.

cumulative associated labor cost would total $751,300 per year.

*Catalog Disclosures:* The final amendments would require sellers offering covered products through catalogs (both online and print) to disclose energy use for each television 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 televisions that would be subject to the Rule's catalog disclosure requirements.[88] Staff additionally estimates that the average catalog contains approximately 500 televisions and that entry of the required information takes one minute per covered product. The cumulative disclosure burden for catalog sellers is thus 1,667 hours (200 retailer catalogs × 500 televisions per catalog × 1 minute each per television shown). In addition, the final Rule requires manufacturers to post images of their EnergyGuide labels on their Web sites. Given approximately 2,000 total models at five minutes per model, the staff estimates that this requirement will entail a burden of 167 hours, for a total of 1,834 hours associated with the catalog requirement.[89] Assuming that the additional disclosure requirement will be implemented by graphic designers at an hourly wage rate of $23.44 per hour,[90] associated labor cost would approximate $42,989 per year.

*Estimated annual non-labor cost burden:* Manufacturers are not likely to require any significant capital costs to comply with the final amendments. Industry members, however, will incur the cost of printing labels for each covered unit. The estimated label cost, based on estimates of 33,000,000 units and $.03 per label, is $990,000 (33,000,000 × $.03).

## VIII. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, requires that the Commission provide an Initial Regulatory Flexibility Analysis (IRFA) with a Proposed Rule, and a Final Regulatory Flexibility Analysis (FRFA) with the final Rule, unless the Commission certifies that the Rule will not have a significant economic impact on a substantial number of small entities.[91]

The Commission does not anticipate that the final amendments will have a significant economic impact on a substantial number of small entities. The Commission recognizes that many affected entities may qualify as small businesses under the relevant thresholds. The Commission does not expect, however, that the economic impact of implementing the label design will be significant. The Commission plans to provide businesses with ample time to implement the requirements. The Commission estimates that these new requirements will apply to about 30 product manufacturers and an additional 200 online and paper catalog sellers of covered products. Out of these companies, the Commission expects that approximately 150 catalog sellers qualify as small businesses. In addition, the Commission does not expect that the requirements specified in the final amendments will have a significant impact on these entities.

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

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

The Commission is adopting these amendments to the Appliance Labeling Rule in order to establish labeling requirements for televisions, pursuant to the Commission's rulemaking authority under the Energy Independence and Security Act of 2007.

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

The Commission did not receive any comments specifically related to the impact of the final amendments on small businesses. The Commission received comments from CERC regarding the impacts of potential retailer requirements on small businesses. However, as discussed in section IV.F of this notice, the final amendments do not adopt those requirements. The Commission also received comments on required disclosures for catalog sellers and the effective date of the final amendments, which are issues that could affect small retail businesses. These issues are discussed in sections IV.F and IV.H of this notice.

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

Under the Small Business Size Standards issued by the Small Business Administration, television manufacturers qualify as small businesses if they have fewer than 1,000 employees (for other household appliances the figure is 500 employees) or if their sales are less than $8.0 million annually. The threshold for television retailers is $9.0 million. The Commission estimates that fewer than 150 retailer entities subject to the final amendments qualify as small businesses.

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

The Commission recognizes that the final Rule will involve some increased costs related to testing, drafting labels, affixing labels to products, and maintaining test records. All of these burdens and the skills required to comply are discussed in the previous section of this document, regarding the Paperwork Reduction Act, and there should be no difference in that burden as applied to small businesses. As explained earlier, the Commission estimates that there are about 150 catalog sellers under the final amendments that would qualify as such entities.

### *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 final amendments.

### *F. Alternatives*

The Commission sought comment and information on the need, if any, for alternative compliance methods that would reduce the economic impact of the Rule on such small entities. In particular, the Commission sought comments on whether it should delay the Rule's effective date to provide additional time for small business compliance and whether to reduce the amount of information catalog sellers must provide. After considering the comments, the Commission has set the Rule's effective date at six months after publication of this notice in the **Federal Register**, which should coincide with the beginning of the annual production cycle for televisions. This should reduce the impacts on manufacturers in response. In addition, the Commission

[88] The number of catalog dealers has increased from the estimate in the NPRM due to revised staff estimates of online sellers.

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

[90] *See* National Compensation Survey, *supra* note 84 at 3–12.

[91] 5 U.S.C. 603–605.

has set the effective date for the catalog disclosure requirements two months after the labeling requirement for manufacturers. This will provide catalog sellers (which are likely to include small businesses) with additional time to ensure their compliance with the Rule. Finally, the amendments also require manufacturers to post label images online to make it easier for online retailers to post labels for the products they sell.

## IX. Final Rule

### List of Subjects in 16 CFR Part 305

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

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

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

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

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

■ 2. In § 305.3, add paragraph (u) to read as follows:

### § 305.3 Description of covered products.

* * * * *

(u) *Television (TV)* means a commercially available electronic product designed primarily for the display and reception of audiovisual signals from terrestrial, cable, satellite, Internet Protocol TV (IPTV), or other transmission of analog and/or digital signals, consisting of a tuner/receiver and a display encased in a single housing. This definition does not cover models that are designed to operate on built-in rechargeable batteries or inserted batteries.

■ 3. In § 305.4, add paragraph (e)(4) to read as follows:

### § 305.4 Prohibited acts.

* * * * *

(e) * * *

(4) Televisions manufactured before May 10, 2011.

* * * * *

■ 4. In § 305.5, add paragraph (d) to read as follows:

**Testing**

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

* * * * *

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

### § 305.8 [Amended]

■ 5. Amend § 305.8(a)(1) in the first sentence by adding the word "televisions," after the term "urinals,".

### § 305.10 [Amended]

■ 6. Amend § 305.10(a) in the first sentence by removing the words "or ceiling fans" and adding, in their place, the words "ceiling fans, or televisions".

■ 7. Add § 305.17 to read as follows:

### § 305.17 Television labeling.

(a) *Layout.* All energy labels for televisions shall use one of three shapes: a vertical rectangle, a horizontal rectangle, and a triangle as detailed in Prototype Labels 8, 9, and 10 in Appendix L. All label size, positioning, spacing, type sizes, positioning of headline, copy, and line widths must be consistent with the prototype and sample labels in Appendix L. The minimum label size for the vertical rectangle label is 1.5″ x 5.5″. The minimum size for the horizontal rectangle label is 1.5″ x 5.23″. The minimum size for the triangle label is 4.5″ x 4.5″ (right angle sides).

(b) *Type style and setting.* The Arial series typeface or equivalent shall be used exclusively on the label. Prototype Labels 8, 9, and 10 in Appendix L contain specific directions for type style and setting and indicate the specific sizes, leading, faces, positioning, and spacing to be used. No hyphenations should be used in setting headline or copy text.

(c) *Colors.* The basic colors of all labels and icons 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 printed process black.

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

(1) *Adhesive label.* All adhesive labels shall be applied so they can be easily removed without the use of tools or liquids, other than water, but shall 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 and consumer. The paper stock for pressure-sensitive or other adhesive labels shall have a basic weight of not less than 58 pounds per 500 sheets (25 x 38) or equivalent, exclusive of the release liner and adhesive. A minimum peel adhesion capacity for the adhesive of 12 ounces per square inch is suggested, but not required if the adhesive can otherwise meet the above standard.

(2) *Cling label.* Labels may be affixed, using the screen's static charge, to the product in the form of a cling label. The cling label shall be affixed in a manner that prevents dislodgment during normal handling throughout the chain of distribution to the retailer and consumer.

(3) *Alternative label.* In lieu of an adhesive or cling label, labels may be affixed using an alternative method to secure the label to the product as long as the method will prevent dislodgment during normal handling throughout the chain of distribution to the retailer and consumer. The label may not be affixed using a hang tag as described in § 305.11(d)(2). The label shall consist of paper stock having a basic weight of not

less than 110 pounds per 500 sheets (25 ½″; x 30 ½″) or other material of equivalent durability.

(e) *Placement—(1) In general.* All labels must be clear and conspicuous to consumers viewing the television screen from the front.

(2) *Adhesive label.* The adhesive label shall be in the shape of a horizontal or vertical rectangle and shall be located on the bezel in the bottom right-hand corner of the television. The horizontal rectangular label shall be located on the far right of the bottom bezel and the vertical rectangular label shall be located on the bottom of the right-hand bezel. Another location on the bezel may be used if the television's configuration prevents such placement.

(3) *Cling label.* The cling label shall be in the shape of a triangle and shall be located in the bottom right-hand corner of the screen.

(4) *Alternative label.* The alternative label shall be in the shape of either a horizontal rectangle, vertical rectangle, or triangle. It shall be visible from the front of the television and located in the bottom right-hand corner of the television. Another prominent location visible from the front of the television may be used if the television's configuration or the mechanism to secure the alternative label prevents such placement.

(f) *Label content.* The television label shall contain the following information:

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

(2) Name of manufacturer or private labeler. This requirement shall, in the case of a corporation, be satisfied only by the actual corporate name, which may be preceded or followed by the name of a 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.

(3) Model number(s) as designated by the manufacturer or private labeler.

(4) Estimated annual energy costs determined in accordance with § 305.5 of this part and based on a usage rate of 5 hours in on mode and 19 hours in standby (sleep) mode per day, and an electricity cost rate of 11 cents per kWh.

(5) The applicable ranges of comparability for estimated annual energy costs based on the labeled product's diagonal screen size, according to the following table:

| Screen size (diagonal) | Annual energy cost ranges for televisions | |
|---|---|---|
| | Low | High |
| 0–16″ (0 to 16.49″) | $3 | $6 |
| 17–20″ (16.5 to 20.49″) | 4 | 11 |
| 21–23″ (20.5 to 23.49″) | 4 | 13 |
| 24–29″ (23.5 to 29.49″) | 9 | 19 |
| 30–34″ (29.5 to 34.49″) | 11 | 25 |
| 35–39″ (34.5 to 39.49″) | 17 | 31 |
| 40–44″ (39.5 to 44.49″) | 15 | 43 |
| 45–49″ (44.5 to 49.49″) | 18 | 51 |
| 50–54″ (49.5 to 54.49″) | 21 | 67 |
| 55–59″ (54.5 to 59.49″) | 24 | 73 |
| 60–64″ (59.5 to 64.49″) | 31 | 79 |
| 65–69″ (64.5 to 69.49″) | 35 | 83 |
| 69.5″ or greater | 39 | 90 |

(6) Placement of the labeled product on the scale proportionate to the lowest and highest estimated annual energy costs as illustrated in Prototype Labels 8, 9, and 10 and Sample Labels 10, 11, and 12 in Appendix L. When the estimated annual energy cost of a given television model falls outside the limits of the current range for that product, the manufacturer shall place the product at the end of the range closest to the model's energy cost.

(7) The model's estimated annual energy consumption as determined in accordance with § 305.5 and based on a usage rate of 5 hours in on mode and 19 hours in sleep (standby) mode per day.

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

(i) A manufacturer may include a part or publication number identification on the label, as long as it appears in the lower right-hand corner of the label and is set in 6-point type or smaller.

(ii) The manufacturer may include the ENERGY STAR logo on the label as illustrated in Sample Labels 10, 11, and 12 in Appendix L. The logo must be 0.375″ wide. Only manufacturers that have signed a Memorandum of Understanding with the Department of Energy or the Environmental Protection Agency covering the televisions to be labeled may add the ENERGY STAR logo to those labels.

(g) *Distribution of labels.* For each television model that a manufacturer distributes in commerce, the manufacturer must make a copy of the label available on a publicly accessible Web site in a manner that allows catalog sellers to hyperlink to the label or download it for use in catalogs that advertise televisions. The labels must remain on the Web site for two years after the manufacturer ceases the model's production.

■ 8. In § 305.20, add paragraphs (g) and (h) to read as follows:

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

* * * * *

(g) *Televisions offered for sale on the Internet.* Any manufacturer, distributor, retailer, or private labeler that advertises televisions on the Internet in a manner that qualifies as a catalog under this Part shall disclose energy information as follows:

(1) *Content.* For each covered television, the Internet seller must display the EnergyGuide label prepared in accordance with § 305.17. The seller may hyperlink to the label as long as it leads directly to the label and the hyperlink is an icon in the form of Sample Icon 13 in Appendix L.

(2) *Format.* The EnergyGuide label or the icon must appear clearly and conspicuously, and in close proximity to the television's price, on each webpage that contains a detailed description of the television and its price. The scale size of the icon and/or the label prototypes in Appendix L may be altered to accommodate the webpage's design, as long as the icon and/or label remain clear and conspicuous to consumers viewing the page.

(h) *Televisions offered for sale in paper catalogs.* Any manufacturer, distributor, retailer, or private labeler that advertises televisions in a paper publication that qualifies as a catalog under this Part shall disclose energy information as follows:

(1) *Content.* For each covered television, the paper catalog must either:

(i) Display the EnergyGuide label prepared in accordance with § 305.17, or

(ii) (A) State the estimated annual energy cost determined in accordance with § 305.5, and

(B) State the following: "Your energy cost depends on your utility rates and use. The estimated cost is based on 11 cents per kWh and 5 hours of use per day. For more information, visit *http://www.ftc.gov/energy*."

(2) *Format.* The required disclosure must appear clearly and conspicuously, and in close proximity to the television's price, on each page that displays the television and its price. If a catalog displays the EnergyGuide label pursuant to paragraph (h)(1)(i) of this section, the size of the label may be altered to accommodate the paper catalog's design, as long as the label remains clear and conspicuous to consumers. If a catalog includes the statements in paragraph (h)(1)(ii) of this section, the statements must be clear and conspicuous to consumers. If a catalog displays multiple covered televisions on a page, the statement in paragraph (h)(1)(ii)(B) of this section

may be displayed only once per page as long as it is clear and conspicuous.

■ 9. Amend Appendix L by adding Prototype Labels 8, 9, and 10, Sample Labels 10, 11, and 12, and Sample Icon 13:

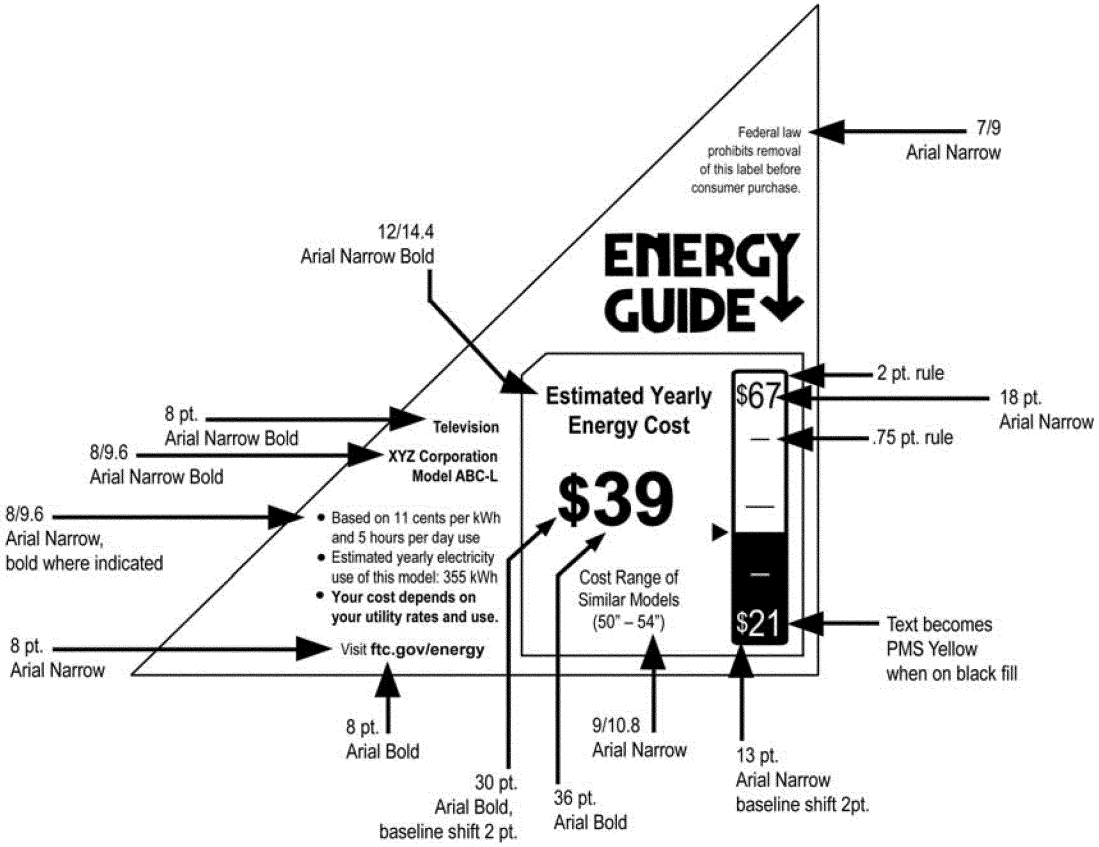
**Appendix L to Part 305—Sample Labels**

* * * * *

BILLING CODE 6750–01–P

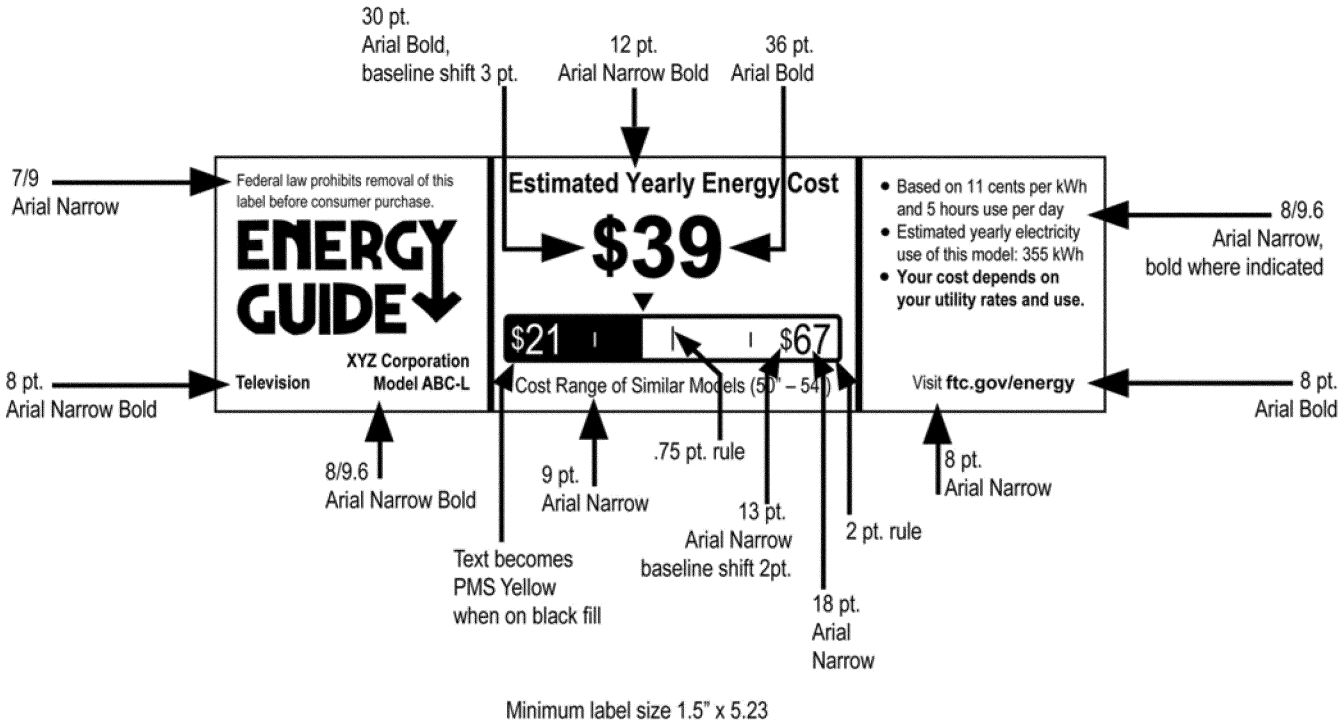
## Prototype Label 8

## Triangular Television Label




Minimum label size right angle triangle 4.5" x 4.5"

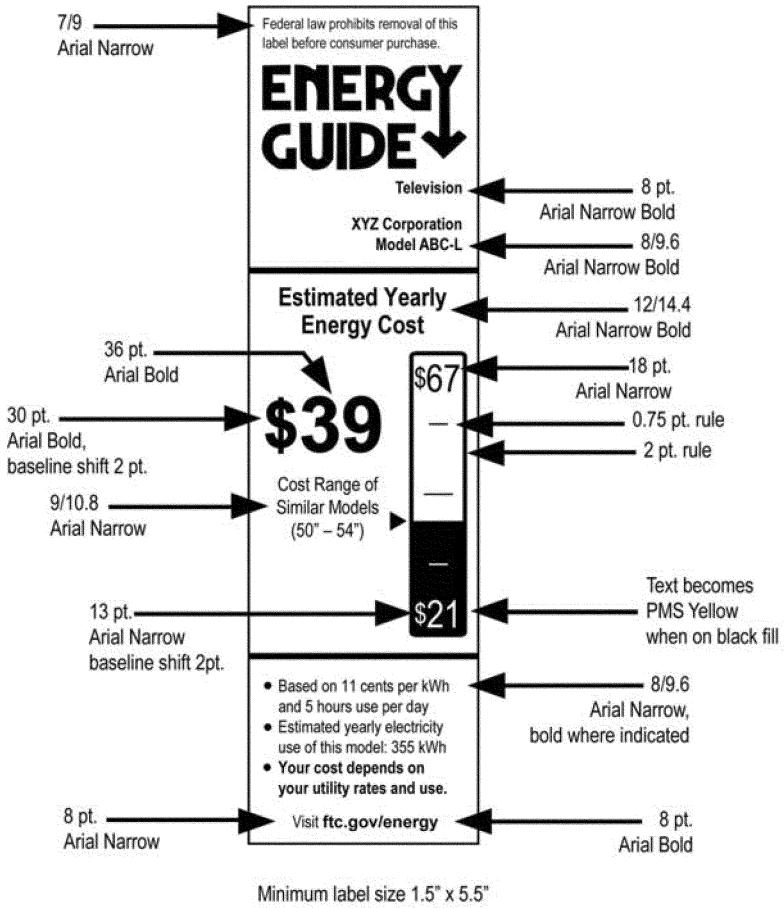
* Typeface is Arial Narrow and Arial or equivalent type style. Type sizes shown are minimum allowable. Use bold or heavy typeface where indicated. Type is black printed on process yellow or equivalent color background. Energy Star logo, if applicable, must be at least 0.36" wide.




* Typeface is Arial Narrow and Arial or equivalent type style. Type sizes shown are minimum allowable. Use bold or heavy typeface where indicated. Type is black printed on process yellow or equivalent color background. Energy Star logo, if applicable, must be at least 0.36" wide.

**Prototype Label 9**

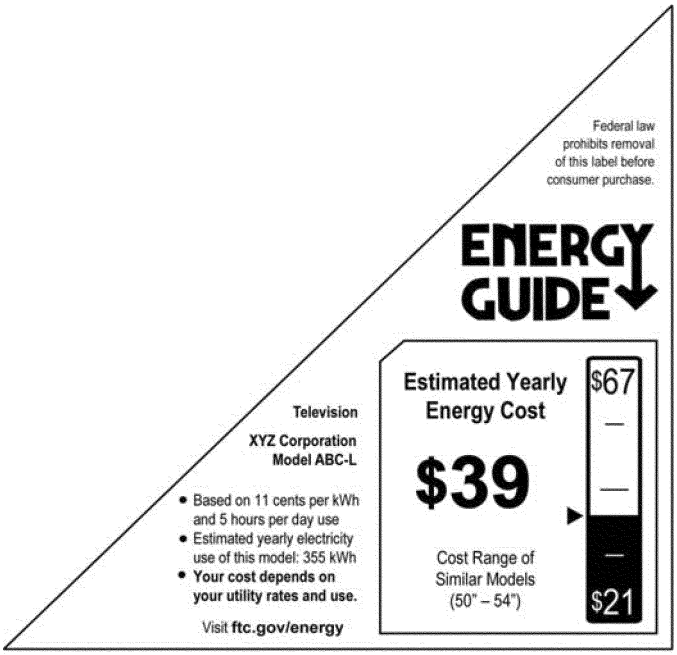
**Horizontal Rectangular Television Label**

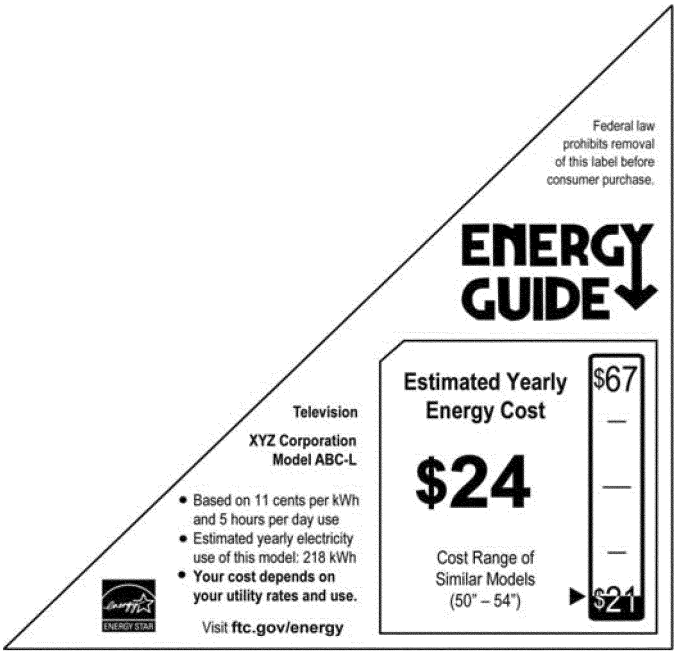



* Typeface is Arial Narrow and Arial or equivalent type style. Type sizes shown are minimum allowable. Use bold or heavy typeface where indicated. Type is black printed on process yellow or equivalent color background. Energy Star logo, if applicable, must be at least 0.36" wide.

**Prototype Label 10**

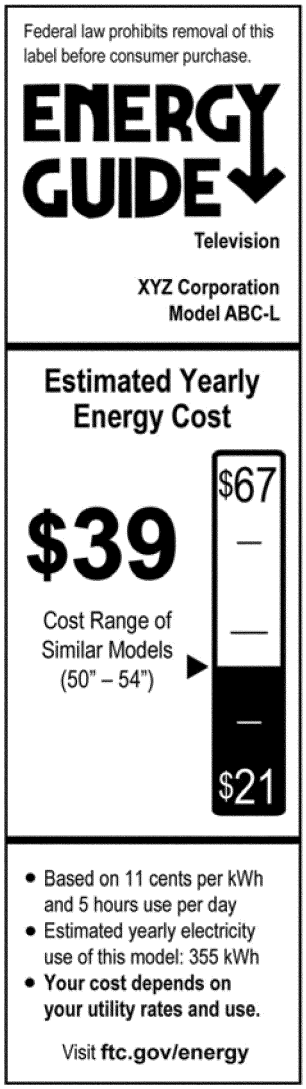
**Vertical Rectangular Television Label**

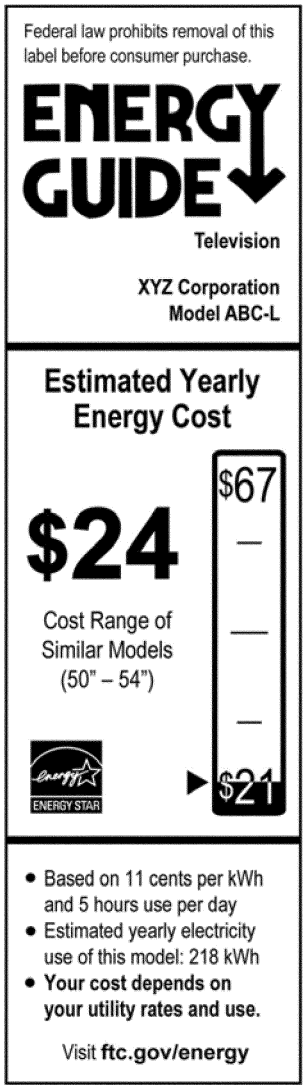



**Sample Label 10**

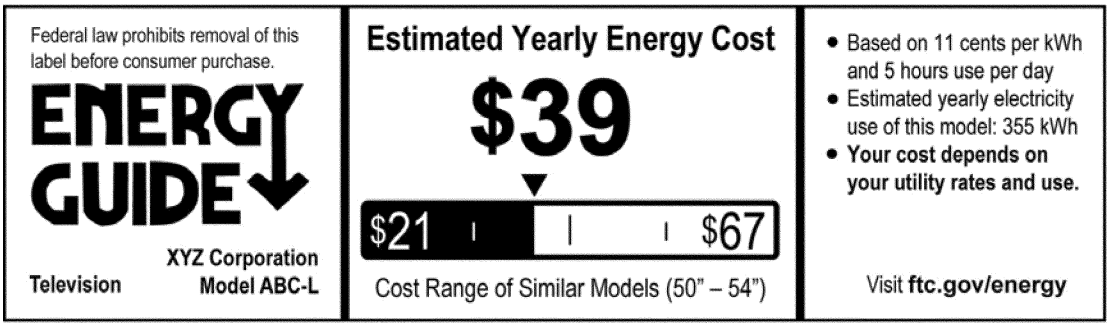
**Triangular Television Labels**

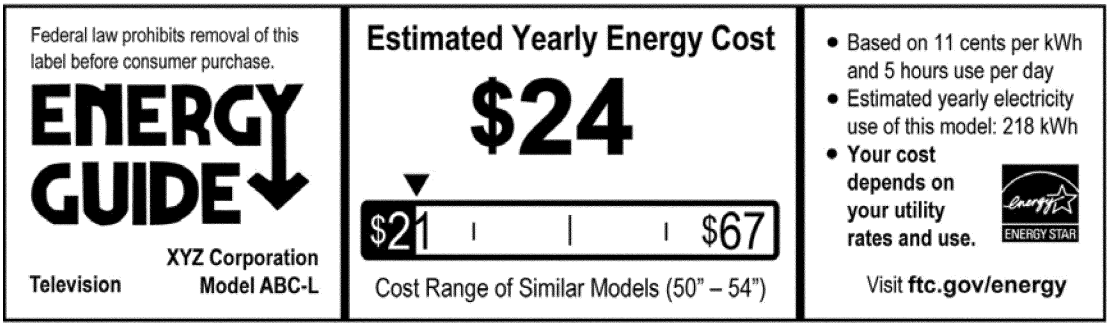



**Sample Label 11**

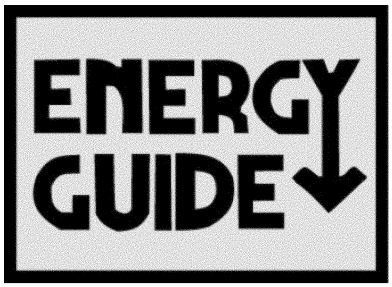
**Vertical Television Labels**




**Sample Label 12**

**Horizontal Television Labels**




**Sample Icon 13**

**Website Link Icon**

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 2010–32704 Filed 1–5–11; 8:45 am]

**BILLING CODE 6750–01–C**