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SUBCHAPTER C—REGULATIONS UNDER SPECIFIC ACTS OF CONGRESS

PART 300—RULES AND REGULATIONS UNDER THE WOOL PRODUCTS LABELING ACT OF 1939

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AUTHORITY: 15 U.S.C. 68 *et seq.* and 15 U.S.C. 70 *et seq.*

SOURCE: 6 FR 3426, July 15, 1941, unless otherwise noted.

DEFINITIONS

§ 300.1 Terms defined.

(a) The term *Act* means the Wool Products Labeling Act of 1939 (approved October 14, 1940, Public No. 850, 76th Congress, Third Session, 54 Stat. 1128, 15 U.S.C. 68 et. seq. as amended by Pub. L. 96–242, 94 Stat. 344).

(b) The terms *rule*, *rules*, *regulations* and *rules and regulations* mean the rules and regulations prescribed by the Commission pursuant to the Act.

(c) The term *ornamentation* means any fibers or yarns imparting a visibly discernible pattern or design to a yarn or fabric.

(d) The term *fiber trademark* means a word or words used by a person to identify a particular fiber produced or sold by him and to distinguish it from fibers of the same generic class produced or sold by others. Such term shall not include any trademark, product mark, house mark, trade name or other name which does not identify a particular fiber.

(e) The terms *required information* or *information required* mean such information as is required to be disclosed on the required stamp, tag, label or other means of identification under the Act and regulations.

(f) The definitions of terms contained in section 2 of the Act shall be applicable also to such terms when used in rules promulgated under the Act.

(g) The term *United States* means the several States, the District of Columbia, and the territories and possessions of the United States.

(h) The terms *mail order catalog* and *mail order promotional material* mean

any materials, used in the direct sale or direct offering for sale of wool products, that are disseminated to ultimate consumers in print or by electronic means, other than by broadcast, and that solicit ultimate consumers to purchase such wool products by mail, telephone, electronic mail, or some other method without examining the actual product purchased.

(i) The terms *label*, *labels*, *labeled*, and *labeling* mean the stamp, tag, label, or other means of identification, or authorized substitute therefore, required to be on or affixed to wool products by the Act or Regulations and on which the information required is to appear.

(j) The terms *invoice* and *invoice or other paper* have the meaning set forth in § 303.1(h) of this chapter.

(k) The term *trimmings* has the meaning set forth in § 303.12 of this chapter.

[29 FR 6623, May 21, 1964, as amended at 45 FR 44261, July 1, 1980; 50 FR 15105, Apr. 17, 1985; 63 FR 7516, Feb. 13, 1998]

LABELING

§ 300.2 General requirement.

Each and every wool product subject to the act shall be marked by a stamp, tag, label, or other means of identification, in conformity with the requirements of the act and the rules and regulations thereunder.

§ 300.3 Required label information.

(a) The marking of wool products under the Act shall be in the form of a stamp, tag, label or other means of identification, showing and displaying upon the product the required information legibly, conspicuously, and nondeceptively. The information required to be shown and displayed upon the product in the stamp, tag, label, or other mark of identification, shall be that which is required by the Act and the rules and regulations thereunder, including the following:

(1) The fiber content of the product specified in section 4(a)(2)(A) of the Act. The generic names and percentages by weight of the constituent fibers present in the wool product, exclusive of permissive ornamentation, shall appear on such label with any percentage of fiber or fibers designated as ''other fiber'' or ''other fibers'' as provided by section 4(a)(2)(A)(5) of the Act appearing last.

(2) The maximum percentage of the total weight of the wool product of any nonfibrous loading, filling or adulterating matter as prescribed by section 4(a)(2)(B) of the Act.

(3) The name or registered identification number issued by the Commission of the manufacturer of the wool product or the name or registered identification number of one or more persons subject to section 3 of the Act with respect to such wool product.

(4) The name of the country where the wool product was processed or manufactured.

(b) In disclosing the constituent fibers in information required by the Act and regulations in this part or in any non-required information, no fiber present in the amount of less than 5 percent shall be designated by its generic name or fiber trademark but shall be designated as ''other fiber,'' except that the percentage of wool or recycled wool shall always be stated, in accordance with section 4(a)(2)(A) of the Act. When more than one of such fibers, other than wool or recycled wool, are present in amounts of less than 5 percent, they shall be designated in the aggregate as ''other fibers.'' Provided, however, that nothing in this section shall prevent the disclosure of any fiber present in the product which has a clearly established and definite functional significance when present in the amount stated, as for example:

''98% wool
2% nylon.''

[29 FR 6623, May 21, 1964, as amended at 45 FR 44261, July 1, 1980; 50 FR 15105, Apr. 17, 1985; 63 FR 7516, Feb. 13, 1998]

§ 300.4 Registered identification numbers.

(a) A registered identification number assigned by the Federal Trade Commission under and in accordance with the provisions of this section may be used upon the stamp, tag, label, or other mark of identification required under the Act to be affixed to a wool product, as and for the name of the person to whom such number has been assigned.

(b) Any manufacturer of a wool product or person subject to section 3 of the Act with respect to such wool product, residing in the United States, may apply to the Federal Trade Commission for a registered identification number for use by the applicant on the stamp, tag, label, or other mark of identification required under the Act.

(c) Registered identification numbers shall be used only by the person or firm to whom they are issued, and such numbers are not transferable or assignable. Registered identification numbers shall be subject to cancellation whenever any such number was procured or has been used improperly or contrary to the requirements of the Acts administered by the Federal Trade Commission, and regulations in this part, or when otherwise deemed necessary in the public interest. Registered identification numbers shall be subject to cancellation if the Commission fails to receive prompt notification of any change in name, business address, or legal business status of a person or firm to whom a registered identification number has been assigned, by application duly executed in the form set out in paragraph (e) of this section, reflecting the current name, business address, and legal business status of the person or firm.

(d) Registered identification numbers assigned under this section may be used on labels required in labeling products subject to the provisions of the Fur Products Labeling Act and Textile Fiber Products Identification Act, and numbers previously assigned by the Commission under such Acts may be used as and for the required name in labeling under this Act. When so used by the person or firm to whom assigned, the use of the numbers shall be construed as identifying and binding the applicant as fully and in all respects as though assigned under the specific Act for which it is used.

(e) The form to apply for a registered identification number or to update information pertaining to an existing number is found in § 303.20(d) of this chapter. The form is available upon request from the Textile Section, Enforcement Division, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580, or on the Internet at *http://www.ftc.gov*.

[29 FR 6623, May 21, 1964, as amended at 48 FR 12516, Mar. 25, 1983; 63 FR 7516, Feb. 13, 1998; 63 FR 71582, Dec. 28, 1998; 65 FR 75156, Dec. 1, 2000]

§ 300.5 Required label and method of affixing.

(a) A label is required to be affixed to each wool product and, where required, to its package or container in a secure manner. Such label shall be conspicuous and shall be of such durability as to remain attached to the product and its package throughout any distribution, sale, resale and until sold and delivered to the ultimate consumer.

(b) Each wool product with a neck must have a label disclosing the country of origin affixed to the inside center of the neck midway between the shoulder seams or in close proximity to another label affixed to the inside center of the neck. The fiber content and RN or name of the company may be disclosed on the same label as the country of origin or on another conspicuous and readily accessible label or labels on the inside or outside of the garment. On all other wool products, the required information shall be disclosed on a conspicuous and readily accessible label or labels on the inside or outside of the product. The country of origin disclosure must always appear on the front side of the label. Other required information may appear either on the front side or the reverse side of a label, provided that the information is conspicuous and readily accessible.

(c) In the case of hosiery products, this section does not require affixing a label to each hosiery product contained in a package if, (1) such hosiery products are intended for sale to the ultimate consumer in such package, (2) such package has affixed to it a label bearing the required information for the hosiery products contained in the package, and (3) the information on the label affixed to the package is equally applicable to each wool product contained therein.

[50 FR 15105, Apr. 17, 1985, as amended at 63 FR 7516, Feb. 13, 1998]

§ 300.6 Labels to be avoided.

Stamps, tags, labels, or other marks of identification, which are insecurely attached, or which in the course of offering the product for sale, selling, reselling, transporting, marketing, or handling incident thereto are likely to become detached, indistinct, obliterated, illegible, mutilated, inaccessible, or inconspicuous, shall not be used.

§ 300.7 English language requirement.

All words, statements and other information required by or under authority of the Act and the rules and regulations thereunder to appear on the stamp, tag, label, or other mark of identification, shall appear in the English language. If the product bears any stamp, tag, label, or mark of identification which contains any of the required information in a language other than English, all of the required information shall appear both in such other language and in the English language.

§ 300.8 Use of fiber trademark and generic names.

(a) Except where another name is required or permitted under the Act or regulations, the respective common generic name of the fiber shall be used when naming fibers in the required information; as for example, ''wool,'' ''recycled wool,'' ''cotton,'' ''rayon,'' ''silk,'' ''linen,'' ''acetate,'' ''nylon,'' ''polyester.''

(b) The generic names of manufactured fibers as heretofore or hereafter established in § 303.7 of this part (Rule 7) of the regulations promulgated under the Textile Fiber Products Identification Act (72 Stat. 1717; 15 U.S.C. 70) shall be used in setting forth the required fiber content information as to wool products.

(c) A non-deceptive fiber trademark may be used on a label in conjunction with the generic name of the fiber to which it relates. Where such a trademark is placed on a label in conjunction with the required information, the generic name of the fiber must appear in immediate conjunction therewith, and such trademark and generic name must appear in type or lettering of equal size and conspicuousness.

(d) Where a generic name or a fiber trademark is used on any label, whether required or nonrequired, a full and complete fiber content disclosure with percentages shall be made on such label in accordance with the Act and regulations.

(e) If a fiber trademark is not used in the required information, but is used elsewhere on the label as nonrequired information, the generic name of the fiber shall accompany the fiber trademark in legible and conspicuous type or lettering the first time the trademark is used.

(f) No fiber trademark or generic name or word, coined word, symbol or depiction which connotes or implies any fiber trademark or generic name shall be used on any label or elsewhere on the product in such a manner as to be false, deceptive, or misleading as to fiber content, or to indicate directly or indirectly that a wool product is composed wholly or in part of a particular fiber, when such is not the case.

(g) The term *fur fiber* may be used to describe the hair or fur fiber or mixtures thereof of any animal or animals other than the sheep, lamb, Angora goat, Cashmere goat, camel, alpaca, llama and vicuna. If the name, symbol, or depiction of any animal producing the hair or fur fiber is used on the stamp, tag, label, or other means of identification applied or affixed to the wool product, the percentage by weight of such hair or fur fiber in the total fiber weight of the wool product shall be separately stated in the required fiber content disclosure: *Provided*, That no such name, symbol or depiction shall be used where such hair or fur fiber is present in the amount of less than five per centum of the total fiber weight. No such name, symbol or depiction shall be used in such a way as to imply in any manner that a wool product contains the fur or hair of an animal when the hair or fur fiber of such animal is not present in the product in the amount of five per centum or more of the total fiber weight. The following are examples of fiber content disclosures under this paragraph:

60% Wool
40% Fur Fiber
or
60% Wool
30% Fur Fiber
10% Angora Rabbit

or
100% Cashgora Hair
or
100% Paco-Vicuna Hair

[29 FR 6624, May 21, 1964, as amended at 45 FR 44261, July 1, 1980; 63 FR 7516, Feb. 13, 1998]

§ 300.9 Abbreviations, ditto marks, and asterisks.

(a) In disclosing required information, words or terms shall not be designated by ditto marks or appear in footnotes referred to by asterisks or other symbols in required information, and shall not be abbreviated.

(b) Where the generic name of a textile fiber is required to appear in immediate conjunction with a fiber trademark, a disclosure of the generic name by means of a footnote, to which reference is made by use of an asterisk or other symbol placed next to the fiber trademark, shall not be sufficient in itself to constitute compliance with the Act and regulations.

[29 FR 6624, May 21, 1964]

§ 300.10 Disclosure of information on labels.

(a) Subject to the provisions of § 300.5(b), the required information may appear on any label or labels attached to the product, including the care label required by 16 CFR part 423, provided all the pertinent requirements of the Act and regulations in this part are met and so long as the combination of required information and non-required information is not misleading. All parts of the required information shall be set forth in such a manner as to be clearly legible, conspicuous, and readily accessible to the prospective purchaser. All parts of the required fiber content information shall appear in type or lettering of equal size and conspicuousness.

(b) Subject to the provisions of § 300.8, any non-required information or representations placed on the product shall not minimize, detract from, or conflict with required information and shall not be false, deceptive, or misleading.

[63 FR 7517, Feb. 13, 1998]

§ 300.11 Improper methods of labeling.

The stamp, tag, label, or other mark of identification required under the act, or the required information contained therein, shall not be minimized, rendered obscure or inconspicuous, or be so placed as likely to be unnoticed or unseen by purchasers and purchaser-consumers when the product is offered or displayed for sale or sold to purchasers or the consuming public, by reason of, among others:

(a) Small or indistinct type.

(b) Failure to use letters and numerals of equal size and conspicuousness in naming all fibers and percentages of such fibers as required by the act.

(c) Insufficient background contrast.

(d) Crowding, intermingling, or obscuring with designs, vignettes, or other written, printed or graphic matter.

§ 300.12 Labeling of pairs or products containing two or more units.

(a) Where a wool product consists of two or more parts, units, or items of different fiber content, a separate label containing the required information shall be affixed to each of such parts, units, or items showing the required information as to such part, unit, or item, provided that where such parts, units, or items, are marketed or handled as a single product or ensemble and are sold and delivered to the ultimate consumer as a single product or ensemble, the required information may be set out on a single label in such a manner as to separately show the fiber composition of each part, unit, or item.

(b) Where garments, wearing apparel, or other wool products are marketed or handled in pairs or ensembles of the same fiber content, only one unit of the pair or ensemble need be labeled with the required information when sold and delivered to the ultimate consumer.

(c) Where parts or units of wool products of the types referred to in paragraphs (a) and (b) of this section are sold separately, such parts or units shall be labeled with the information required by the Act and regulations.

[29 FR 6624, May 21, 1964]

§ 300.13 Name or other identification required to appear on labels.

(a) The name required by the Act to be used on labels shall be the name under which the manufacturer of the wool product or other person subject to section 3 of the Act with respect to such product is doing business. Trade names, trade marks or other names which do not constitute the name under which such person is doing business shall not be used for required identification purposes.

(b) Registered identification numbers, as provided for in § 300.4 of this part (Rule 4), may be used for identification purposes in lieu of the required name.

[29 FR 6625, May 21, 1964]

§ 300.14 Substitute label requirement.

When necessary to avoid deception, the name of any person other than the manufacturer of the product appearing on the stamp, tag, label, or other mark of identification affixed to such product shall be accompanied by appropriate words showing that the product was not manufactured by such person; as for example:

Manufactured for: _____
Distributed by: _____
_____ Distributors

§ 300.15 Labeling of containers or packaging of wool products.

When wool products are marketed and delivered in a package which is intended to remain unbroken and intact until after delivery to the ultimate consumer, each wool product in the package, except hosiery, and the package shall be labeled with the required information. If the package is transparent to the extent it allows for a clear reading of the required information on the wool product, the package is not required to be labeled.

[50 FR 15106, Apr. 17, 1985]

§ 300.16 Ornamentation.

(a) Where the wool product contains fiber ornamentation not exceeding 5 percent of the total fiber weight of the product and the stated percentages of fiber content of the product are exclusive of such ornamentation, the stamp, tag, label, or other means of identification shall contain a phrase or statement showing such fact; as for example:

50% Wool
25% Recycled Wool
25% Cotton
Exclusive of Ornamentation

The fiber content of such ornamentation may be disclosed where the percentage of the ornamentation in relation to the total fiber weight of the principal fiber or blend of fibers is shown; as for example:

70% Recycled Wool
30% Acetate
Exclusive of 4% Metallic Ornamentation

(b) Where the fiber ornamentation exceeds five per centum it shall be included in the statement of required percentages of fiber content.

(c) Where the ornamentation constitutes a distinct section of the product, sectional disclosure may be made in accordance with § 300.23 of this part (Rule 23).

[29 FR 6625, May 21, 1964, as amended at 45 FR 44261, July 1, 1980]

§ 300.17 Use of the term "all" or "100%."

Where the fabric or product to which the stamp, tag, label, or mark of identification applies is composed wholly of one kind of fiber, either the word *all* or the term *100%* may be used with the correct fiber name; as for example ''100% Wool,'' ''All Wool,'' ''100% Recycled Wool,'' ''All Recycled Wool.'' If any such product is composed wholly of one fiber with the exception of fiber ornamentation not exceeding 5%, such term ''all'' or ''100%'' as qualifying the name of the fiber may be used, provided it is immediately followed by the phrase ''exclusive of ornamentation,'' or by a phrase of like meaning; such as, for example:

All Wool—Exclusive of Ornamentation
or
100% Wool—Exclusive of Ornamentation.

[45 FR 44261, July 1, 1980]

§ 300.18 Use of name of specialty fiber.

(a) In setting forth the required fiber content of a product containing any of the specialty fibers named in Section

2(b) of the Act, the name of the specialty fiber present may be used in lieu of the word ''wool,'' provided the percentage of each named specialty fiber is given, and provided further that the name of the specialty fiber so used is qualified by the word ''recycled'' when the fiber referred to is ''recycled wool'' as defined in the Act. The following are examples of fiber content designation permitted under this rule:

55% Alpaca—45% Camel Hair
50% Recycled Camel Hair—50% Wool
60% Recycled Alpaca—40% Rayon
35% Recycled Llama—35% Recycled Vicuna—30% Cotton
60% Cotton—40% Recycled Llama.

(b) Where an election is made to use the name of a specialty fiber in lieu of the word ''wool'' in describing such specialty fiber, such name shall be used at any time reference is made to the specialty fiber either in required or nonrequired information. The name of the specialty fiber or any word, coined word, symbol or depiction connoting or implying the presence of such specialty fiber shall not be used in nonrequired information on the required label or on any secondary or auxiliary label attached to the wool product if the name of such specialty fiber does not appear in the required fiber content disclosure.

[29 FR 6625, May 21, 1964, as amended at 45 FR 44262, July 1, 1980]

§ 300.19 Use of terms "mohair" and "cashmere."

(a) In setting forth the required fiber content of a product containing hair of the Angora goat known as mohair or containing hair or fleece of the Cashmere goat known as cashmere, the term *mohair* or *cashmere*, respectively, may be used for such fiber in lieu of the word ''wool,'' provided the respective percentage of each such fiber designated as ''mohair'' or ''cashmere'' is given, and provided further that such term ''mohair'' or ''cashmere'' where used is qualified by the word ''recycled'' when the fiber referred to is ''recycled wool'' as defined in the Act. The following are examples of fiber content designations permitted under this rule:

50% Mohair—50% Wool
60% Recycled Mohair—40% Cashmere
60% Cotton—40% Recycled Cashmere.

(b) Where an election is made to use the term ''mohair'' or ''cashmere'' in lieu of the term *wool* as permitted by this section, the appropriate designation of ''mohair'' or ''cashmere'' shall be used at any time reference is made to such fiber in either required or nonrequired information. The term ''mohair'' or ''cashmere'' or any words, coined words, symbols or depictions connoting or implying the presence of such fibers shall not be used in nonrequired information on the required label or on any secondary or auxiliary label attached to the wool product if the term ''mohair'' or ''cashmere'' as the case may be does not appear in the required fiber content disclosure.

[29 FR 6625, May 21, 1964, as amended at 45 FR 44262, July 1, 1980]

§ 300.20 Use of the terms "virgin" or "new."

The terms ''virgin'' or ''new'' as descriptive of a wool product, or any fiber or part thereof, shall not be used when the product or part so described is not composed wholly of new or virgin fiber which has never been reclaimed from any spun, woven, knitted, felted, braided, bonded, or otherwise manufactured or used product.

[29 FR 6625, May 21, 1964]

§ 300.21 Marking of samples, swatches or specimens.

Where samples, swatches or specimens of wool products subject to the act were used to promote or effect sales of such wool products in commerce, said samples, swatches and specimens, as well as the products themselves, shall be labeled or marked to show their respective fiber contents and other information required by law.

[6 FR 3426, July 15, 1941. Redesignated at 63 FR 7517, Feb. 13, 1998]

§ 300.22 Sectional disclosure of content.

(a) *Permissive*. Where a wool product is composed of two or more sections which are of different fiber composition, the required information as to fiber content may be separated on the same label in such manner as to show the fiber composition of each section.

(b) *Mandatory*. The disclosure as above provided shall be made in all instances where such form of marking is necessary to avoid deception.

[29 FR 6626, May 21, 1964. Redesignated at 63 FR 7517, Feb. 13, 1998]

§ 300.23 Linings, paddings, stiffening, trimmings and facings.

(a) In labeling or marking garments or articles of apparel which are wool products, the fiber content of any linings, paddings, stiffening, trimmings or facings of such garments or articles of apparel shall be given and shall be set forth separately and distinctly in the stamp, tag, label, or other mark of identification of the products.

(1) If such linings, trimmings or facings contain, purport to contain or are represented as containing wool, or recycled wool; or

(2) If such linings are metallically coated, or coated or laminated with any substance for warmth, or if such linings are composed of pile fabrics, or any fabrics incorporated for warmth or represented directly or by implication as being incorporated for warmth, which articles the Commission finds constitute a class of articles which is customarily accompanied by express or implied representations of fiber content; or

(3) If any express or implied representations of fiber content of any of such linings, paddings, stiffening, trimmings or facings are customarily made.

(b) In the case of garments which contain interlinings, the fiber content of such interlinings shall be set forth separately and distinctly as part of the required information on the stamp, tag, label, or other mark of identification of such garment. For purposes of this paragraph (b) the term *interlining* means any fabric or fibers incorporated into a garment or article of wearing apparel as a layer between an outershell and an inner lining.

(c) In the case of wool products which are not garments or articles of apparel, but which contain linings, paddings, stiffening, trimmings, or facings, the stamp, tag, label, or other mark of identification of the product shall show the fiber content of such linings, paddings, stiffening, trimmings or facings, set forth separately and distinctly in such stamp, tag, label, or other mark of identification.

(d) Wool products which are or have been manufactured for sale or sold for use as linings, interlinings, paddings, stiffening, trimmings or facings, but not contained in a garment, article of apparel, or other product, shall be labeled or marked with the required information as in the case of other wool products.

[29 FR 6626, May 21, 1964, as amended at 45 FR 44262, July 1, 1980. Redesignated at 63 FR 7517, Feb. 13, 1998]

§ 300.24 Representations as to fiber content.

(a) Words, coined words, symbols, or depictions which constitute or imply the name or designation of a fiber which is not present in the product shall not appear on labels. Any word or coined word which is phonetically similar to the name or designation of a fiber or which is only a slight variation in spelling from the name or designation of a fiber shall not be used in such a manner as to represent or imply that such fiber is present in the product when the fiber is not present as represented.

(b) Where a word, coined word, symbol or depiction which connotes or implies the presence of a fiber is used on any label, whether required or nonrequired, a full and complete fiber content disclosure with percentages shall be made on such label in accordance with the Act and regulations.

[29 FR 6626, May 21, 1964, as amended at 50 FR 15106, Apr. 17, 1985. Redesignated at 63 FR 7517, Feb. 13, 1998]

§ 300.25 Country where wool products are processed or manufactured.

(a) In addition to the other information required by the Act and Regulations:

(1) Each imported wool product shall be labeled with the name of the country where such imported product was processed or manufactured;

(2) Each wool product completely made in the United States of materials that were made in the United States shall be labeled using the term *Made in U.S.A.* or some other clear and equivalent term.

(3) Each wool product made in the United States, either in whole or in part of imported materials, shall contain a label disclosing these facts; for example:

''Made in USA of imported fabric''

or

''Knitted in USA of imported yarn'' and

(4) Each wool product partially manufactured in a foreign country and partially manufactured in the United States shall contain on a label the following information:

(i) The manufacturing process in the foreign country and in the USA; for example:

''Imported cloth, finished in USA''

or

''Sewn in USA of imported components''

or

''Made in [foreign country], finished in USA''

or

''Scarf made in USA of fabric made in China''

or

''Comforter Filled, Sewn and Finished in the U.S. With Shell Made in China''

or

''Made in [Foreign Country]/fabric made in USA''

or

''Knit in USA, assembled in [Foreign Country]''.

(ii) When the U.S. Customs Service requires an origin label on the unfinished product, the manufacturing processes as required in paragraph (a)(4)(i) of this section or the name of the foreign country required by Customs, for example:

''Made in (foreign country)''

(b) For the purpose of determining whether a product should be marked under paragraphs (a) (2), (3), or (4) of this section, a manufacturer needs to consider the origin of only those materials that are covered under the Act and that are one step removed from that manufacturing process. For example, a yarn manufacturer must identify fiber if it is imported, a cloth manufacturer must identify imported yarn and a household product manufacturer must identify imported cloth or imported yarn for household products made directly from yarn, or imported fiber used as filling for warmth.

(c) The term country means the political entity known as a nation. Except for the United States, colonies, possessions or protectorates outside the boundaries of the mother country shall be considered separate countries, and the name thereof shall be deemed acceptable in designating the country where the wool product was processed or manufactured unless the Commission shall otherwise direct.

(d) The country where the imported wool product was principally made shall be considered to be the country where such wool product was processed or manufactured. Further work or material added to the wool product in another country must effect a basic change in form in order to render such other country the place where such wool product was processed or manufactured.

(e) The English name of the country where the imported wool product was processed or manufactured shall be used. The adjectival form of the name of the country will be accepted as the name of the country where the wool product was processed or manufactured, provided the adjectival form of the name does not appear with such other words so as to refer to a kind of species of product. Variant spellings which clearly indicate the English name of the country, such as Brasil for Brazil and Italie for Italy, are acceptable. Abbreviations which unmistakenly indicate the name of a country, such as *Gt. Britain* for *Great Britain,* are acceptable.

(f) Nothing in this Rule shall be construed as limiting in any way the information required to be disclosed on labels under the provisions of any Tariff Act of the United States or regulations prescribed by the Secretary of the Treasury.

[50 FR 15106, Apr. 17, 1985. Redesignated and amended at 63 FR 7517, Feb. 13, 1998; 65 FR 75156, Dec. 1, 2000]

§ 300.25a Country of origin in mail order advertising.

When a wool product is advertised in any mail order catalog or mail order promotional material, the description of such product shall contain a clear

and conspicuous statement that the product was either made in U.S.A., imported, or both. Other words or phrases with the same meaning may be used. The statement of origin required by this section shall not be inconsistent with the origin labeling of the product being advertised.

[50 FR 15106, Apr. 17, 1985. Redesignated at 63 FR 7517, Feb. 13, 1998]

§ 300.26 Pile fabrics and products composed thereof.

The fiber content of pile fabrics or products made thereof may be stated in the label or mark of identification in such segregated form as will show the fiber content of the face or pile and of the back or base, with the percentages of the respective fibers as they exist in the face or pile and in the back or base: *Provided,* That in such disclosure the respective percentages of the face and the back be given in such manner as will show the ratio between the face and the back. Examples of the form of marking pile fabrics as to fiber content provided for in this section are as follows:

100% Wool Pile
100% Cotton Back
(Back constitutes 60% of fabric and pile 40%)
Pile—60% Recycled Wool, 40% Wool
Back—70% Cotton, 30% Rayon
(Pile constitutes 60% of fabric and back 40%).

[6 FR 3426, July 15, 1941, as amended at 45 FR 44262, July 1, 1980]

§ 300.27 Wool products containing superimposed or added fibers.

Where a wool product is made wholly of one fiber or a blend of fibers with the exception of an additional fiber in minor proportion superimposed or added in certain separate and distinct areas or sections for reinforcing or other useful purposes, the product may be designated according to the fiber content of the principal fiber or blend of fibers, with an excepting naming the superimposed or added fiber, giving the percentage thereof in relation to the total fiber weight of the principal fiber or blend of fibers, and indicating the area or section which contains the superimposed or added fiber. An example of this type of fiber content disclosure, as applied to products having reinforcing fibers added to a particular area or section, is as follows:

55% Recycled Wool
45% Rayon
Except 5% Nylon added to toe and heel

[29 FR 6626, May 21, 1964, as amended at 45 FR 44262, July 1, 1980]

§ 300.28 Undetermined quantities of reclaimed fibers.

(a) Where a wool product is composed in part of various man-made fibers recovered from textile products containing underdetermined qualities of such fibers, the percentage content of the respective fibers recovered from such products may be disclosed on the required stamp, tag, or label, in aggregate form as ''man-made fibers'' followed by the naming of such fibers in the order of their predominance by weight, as for example:

60% Wool
40% Man-made fibers
Rayon
Acetate
Nylon

(b) Where a wool product is composed in part of wool, or recycled wool and in part of unknown and, for practical purposes, undeterminable non-woolen fibers reclaimed from any spun, woven, knitted, felted, braided, bonded or otherwise manufactured or used product, the required fiber content disclosure may, when truthfully applicable, in lieu of the fiber content disclosure otherwise required by the Act and regulations, set forth (1) the percentages of wool or recycled wool, and (2) the generic names and the percentages of all other fibers whose presence is known or practically ascertainable and (3) the percentage of the unknown and undeterminable reclaimed fibers, designating such reclaimed fibers as ''unknown reclaimed fibers'' or ''undetermined reclaimed fibers,'' as for example:

75% Recycled Wool—25% Unknown Reclaimed Fibers.
35% recycled Wool—30% Acetate—15% Cotton—20% Undetermined Reclaimed Fibers.

In making the required fiber content disclosure any fibers referred to as ''unknown reclaimed fibers'' or ''undetermined reclaimed fibers'' shall be listed last.

(c) The terms *unknown recycled fibers* and *undetermined recycled fibers* may be used in describing the unknown and undeterminable reclaimed fibers referred to in paragraph (b) of this rule in lieu of the terms specified therein, provided, however, That the same standard is used in determining the applicability of the term *recycled* as is used in defining ''recycled wool'' in section 2(c) of the Act.

(d) For purposes of this rule undetermined or unascertained amounts of wool or recycled wool may be classified and designated as recycled wool.

(e) Nothing contained in this rule shall excuse a full and accurate disclosure of fiber content with correct percentages if the same is known or practically ascertainable, or permit a deviation from the requirements of section 4(a)(2)(A) of the Act with respect to products not labeled under the provisions of this rule or permit a higher classification of wool or recycled wool than that provided by Section 2 of the Act.

[29 FR 6626, May 21, 1964, as amended at 45 FR 44262, July 1, 1980; 45 FR 49542, July 25, 1980]

§ 300.29 Garments or products composed of or containing miscellaneous cloth scraps.

(a) For wool products which consist of, or are made from, miscellaneous cloth scraps comprising manufacturing by-products and containing various fibers of undetermined percentages, the following form of disclosure as to fiber content of such wool products, where truthfully appliable and with appropriate percentage figure inserted, may be used in the stamp, tag, label, or mark of identification of such product:

(1) Where the product contains chiefly cotton as well as woolen fibers in the minimum percentage designated for recycled wool:

Made of Miscellaneous Cloth Scraps Composed Chiefly of Cotton With Minimum of ____% Recycled Wool.

(2) Where the product contains chiefly rayon as well as woolen fibers in the minimum percentage designated for recycled wool:

Made of Miscellaneous Cloth Scraps Composed Chiefly of Rayon With Minimum of ____% Recycled Wool.

(3) Where the product is composed chiefly of a mixture of cotton and rayon as well as woolen fibers in the minimum percentage designated for recycled wool:

Made of Miscellaneous Cloth Scraps Composed Chiefly of Cotton and Rayon With Minimum of ____% Recycled Wool.

(4) Where the product contains chiefly woolen fibers with the balance of undetermined mixtures of cotton, rayon or other non-woolen fibers:

Made of Miscellaneous Cloth Scraps Containing Cotton, Rayon and Other Non-Woolen Fibers, With Minimum of ____% Recycled Wool.

(b) Where the cotton or rayon content or the non-woolen fiber content mentioned in such forms of disclosure is not known to comprise as much as 50% of the fiber content of the product, the word ''chiefly'' in the respective form of disclosure specified in this section shall be omitted.

(c) The words ''Contents are'' may be used in the above-mentioned forms of marking in lieu of the words ''Made of'' where appropriate to the nature of the product.

(d) For purposes of this rule, undetermined or unascertained amounts of wool or recycled wool which may be contained in the product may be classified and designated as recycled wool.

[6 FR 3426, July 15, 1941, as amended at 45 FR 44262, July 1, 1980]

§ 300.30 Deceptive labeling in general.

Products subject to the act shall not bear, nor have used in connection therewith, any stamp, tag, label, mark or representation which is false, misleading or deceptive in any respect.

MANUFACTURERS' RECORDS

§ 300.31 Maintenance of records.

(a) Pursuant to the provisions of section 6 of the Act, every manufacturer of a wool product subject to the Act, irrespective of whether any guaranty has been given or received, shall maintain records showing the information required by the Act and Regulations with respect to all such wool products made

by such manufacturer. Such records shall show:

(1) The fiber content of the product specified in section 4(a)(2)(A) of the Act.

(2) The maximum percentage of the total weight of the wool product of any non-fibrous loading, filling or adulterating matter as prescribed by section 4(a)(2)(B) of the Act.

(3) The name, or registered identification number issued by the Commission, of the manufacturer of the wool product or the name or registered identification number of one or more persons subject to section 3 of the Act with respect to such wool product.

(4) The name of the country where the wool product was processed or manufactured as prescribed by sections 300.25a and/or .25b.

(b) Any person substituting labels shall keep such records as will show the information on the label removed and the name or names of the person or persons from whom the wool product was received.

(c) The purpose of these records is to permit a determination that the requirements of the Act and Regulations have been met and to establish a traceable line of continuity from raw material through processing to finished product. The records shall be preserved for at least three years.

[53 FR 31314, Aug. 18, 1988]

GUARANTIES

§ 300.32 Form of separate guaranty.

(a) The following are suggested forms of separate guaranties under section 9 of the Act which may be used by a guarantor residing in the United States on or as part of an invoice or other paper relating to the marketing or handling of any wool products listed and designated therein and showing the date of such invoice or other paper and the signature and address of the guarantor:

(1) *General form.*

We guarantee that the wool products specified herein are not misbranded under the provisions of the Wool Products Labeling Act and rules and regulations thereunder.

(2) *Guaranty based on guaranty.*

Based upon a guaranty received, we guarantee that the wool products specified herein are not misbranded under the provisions of the Wool Products Labeling Act and rules and regulations thereunder.

NOTE: The printed name and address on the invoice or other paper will suffice to meet the signature and address requirements.

(b) The mere disclosure of required information including the fiber content of wool products on a label or on an invoice or other paper relating to its marketing or handling shall not be considered a form of separate guaranty.

[29 FR 6627, May 21, 1964]

§ 300.33 Continuing guaranty filed with Federal Trade Commission.

(a)(1) Under section 9 of the Act any person residing in the United States and marketing or handling wool products may file a continuing guaranty with the Federal Trade Commission.

(2) When filed with the Commission a continuing guaranty shall be fully executed in duplicate. Forms for use in preparing continuing guaranties will be supplied by the Commission upon request.

(3) Continuing guaranties filed with the Commission shall continue in effect until revoked. The guarantor shall promptly report any change in business status to the Commission.

(b) The prescribed form for a continuing guaranty is found in § 303.38(b) of this chapter. The form is available upon request from the Textile Section, Enforcement Division, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

(c) Any person who has a continuing guaranty on file with the Commission may, during the effective dates of the guaranty, give notice of such fact by setting forth on the invoice or other paper covering the marketing or handling of the product guaranteed the following:

Continuing Guaranty under the Wool Products Labeling Act filed with the Federal Trade Commission.

(d) Any person who falsely represents that he has a continuing guaranty on file with the Federal Trade Commission shall be deemed to have furnished

a false guaranty under section 9(b) of the Act.

[29 FR 6627, May 21, 1964, as amended at 48 FR 12517, Mar. 25, 1983; 63 FR 7517, Feb. 13, 1998; 63 FR 71583, Dec. 28, 1998]

§ 300.34 Reference to existing guaranty on labels not permitted.

No representation or suggestion that a wool product is guaranteed under the act by the Government, or any branch thereof shall be made on or in the stamp, tag, label, or other mark of identification, applied or affixed to wool products.

GENERAL

§ 300.35 Hearings under section 4(d) of the act.

Hearings under section 4(d) of the act will be held when deemed by the Commission to be in the public interest. Interested persons may file applications for such hearings. Such applications shall be filed in quadruplicate and shall contain a detailed technical description of the class or classes of articles or products regarding which applicant requests a determination and announcement by the Commission concerning express or implied representations of fiber content of articles or concerning insignificant or inconsequential textile content of products.

(Sec. 4(d), 54 Stat. 1129; 15 U.S.C. 68b(d))

PART 301—RULES AND REGULATIONS UNDER FUR PRODUCTS LABELING ACT

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301.0 Fur products name guide.

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AUTHORITY: 15 U.S.C. 69 *et seq.*

NAME GUIDE

§ 301.0 Fur products name guide.

NAME GUIDE

Name	Order	Family	Genus-species
Alpaca	Ungulata	Camelidae	Lama pacos.
Antelope	.....do	Bovidae	Hippotragus niger and Antilope cervicapra.
Badger	Carnivora	Mustelidae	Taxida sp. and Meles sp.
Bassarisk	.....do	Procyonidae	Bassariscus astutus.
Bear	.....do	Ursidae	Ursus sp.
Bear, Polar	.....do	.....do	Thalarctos sp.
Beaver	Rodentia	Castoridae	Castor canadensis.
Burunduk	.....do	Sciuridae	Eutamias asiaticus.
Calf	Ungulata	Bovidae	Bos taurus.
Cat, Caracal	Carnivora	Felidae	Caracal caracal.
Cat, Domestic	.....do	.....do	Felis catus.
Cat, Lynx	.....do	.....do	Lynx refus.
Cat, Manul	.....do	.....do	Felis manul.
Cat, Margay	.....do	.....do	Felis wiedii.
Cat, Spotted	.....do	.....do	Felis sp. (South America).
Cat, Wild	.....do	.....do	Felis catus and Felis lybica.
Cheetah	.....do	.....do	Acinonyx jubatus.
Chinchilla	Rodentia	Chinchillidae	Chinchilla chinchilla.
Chipmunk	.....do	Sciuridae	Eutamias sp.
Civet	Carnivora	Viverridae	Viverra sp., Viverricula sp., Paradoxurus sp., Paguma sp., and Herpestes sp.
Desman	Insectivora	Talpidae	Desmana moschata and Galemys pyrenaicus.
Dog	Carnivora	Canidae	Canis familiaris.
Ermine	.....do	Mustelidae	Mustela erminea.
Fisher	.....do	.....do	Martes pennanti.
Fitch	.....do	.....do	Mustela putorius.
Fox	.....do	Canidae	Vulpes fulva, Vulpes, vulpes, and Vulpes macrotis.
Fox, Blue	.....do	.....do	Alopex sp.
Fox, Grey	.....do	.....do	Urocyon cinereoargenteus and Urocyon littoralis.
Fox, Kit	.....do	.....do	Vulpes velox.
Fox, White	Carnivora	Canidae	Alpoex sp.
Genet	.....do	Viverridae	Genetta genetta.
Goat	Ungulata	Bovidae	Cpara prisca.
Guanaco, or its young, the Guanaquito..	.....do	Camelidae	Lama guanicoe.
Hamster	Rodentia	Cricetidae	Cricetus cricetus.
Hare	.....do	Leporidae	Lepus sp. and Lepus europaeus occidentalis.
Jackal	Carnivora	Canidae	Canis aureus and Canis adustus.
Jackal, Cape	.....do	.....do	Canis mesomelas.
Jaguar	.....do	Felidae	Felis onca.
Jaguarondi	.....do	.....do	Felis yagouaroundi.
Kangaroo	Marsupialia	Macropodidae	Macropus sp.
Kangaroo-rat	.....do	.....do	Bettongia sp.
Kid	Ungulata	Bovidae	Capra prisca.
Kinkajou	Carnivora	Procyonidae	Potos flavus.
Koala	Marsupialia	Phasocolarctidae	Phascolarctos cinereus.
Kolinsky	Carnivora	Mustelidae	Mustela sibirica.
Lamb	Ungulata	Bovidae	Ovis aries.
Leopard	Carnivora	Felidae	Felis pardus.
Llama	Ungulata	Cemelidae	Lama glama.
Lynx	Carnivora	Felidae	Lynx canadensis and Lynx lynx.
Marmot	Rodentia	Scinridae	Marmota bobak.
Marten, American	Carnivora	Mustelidae	Martes americana and Martes caurina.
Marten, Baum	.....do	.....do	Martes martes.
Marten, Japanese	.....do	.....do	Martes melampus.
Marten, Stone	.....do	.....do	Martes foina.
Mink	.....do	.....do	Mustela vison and Mustela lutreola.
Mole	Insectivora	Talpidae	Talpa sp.
Monkey	Primates	Colobidae	Colobus polykomos.
Muskrat	Rodentia	Muridae	Ondatra zibethicus.
Nutria	.....do	Capromyidae	Myocastor coypus.
Ocelot	Carnivora	Felidae	Felis pardalis.
Opossum	Marsupialia	Didelphiidae	Didelphis sp.
Oppossum, Australian	.....do	Phalangeridae	Trichosurus vulpecula.
Opossum, Ring-tail	.....do	.....do	Pseudocheirus sp.
Oppossum, South American.	.....do	Didelphiidae	Lutreolina crassicaudata.

NAME GUIDE—Continued

Name	Order	Family	Genus-species
Opossum, Water	.....do	.....do	Chironectes minimus.
Otter	Carnivora	Mustelidae	Lutra canadensis, Pteronura brasitionsis, Lutra annectens and Lutra lutra.
Otter, Sea	.....do	.....do	Enhydra lutris.
Pahmi	.....do	.....do	Helictis moschata and Helictis personata.
Panda	.....do	Procyonidae	Ailurus fulgens.
Peschanik	Rodentia	Sciuridae	Citellus fulvus.
Pony	Ungulata	Equidae	Equus caballus.
Rabbit	Rodentia	Leporidae	Oryctolagus cuniculus.
Raccoon	Carnivora	Procyonidae	Procyon lotor and Procyon cancrivorus.
Raccoon, Asiatic	.....do	Canidae	Nyctereutes procyonoidos.
Raccoon, Mexican	.....do	.....do	Nasua sp.
Reindeer	Ungulata	Cervidae	Rangifer tarandus.
Sable	Carnivora	Mustelidae	Martes zibellina.
Sable, American	.....do	.....do	Martes americana and Martes caurina.
Seal, Fur	Pinnipedia	Otariidae	Callorhinus ursinus and Arctocephalus sp.
Seal, Hair	.....do	Phocidae	Phoca sp.
Seal, Roc	.....do	Otariidae	Otaria flavescens.
Sheep	Ungulata	Bovidae	Ovis aries.
Skunk	Carnivora	Mustelidae	Mephitis mephitis, Mephitis macroura, Conepatus semistriatus and Conepatus sp.
Skunk, Spotted	.....do	.....do	Spilogale sp.
Squirrel	Rodentia	Sciuridae	Sciurus vulgaris.
Squirrel, Flying	.....do	.....do	Eupetaurus cinereus, Pteromys volans and Petaurista leucogenys.
Susilk	.....do	.....do	Citellus citellus, Citellus rufescens and Citellus suslica.
Vicuna	Ungulata	Camelidae	Vicugna vicugna.
Viscacha	Rodentia	Chinchillidae	Ligidium viscacia.
Wallaby	Marsupialia	Macropodidae	Wallabia sp., Petrogale sp., and Thylogale sp.
Weasel	Carnivora	Mustelidae	Mustela frenata.
Weasel, Chinese	.....do	.....do	Mustela sibirica.
Weasel, Japanese	.....do	.....do	Mustela itatsi (also classified as Mustela sibirica itatsi).
Weasel, Manchurian	Carnivora	Mustelidae	Mustela altaica and Mustela rixosa.
Wolf	.....do	Canidae	Canis lupus and Canis niger.
Wolverine	.....do	Mustelidae	Gulo luscus and Gulo gulo.
Wombat	Marsupialia	Vombatidae	Vombatus sp.
Woodchuck	Rodentia	Sciuridae	Marmota monax.

(Secs. 7, 8, 65 Stat. 179; 15 U.S.C. 69e, 69f)

[17 FR 1205, Feb. 3, 1952, as amended at 26 FR 10446, Nov. 4, 1961; 32 FR 6023, Apr. 15, 1967]

REGULATIONS

SOURCE: 17 FR 6075, July 8, 1952, unless otherwise noted.

§ 301.1 Terms defined.

(a) As used in this part, unless the context otherwise specifically requires:

(1) The term *act* means the *Fur Products Labeling Act* (approved Aug. 8, 1951, Pub. L. 110, 82d Cong., 1st Sess.; 15 U.S.C.A. sec. 69; 65 Stat. 179).

(2) The terms *rule*, *rules*, *regulations*, and *rules and regulations*, mean the rules and regulations prescribed by the Commission pursuant to section 8 (b) of the act.

(3) The definitions of terms contained in section 2 of the act shall be applicable also to such terms when used in rules promulgated under the act.

(4) The terms *Fur Products Name Guide* and *Name Guide* mean the register of names of hair fleece and fur bearing animals issued by the Commission on February 8, 1952, pursuant to the provisions of section 7 (a) of the act.

(5) The terms *required information* and *information required* mean the information required to be disclosed on labels, invoices and in advertising under the act and rules and regulations, and such further information as may be permitted by the regulations, when and if used.

(6) The term *cat fur* means the pelt or skin of any animal of the species *Felis catus*.

(7) The term *dog fur* means the pelt or skin of any animal of the species *Canis familiaris*.

(8) The term *dog or cat fur product* means any item of merchandise which consists, or is composed in whole or in part, of any dog fur, cat fur, or both.

(b) The term *wearing apparel* as used in the definition of a fur product in section 2(d) of the Act means (1) Any articles of clothing or covering for any part of the body; and (2) shall include any assembled furs, used furs, or waste furs, in attached form, including mats, plates or garment shells or furs flat off the board, and furs which have been dyed, tip-dyed, bleached or artificially colored, intended for use as or in wearing apparel: *Provided, however,* That the provisions of section 4(2) of the Act shall not be applicable to those fur products set out in paragraph (b)(2) of this section.

[17 FR 6075, July 8, 1952, as amended at 26 FR 3186, Apr. 14, 1961; 61 FR 67709, Dec. 24, 1996; 65 FR 82270, Dec. 28, 2000]

§ 301.2 General requirements.

(a) Each and every fur product, except those exempted under § 301.39 of this part, shall be labeled and invoiced in conformity with the requirements of the act and rules and regulations.

(b) Each and every fur shall be invoiced in conformity with the requirements of the act and rules and regulations.

(c) Any advertising of fur products or furs shall be in conformity with the requirements of the act and rules and regulations.

§ 301.3 English language requirements.

All information required under the act and rules and regulations to appear on labels, invoices, and in advertising, shall be set out in the English language. If labels, invoices or advertising matter contain any of the required information in a language other than English, all of the required information shall appear also in the English language. The provisions of this section shall not apply to advertisements in foreign language newspapers or periodicals, but such advertising shall in all other respects comply with the act and regulations.

§ 301.4 Abbreviations or ditto marks prohibited.

In disclosing required information in labeling and advertising, words or terms shall not be abbreviated or designated by the use of ditto marks but shall be spelled out fully, and in invoicing the required information shall not be abbreviated but shall be spelled out fully.

§ 301.5 Use of Fur Products Name Guide.

(a) The Fur Products Name Guide (§ 301.0 of this part) is set up in four columns under the headings of Name, Order, Family and Genus-Species. The applicable animal name appearing in the column headed ''Name'' shall be used in the required information in labeling, invoicing and advertising of fur products and furs. The scientific names appearing under the columns headed Order, Family, and Genus-Species are furnished for animal identification purposes and shall not be used.

(b) Where the name of the animal appearing in the Name Guide consists of two separate words the second word shall precede the first in designating the name of the animal in the required information; as for example: ''Fox, Black'' shall be disclosed as ''Black Fox.''

§ 301.6 Animals not listed in Fur Products Name Guide.

(a) All furs are subject to the act and regulations regardless of whether the name of the animal producing the fur appears in the Fur Products Name Guide.

(b) Where fur is obtained from an animal not listed in the Fur Products Name Guide it shall be designated in the required information by the true English name of the animal or in the absence of a true English name, by the name which properly identifies such animal in the United States.

§ 301.7 Describing furs by certain breed names prohibited.

If the fur of an animal is described in any manner by its breed, species, strain or coloring, irrespective of former usage, such descriptive matter shall not contain the name of another animal either in the adjective form or

otherwise nor shall such description (subject to any exception contained in this part or animal names appearing in the Fur Products Name Guide) contain a name in an adjective form or otherwise which connotes a false geographic origin of the animal. For example, such designations as ''Sable Mink,'' ''Chinchilla Rabbit,'' and ''Aleutian Mink'' shall not be used.

§ 301.8 Use of terms "Persian Lamb," "Broadtail Lamb," and "Persian-broadtail Lamb" permitted.

(a) The term *Persian Lamb* may be used to describe the skin of the young lamb of the Karakul breed of sheep or top-cross breed of such sheep, having hair formed in knuckled curls.

(b) The term *Broadtail Lamb* may be used to describe the skin of the prematurely born, stillborn, or very young lamb of the Karakul breed of sheep or top-cross breed of such sheep, having flat light-weight fur with a moire pattern.

(c) The term *Persian-broadtail Lamb* may be used to describe the skin of the very young lamb of the Karakul breed of sheep or top-cross breed of such sheep, having hair formed in flattened knuckled curls with a moire pattern.

(d) The terms ''Persian Lamb'', ''Broadtail Lamb'', or ''Persian-broadtail Lamb'' shall not be used to describe: (1) The so-called Krimmer, Bessarabian, Rumanian, Shiraz, Salzfelle, Metis, Dubar, Meshed, Caracul, Iranian, Iraqi, Chinese, Mongolian, Chekiang, or Indian lamb skins, unless such lamb skins conform with the requirements set out in paragraph (a), (b), or (c) of this section respectively; or (2) any other lamb skins having hair in a wavy or open curl pattern.

§ 301.9 Use of terms "Mouton Lamb" and "Shearling Lamb" permitted.

(a) The term *Mouton Lamb* may be used to describe the skin of a lamb which has been sheared, the hair straightened, chemically treated, and thermally set to produce a moisture repellant finish; as for example:

Dyed Mouton Lamb

(b) The term *Shearling Lamb* may be used to describe the skin of a lamb which has been sheared and combed.

[17 FR 6075, July 8, 1952, as amended at 26 FR 3186, Apr. 14, 1961]

§ 301.10 Use of term "Broadtail-processed Lamb" permitted.

The term *Broadtail-processed Lamb* may be used to describe the skin of a lamb which has been sheared, leaving a moire hair pattern on the pelt having the appearance of the true fur pattern of ''Broadtail Lamb''; as for example:

Dyed Broadtail-processed Lamb
Fur origin: Argentina

§ 301.11 Fictitious or non-existing animal designations prohibited.

No trade names, coined names, nor other names or words descriptive of a fur as being the fur of an animal which is in fact fictitious or non-existent shall be used in labeling, invoicing or advertising of a fur or fur product.

§ 301.12 Country of origin of imported furs.

(a)(1) In the case of furs imported into the United States from a foreign country, the country of origin of such furs shall be set forth as a part of the information required by the act in invoicing and advertising.

(2) In the case of fur products imported into the United States from a foreign country, or fur products made from furs imported into the United States from a foreign country, the country of origin of the furs contained in such products shall be set forth as a part of the information required by the act in labeling, invoicing and advertising.

(b) The term *country* means the political entity known as a nation. Colonies, possessions or protectorates outside the boundaries of the mother country shall be considered separate countries and the name thereof shall be deemed acceptable in designating the ''country of origin'' unless the Commission shall otherwise direct.

(c) The country in which the animal producing the fur was raised, or if in a feral state, was taken, shall be considered the ''country of origin.''

(d) When furs are taken within the territorial waters of a country, such

country shall be considered the ''country of origin.'' Furs taken outside such territorial waters, or on the high seas, shall have as their country of origin the country having the nearest mainland.

(e)(1) The English name of the country of origin shall be used. Abbreviations which unmistakably indicate the name of a country, such as ''Gt. Britain'' for ''Great Britain,'' are acceptable. Abbreviations such as ''N.Z.'' for ''New Zealand'' are not acceptable.

(2) The name of the country of origin, when used as a part of the required information in labeling shall be preceded by the term *fur origin;* as for example:

Dyed Muskrat
Fur Origin: Russia

or

Dyed China Mink
Fur Origin: China

(3) In addition to the required disclosure of country of origin the name of the country may also appear in adjective form in connection with the name of the animal; as for example:

Tip-dyed Canadian American Sable
Fur Origin: Canada

or

Russian Sable
Fur Origin: Russia

(f) Nothing in this section shall be construed as limiting in any way the information required to be disclosed on labels under the provisions of any Tariff Act of the United States or regulations prescribed by the Secretary of the Treasury.

[17 FR 6075, July 8, 1952, as amended at 26 FR 3186, Apr. 14, 1961; 61 FR 67709, Dec. 24, 1996]

§ 301.13 Fur products having furs with different countries of origin.

When a fur product is composed of furs with different countries of origin the names of such countries shall be set forth in the required information in the order of predominance by surface areas of the furs in the fur product.

§ 301.14 Country of origin of used furs.

When the country of origin of used furs is unknown, and no representations are made directly or by implication with respect thereto, this fact shall be set out as a part of the required information in lieu of the country of origin as ''Fur origin: Unknown.''

§ 301.15 Designation of section producing domestic furs permitted.

In the case of furs produced in the United States the name of the section or area producing the furs used in the fur product may be set out in connection with the name of the animal; as for example:

Dyed Fur Seal
Fur origin: Alaska

or

Dyed Muskrat
Fur origin: Minnesota

§ 301.16 Disclosure of origin of certain furs raised or taken in United States.

If the name of any animal set out in the Fur Products Name Guide or term permitted by the regulations to be used in connection therewith connotes foreign origin and such animal is raised or taken in the United States, furs obtained therefrom shall be described in disclosing the required information as having the United States as the country of origin; as for example:

Dyed Persian Lamb
Fur origin: United States

or

Mexican Raccoon
Fur origin: United States

§ 301.17 Misrepresentation of origin of furs.

No misleading nor deceptive statements as to the geographical or zoological origin of the animal producing a fur shall be used directly or indirectly in labeling, invoicing or advertising furs or fur products.

§ 301.18 Passing off domestic furs as imported furs prohibited.

No domestic furs nor fur products shall be labeled, invoiced or advertised in such a manner as to represent directly or by implication that they have been imported.

§ 301.19 Pointing, dyeing, bleaching or otherwise artificially coloring.

(a) Where a fur or fur product is pointed or contains or is composed of bleached, dyed or otherwise artificially

colored fur, such facts shall be disclosed as a part of the required information in labeling, invoicing and advertising.

(b) The term *pointing* means the process of inserting separate hairs into furs or fur products for the purpose of adding guard hairs, either to repair damaged areas or to simulate other furs.

(c) The term *bleaching* means the process for producing a lighter shade of a fur, or removing off-color spots and stains by a bleaching agent.

(d) The term *dyeing* (which includes the processes known in the trade of tipping the hair or fur, feathering, and beautifying) means the process of applying dyestuffs to the hair or fur, either by immersion in a dye bath or by application of the dye by brush, feather, spray, or otherwise, for the purpose of changing the color of the fur or hair, or to accentuate its natural color. When dyestuff is applied by immersion in a dye bath or by application of the dye by brush, feather, or spray, it may respectively be described as ''vat dyed'', ''brush dyed'', ''feather dyed'', or ''spray dyed'', as the case may be. When dyestuff is applied only to the ends of the hair or fur, by feather or otherwise, it may also be described as ''tip-dyed''. The application of dyestuff to the leather or the skin (known in the trade as ''tipping'', as distinguished from tip-dyeing the hair or fur as above described) and which does not affect a change of, nor accentuate the natural color of the hair or fur, shall not be considered as ''dyeing''. When fluorescent dye is applied to a fur or fur product it may be described as ''brightener added''.

(e) The term *artificial coloring* means any change or improvement in color of a fur or fur product in any manner other than by pointing, bleaching, dyeing, or tip-dyeing, and shall be described in labeling, invoicing and advertising as ''color altered'' or ''color added''.

(f) The term *blended* shall not be used as a part of the required information to describe the pointing, bleaching, dyeing, tip-dyeing, or otherwise artificially coloring of furs.

(g) Where a fur or fur product is not pointed, bleached, dyed, tip-dyed, or otherwise artificially colored it shall be described as ''natural''.

(h) Where any fur or fur product is dressed, processed or treated with a solution or compound containing any metal and such compound or solution effects any change or improvement in the color of the hair, fleece or fur fiber, such fur or fur product shall be described in labeling, invoicing and advertising as ''color altered'' or ''color added''.

(i)(1) Any person dressing, processing or treating a fur pelt in such a manner that it is required under paragraph (e) or (h) of this section to be described as ''color altered'' or ''color added'' shall place a black stripe at least one half inch (1.27 cm) in width across the leather side of the skin immediately above the rump or place a stamp with a solid black center in the form of either a two inch (5.08 cm) square or a circle at least two inches (5.08 cm) in diameter on the leather side of the pelt and shall use black ink for all other stamps or markings on the leather side of the pelt.

(2) Any person dressing, processing or treating a fur pelt which after processing is considered natural under paragraph (g) of this section shall place a white stripe at least one half inch (1.27 cm) in width across the leather side of the skin immediately above the rump or place a stamp with a solid white center in the form of either a two inch (5.08 cm) square or a circle at least two inches (5.08 cm) in diameter on the leather side of the pelt and shall use white ink for all other stamps or markings on the leather side of the pelt.

(3) Any person dressing, processing or treating a fur pelt in such a manner that it is considered dyed under paragraph (d) of this section shall place a yellow stripe at least one half inch (1.27 cm) in width across the leather side immediately above the rump or place a stamp with a solid yellow center in the form of either a two inch (5.08 cm) square or a circle at least two inches (5.08 cm) in diameter on the leather side of the pelt and shall use yellow ink for all other stamps or markings on the leather side of the pelt.

(4) In lieu of the marking or stamping otherwise required by paragraphs

(i) (1), (2), and (3) of this section, any person dressing, processing or treating a fur pelt so as to be subject to the stamping or marking requirements of this paragraph may stamp the leather side of the pelt with the appropriate truthful designation ''dyed'', ''color altered'', ''color added'', or ''natural'', as the case may be, in such manner that the stamp will not be obliterated or mutilated by further processing and will remain clearly legible until the finished fur product reaches the ultimate consumer.

(5) Where, after assembling, fur garment shells, mats, plates or other assembled furs are processed or treated in such a manner as to fall within the stamping or marking provisions of this paragraph, such assembled furs, in lieu of the stamping or marking of each individual pelt or piece, may be appropriately stamped on the leather side as provided in this paragraph in such a manner that the stamp will remain on the finished fur product and clearly legible until it reaches the ultimate consumer and will not be mutilated or obliterated by further processing.

(j) Any person who shall process a fur pelt in such a manner that after such processing it is no longer considered as natural shall clearly, conspicuously and legibly stamp on the leather side of the pelt and on required invoices relating thereto a lot number or other identifying number which relates to such records of the processor as will show the source and disposition of the pelts and the details of the processing performed. Such person shall also stamp his name or registered identification number on the leather side of the pelt.

(k) Any person who possesses fur pelts of a type which are always considered as dyed under paragraph (d) of this section after processing or any person who processes fur pelts which are always natural at the time of sale to the ultimate consumer, which pelts for a valid reason cannot be marked or stamped as provided in this section, may file an affidavit with the Federal Trade Commission's Bureau of Consumer Protection setting forth such facts as will show that the pelts are always dyed or natural as the case may be and that the stamping of such pelts cannot be reasonably accomplished. If the Bureau of Consumer Protection is satisfied that the public interest will be protected by the filing of the affidavit, it may accept such affidavit and advise the affiant that marking of the fur pelts themselves as provided in this section will be unnecessary until further notice. Any person filing such an affidavit shall promptly notify the Commission of any change in circumstances with respect to its operations.

(l) Any person subject to this section who incorrectly marks or fails to mark fur pelts as provided in paragraphs (i) and (j) of this section shall be deemed to have misbranded such products under section 4(l) of the Act. Any person subject to this section who furnishes a false or misleading affidavit under paragraph (k) of this section or fails to give the notice required by paragraph (k) of this section shall be deemed to have neglected and refused to maintain the records required by section 8(d) of the Act.

(1) In connection with paragraph (h) of this section, the following method may be used for detection of parts per million of iron and copper in hairs from fur pelts including hairs from mink pelts. Procedure for detection of parts per million of iron and copper in hairs from fur pelts including mink hairs.

(2) A recommended method for preparation of samples would be: Carefully pluck hair samples from 10 to 15 different representative sites on the pelt or garment. This can best be accomplished by using a long nose stainless steel pliers with a tip diameter of 1/16 inch (1.59 mm). The pliers should be inserted at the same angle as the guard hairs with the tip opened to 1/4 inch (6.35 mm). After contact with the hide, the tip should be raised about 1/4 inch (6.35 mm), closed tightly and pulled quickly and firmly to remove the hair.

(3) Place an accurately weighed sample of approximately .1000 grams of mink hair into a beaker with 20 ml. concentrated nitric acid. Evaporate just to dryness on a hot plate.

(4) If there is any organic matter still present, add 10 ml. of concentrated nitric acid (see paragraph 7) and again evaporate just to dryness on a hot plate. This step should be repeated until the nitric acid solution becomes

clear to light green. Add 10 ml. of 1% hydrochloric acid to the dried residue in the beaker. Warm on a hot plate to insure complete solution of the residue.

(5) A recommended analytical procedure would be atomic absorption spectrophotometry. In testing for iron, the atomic absorption instrument must have the capability of a 2 angstrom band pass at the 2483 A line. When analyzing for iron the air-acetylene flame should be as lean as possible.

(6) A reagent blank should be carried through the entire procedure as outlined above and the final results corrected for the amounts of iron and copper found in the reagent blank.

(7) If facilities are available for handling perchloric acid, a preferred alternate to the additional nitric acid treatment would be to add 2 ml. of perchloric acid and 8 ml. of nitric acid, cover the beaker with a watch glass and allow the solutions to become clear to light green before removal of the watch glass and evaporation just to dryness.

[17 FR 6075, July 8, 1952, as amended at 26 FR 3186, Apr. 14, 1961; 34 FR 381, Jan. 10, 1969; 36 FR 5689, Mar. 26, 1971; 41 FR 2636, Jan. 19, 1976; 53 FR 31314, Aug. 18, 1988; 61 FR 67709, Dec. 24, 1996]

§ 301.20 Fur products composed of pieces.

(a) Where fur products, or fur mats and plates, are composed in whole or in substantial part of paws, tails, bellies, sides, flanks, gills, ears, throats, heads, scrap pieces, or waste fur, such fact shall be disclosed as a part of the required information in labeling, invoicing and advertising. Where a fur product is made of the backs of skins such fact may be set out in labels, invoices and advertising.

(b) Where fur products, or fur mats and plates, are composed wholly or substantially of two or more of the parts set out in paragraph (a) of this section or one or more of such parts and other fur, disclosure in respect thereto shall be made by naming such parts or other fur in order of predominance by surface area.

(c) The terms *substantial part* and *substantially* mean ten per centum (10 percent) or more in surface area.

(d) The term *assembled* shall not be used in lieu of the terms set forth in paragraph (a) of this section to describe fur products or fur mats and plates composed of such parts.

§ 301.21 Disclosure of used furs.

(a) When fur in any form has been worn or used by an ultimate consumer it shall be designated ''used fur'' as a part of the required information in invoicing and advertising.

(b) When fur products or fur mats and plates are composed in whole or in part of used fur, such fact shall be disclosed as a part of the required information in labeling, invoicing and advertising; as for example:

Leopard
Used Fur
or
Dyed Muskrat
Contains Used Fur

§ 301.22 Disclosure of damaged furs.

(a) The term *damaged fur,* as used in this part, means a fur, which, because of a known or patent defect resulting from natural causes or from processing, is of such a nature that its use in a fur product would decrease the normal life and durability of such product.

(b) When damaged furs are used in a fur product, full disclosure of such fact shall be made as a part of the required information in labeling, invoicing, or advertising such product; as for example:

Mink
Fur origin: Canada
Contains Damaged Fur

§ 301.23 Second-hand fur products.

When a fur product has been used or worn by an ultimate consumer and is subsequently marketed in its original, reconditioned, or rebuilt form with or without the addition of any furs or used furs, the requirements of the act and regulations in respect to labeling, invoicing and advertising of such product shall be applicable thereto, subject, however, to the provisions of § 301.14 of this part as to country of origin requirement, and in addition, as a part of the required information such product shall be designated ''Second-hand'',

''Reconditioned-Second-hand'', or ''Rebuilt-Second-hand'', as the case may be.

§ 301.24 Repairing, restyling and remodeling fur products for consumer.

When fur products owned by and to be returned to the ultimate-consumer are repaired, restyled or remodeled and used fur or fur is added thereto, labeling of the fur product shall not be required. However, the person adding such used fur or fur to the fur product, or who is responsible therefor, shall give to the owner an invoice disclosing the information required under the act and regulations respecting the used fur or fur added to the fur product, subject, however, to the provisions of § 301.14 of this part as to country of origin requirements.

§ 301.25 Name required to appear on labels and invoices.

The name required by the act to be used on labels and invoices shall be the full name under which the person is doing business, and no trade-mark, trade name nor other name which does not constitute such full name shall be used in lieu thereof.

§ 301.26 Registered identification numbers.

(a) Registered numbers for use as the required identification in lieu of the name on fur product labels as provided in section 4(2)(E) of the act will be issued by the Commission to qualified persons residing in the United States upon receipt of an application duly executed in the form set out in paragraph (d) of this section.

(b)(1) Registered identification numbers shall be used only by the person or concern to whom they are issued, and such numbers are not transferable or assignable.

(2) Registered identification numbers shall be subject to cancellation if the Federal Trade Commission fails to receive prompt notification of any change in name, business address, or legal business status of a person or firm to whom a registered identification number has been assigned, by application duly executed in the form set out in paragraph (d) of this section, reflecting the current name, business address, and legal business status of the person or firm.

(3) Registered identification numbers shall be subject to cancellation whenever any such number was procured or has been used improperly or contrary to the requirements of the act and regulations, or when otherwise deemed necessary in the public interest.

(c) Registered identification numbers assigned under this rule may be used on labels required in labeling products subject to the provisions of the Wool Products Labeling Act and Textile Fiber Products Identification Act, and numbers previously assigned or to be assigned by the Commission under such Acts may be used as and for the required name in labeling under this Act. When so used by the person or firm to whom assigned, the use of the numbers shall be construed as identifying and binding the applicant as fully and in all respects as though assigned under the specific Act for which it is used.

(d) The form to apply for a registered identification number or to update information pertaining to an existing number is found in § 303.20(d) of this chapter. The form is available upon request from the Textile Section, Enforcement Division, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580, or on the Internet at *http://www.ftc.gov*.

[17 FR 6075, July 8, 1952, as amended at 26 FR 3187, Apr. 14, 1961; 48 FR 12516, Mar. 25, 1983; 63 FR 7517, Feb. 13, 1998; 63 FR 71583, Dec. 28, 1998]

§ 301.27 Label and method of affixing.

At all times during the marketing of a fur product the required label shall have a minimum dimension of one and three-fourths (1¾) inches by two and three-fourths (2¾) inches (4.5 cm × 7 cm). Such label shall be of a material of sufficient durability and shall be conspicuously affixed to the product in a secure manner and with sufficient permanency to remain thereon throughout the sale, resale, distribution and handling incident thereto, and shall remain on or be firmly affixed to the respective product when sold and delivered to the purchaser and purchaser-consumer thereof.

[61 FR 67710, Dec. 24, 1996]

§ 301.28 Labels to be avoided.

Labels which are insecurely or inconspicuously attached, or which in the course of offering the fur product for sale, selling, transporting, marketing, or handling incident thereto, are likely to become detached, indistinct, obliterated, illegible, mutilated, inaccessible or inconspicuous shall not be used.

§ 301.29 Requirements in respect to disclosure on label.

(a) The required information shall be set out on the label in a legible manner and in not smaller than pica or twelve (12) point type, and all parts of the required information shall be set out in letters of equal size and conspicuousness. All of the required information with respect to the fur product shall be set out on one side of the label and no other information shall appear on such side except the lot or style designation and size. The lot or style designation may include non-deceptive terms indicating the type of garment, color of fur, and brand name for fur. The other side of the label may be used to set out any nonrequired information which is true and non-deceptive and which is not prohibited by the Act and regulations, but in all cases the animal name used shall be that set out in the Name Guide.

(b) The required information may be set out in hand printing provided it conforms to the requirements of paragraph (a) of this section, and is set out in indelible ink in a clear, distinct, legible and conspicuous manner. Handwriting shall not be used in setting out any of the required information on the label.

[17 FR 6075, July 8, 1952, as amended at 26 FR 3187, Apr. 14, 1961]

§ 301.30 Arrangement of required information on label.

(a) The applicable parts of the information required with respect to the fur to appear on labels affixed to fur products shall be set out in the following sequence:

(1) That the fur product contains or is composed of natural, pointed, bleached, dyed, tip-dyed or otherwise artificially colored fur, when such is the fact;

(2) That the fur product contains fur which has been sheared, plucked, or letout, when such is the fact;

(3) That the fur contained in the fur product originated in a particular country (when so used the name of the country should be stated in the adjective form), when such is the fact;

(4) The name or names (as set forth in the Fur Products Name Guide) of the animal or animals that produced the fur;

(5) That the fur product is composed in whole of backs or in whole or in substantial part of paws, tails, bellies, sides flanks, gills, ears, throats, heads, scrap pieces, or waste fur, when such is the fact;

(6) The name of the country of origin of any imported furs used in the fur product;

(7) Any other information required or permitted by the Act and regulations with respect to the fur.

NOTE: The information set out in paragraphs (a) (2) and (3) of this section and the term *backs* set out in paragraph (a)(5) of this section are not mandatory, but when and if used, shall be set out in the sequence noted.

(b) That part of the required information with respect to the name or registered identification number of the manufacturer or dealer may precede or follow the required information set out in paragraph (a) of this section.

[17 FR 6075, July 8, 1952, as amended at 26 FR 3187, Apr. 14, 1961]

§ 301.31 Labeling of fur products consisting of two or more units.

(a) The label shall be attached to and appear upon each garment or separate article of wearing apparel subject to the act irrespective of whether two or more garments or articles may be sold or marketed together or in combination with each other.

(b) In the case of fur products manufactured for use in pairs or groups, only one label will be required if all units in the pair or group are of the same fur and have the same country of origin, and are firmly attached to each other when marketed and delivered in the channels of trade and to the purchaser-consumer and the information set out on the label is clearly applicable to

each unit in the pair or group and supplies the information required under the act and rules and regulations.

§ 301.32 Fur product containing material other than fur.

(a) Where a fur product contains a material other than fur the content of which is required to be disclosed on labels under other statutes administered by the Commission, such information may be set out on the same side of the label and in immediate conjunction with the information required under this Act; as for example:

100% Wool
Interlining—100% Recycled Wool
Trim—Dyed Muskrat
Fur Origin: Canada

or

Body: 100% Cotton
Lining: 100% Nylon
Collar: Dyed Mouton Lamb
Fur Origin: Argentina

(b) Information which may be desirable or necessary to fully inform the purchaser of other material content of a fur product may be set out on the same side of the label as used for disclosing the information required under the Act and rules and regulations; as for example:

Body—Leather
Trim—Dyed Mink

[26 FR 3187, Apr. 14, 1961, as amended at 45 FR 44263, July 1, 1980]

§ 301.33 Labeling of samples.

Where samples of furs or fur products subject to the act are used to promote or effect sales of fur products, said samples, as well as the fur products purchased therefrom, shall be labeled to show the information required under the act and regulations.

§ 301.34 Misbranded or falsely invoiced fur products.

(a) If a person subject to section 3 of the Act with respect to a fur product finds that a fur product is misbranded he shall correct the label or replace same with a substitute containing the required information.

(b) If a person subject to section 3 of the Act with respect to a fur or fur product finds that the invoice issued to him is false or deceptive, he shall, in connection with any invoice issued by him in relation to such fur or fur product correctly set forth all of the information required by the Act and regulations in relation to such fur or fur product.

[26 FR 3187, Apr. 14, 1961]

§ 301.35 Substitution of labels.

(a) Persons authorized under the provisions of section 3(e) of the act to substitute labels affixed to fur products may do so, provided the substitute label is complete and carries all the information required under the act and rules and regulations in the same form and manner as required in respect to the original label. The substitute label need not, however, show the name or registered number appearing on the original label if the name or registered number of the person who affixes the substitute appears thereon.

(b) The original label may be used as a substitute label provided the name or registered number of the person making the substitution, together with the item number or mark assigned by such person to said fur product for record purposes is inserted thereon without interfering with or obscuring in any manner other required information. In connection with such substitution the name or registered number as well as any record numbers appearing on the original label may be removed.

(c) Persons substituting labels under the provision of this section shall maintain the records required under § 301.41 of this part.

§ 301.36 Sectional fur products.

(a) Where a fur product is composed of two or more sections containing different animal furs the required information with respect to each section shall be separately set forth in labeling, invoicing or advertising; as for example:

Dyed Rabbit
Fur origin: France
Trimming: Dyed Mouton-processed Lamb
Fur origin: Argentina

or

Body: Dyed Kolinsky
Fur origin: Russia
Tail: Dyed Mink
Fur origin: Canada

(b) The provisions of this section shall not be interpreted so as to require the disclosure of very small amounts of different animal furs added to complete a fur product or skin such as the ears, snoot, or under part of the jaw.

§ 301.37 Manner of invoicing furs and fur products.

(a) In the invoicing of furs and fur products, all of the required information shall be set out in a clear, legible, distinct and conspicuous manner. The invoice shall be issued at the time of the sale or other transaction involving furs or fur products, but the required information need not be repeated in subsequent periodic statements of account respecting the same furs or fur products.

(b) Non-required information or representations appearing in the invoicing of furs and fur products shall in no way be false or deceptive nor include any names, terms or representations prohibited by the act and regulations. Nor shall such information or representations be set forth or used in such manner as to interfere with the required information.

§ 301.38 Advertising of furs and fur products.

(a)(1) In advertising furs or fur products, all parts of the required information shall be stated in close proximity with each other and, if printed, in legible and conspicuous type of equal size.

(2) Non-required information or representations appearing in the advertising of furs and fur products shall in no way be false or deceptive nor include any names, terms or representations prohibited by the act and regulations. Nor shall such information or representations be set forth or used in such manner as to interfere with the required information.

(b)(1) In general advertising of a group of fur products composed in whole or in part of imported furs having various countries of origin, the disclosure of such countries of origin may, by reference, be made through the use of the following statement in the advertisement in a clear and conspicuous manner:

Fur products labeled to show country of origin of imported furs

(2) The provisions of this paragraph shall not be applicable in the case of catalogue, mail order, or other types of advertising which solicit the purchase of fur products in such a manner that the purchaser or prospective purchaser would not have the opportunity of viewing the product and attached label prior to delivery thereof.

(c) In advertising of an institutional type referring only to the general nature or kind of business conducted or to the general classification of the types or kinds of furs or fur products manufactured or handled, and which advertising is not intended to aid, promote, or assist directly or indirectly in the sale or offering for sale of any specific fur products or furs, the required information need not be set forth: *Provided, however,* That if reference is made in the advertisement to a color of the fur which was caused by dyeing, bleaching or other artificial coloring, such facts shall be disclosed in the advertising, and provided further, that when animal names are used in such advertising, such names shall be those set forth in the Fur Products Name Guide. For example, the kind of advertising contemplated by this paragraph is as follows:

X Fur Company
Famous for its Black Dyed Persian Lamb Since 1900

or

X Company
Manufacturers of Fine Muskrat Coats, Capes and Stoles

§ 301.39 Exempted fur products.

(a) If the cost of any fur trim or other manufactured fur or furs contained in a fur product, exclusive of any costs incident to its incorporation therein, does not exceed one hundred fifty dollars ($150) to the manufacturer of the finished fur product, or if a manufacturer's selling price of a fur product does not exceed one hundred fifty dollars ($150), and the provisions of paragraphs (b) and (c) of this section are met, the fur product shall be exempted from the requirements of the Act and regulations in this part; provided, however, that if the fur product is made of or contains any used fur, or if the fur product itself is or purports to be the whole skin of an animal with

the head, ears, paws and tail, such as a choker or scarf, the fur product is to be labeled, invoiced and advertised in accordance with the requirements of the Act and regulations in this part, regardless of the cost of the fur used in the fur product or the manufacturer's selling price. The exemption provided for herein shall not be applicable:

(1) To any dog or cat fur product;

(2) If any false, deceptive, or misleading representations as to the fur contained in the fur product are made; or

(3) If any representations as to the fur are made in labeling, invoicing, or advertising without disclosing:

(i) In the case of labels, the information required to be disclosed under section 4(2)(A), (C), and (D) of the Act;

(ii) In the case of advertising, the information required to be disclosed under section 5(a)(1), (3), and (4) of the Act; and

(iii) In the case of invoicing, the information required to be disclosed under section 5(b)(1)(A), (C), and (D) of the Act.

(b) Where a fur product is exempt under this section from the requirements of the act and regulations, the manufacturer thereof shall maintain, in addition to the other records required under the act and regulations, adequate records showing the cost of the fur used in such fur product, or copies of invoices showing the manufacturer's selling price of the fur product, provided such price is used as the basis for exemption. Such records shall be preserved for at least three years.

(c) If a fur product is exempt under this section and the manufacturer's selling price exceeds one hundred fifty dollars ($150), the manufacturer's or wholesaler's invoice shall carry information indicating such fur product is exempt from the provisions of the Act and regulations in this part; as for example: ''FPL EXEMPT.''

[17 FR 6075, July 8, 1952, as amended at 26 FR 3187, Apr. 14, 1961; 26 FR 3771, May 2, 1961; 34 FR 381, Jan. 10, 1969; 63 FR 7517, Feb. 13, 1998; 65 FR 82270, Dec. 28, 2000]

§ 301.40 Item number or mark to be assigned to each fur product.

(a) For the purpose of identification, each fur product shall be assigned a separate item number or mark by the manufacturer thereof: *Provided, however,* That where all of the furs used in a group of fur products are obtained through the same purchase and from the same source and all of the required information with respect to such furs is identical, then a single item number or mark may be assigned to identify all of the fur products in such group. Each number or mark so assigned shall appear on the required label and invoice pertaining to such product and used for the identification thereof in the records required by § 301.41 of this part.

(b) Any subsequent dealer in fur products may assign to each fur product handled a different item number or mark to be used on the required label and invoice pertaining to such product, in lieu of that of the manufacturer or other supplier, and for the identification of such fur product in the records required by § 301.41 of this part.

§ 301.41 Maintenance of records.

(a) Pursuant to section 3(e) and section 8(d)(1), of the Act, each manufacturer or dealer in fur products or furs (including dressers, dyers, bleachers and processors), irrespective of whether any guaranty has been given or received, shall maintain records showing all of the required information relative to such fur products or furs in such manner as will readily identify each fur or fur product manufactured or handled. Such records shall show:

(1) That the fur product contains or is composed of natural, pointed, bleached, dyed, tip-dyed or otherwise artificially colored fur, when such is the fact;

(2) That the fur product contains used fur, when such is the fact;

(3) The name or names (as set forth in the Fur Products Name Guide) of the animal or animals that produced the fur;

(4) That the fur product is composed in whole or in substantial part of paws, tails, bellies, sides, flanks, gills, ears, throats, heads, scrap pieces, or waste fur, when such is the fact;

(5) The name of the country of origin of any imported furs used in the fur products;

(6) The name, or other identification issued and registered by the Commission, of one or more of the persons who manufacture, import, sell, advertise, offer, transport or distribute the fur product in commerce.

(7) The item number assigned, or reassigned, to each fur or fur product as set out in § 301.40

(b) The purpose of the records is to permit a determination that the requirements of the Act and Regulations have been met and to establish a traceable line of continuity from raw material through processing to finished product. The records shall be preserved for at least three years.

[53 FR 31315, Aug. 18, 1988]

§ 301.42 Deception as to nature of business.

When necessary to avoid deception, the name of any person other than the manufacturer of the fur product appearing on the label or invoice shall be accompanied by appropriate words showing that the fur product was not manufactured by such person; as for example:

Distributed by _____
or
_____ Wholesalers

§ 301.43 Use of deceptive trade or corporate names, trademarks or graphic representations prohibited.

No person shall use in labeling, invoicing or advertising any fur or fur product a trade name, corporate name, trademark or other trade designation or graphic representation which misrepresents directly or by implication to purchasers, prospective purchasers or the consuming public:

(a) The character of the product including method of construction;

(b) The name of the animal producing the fur;

(c) The method or manner of distribution; or

(d) The geographical or zoological origin of the fur.

[61 FR 67710, Dec. 24, 1996]

§ 301.44 Misrepresentation of prices.

(a) No person shall, with respect to a fur or fur product, advertise such fur or fur product at alleged wholesale prices or at alleged manufacturers cost or less, unless such representations are true in fact; nor shall any person advertise a fur or fur product at prices purported to be reduced from what are in fact fictitious prices, nor at a purported reduction in price when such purported reduction is in fact fictitious.

(b) No person shall, with respect to a fur or fur product, advertise such fur or fur product with comparative prices and percentage savings claims except on the basis of current market values or unless the time of such compared price is given.

(c) No person shall, with respect to a fur or fur product, advertise such fur or fur product as being ''made to sell for'', being ''worth'' or ''valued at'' a certain price, or by similar statements, unless such claim or representation is true in fact.

(d) No person shall, with respect to a fur or fur product, advertise such fur or fur product as being of a certain value or quality unless such claims or representations are true in fact.

(e) Persons making pricing claims or representations of the types described in paragraphs (a), (b), (c) and (d) of this section shall maintain full and adequate records disclosing the facts upon which such claims or representations are based.

(f) No person shall, with respect to a fur or fur product, advertise such fur or fur product by the use of an illustration which shows such fur or fur product to be a higher priced product than the one so advertised.

(g) No person shall, with respect to a fur or fur product, advertise such fur or fur product as being ''bankrupt stock'', ''samples'', ''show room models'', ''Hollywood Models'', ''Paris Models'', ''French Models'', ''Parisian Creations'', ''Furs Worn by Society Women'', ''Clearance Stock'', ''Auction Stock'', ''Stock of a business in a state of liquidation'', or similar statements, unless such representations or claims are true in fact.

§ 301.45 Representations as to construction of fur products.

(a) No misleading nor deceptive statements as to the construction of fur products shall be used directly or

indirectly in labeling, invoicing or advertising such products. (For example, a fur product made by the skin-on-skin method should not be represented as having been made by the letout method.)

(b) Where a fur product is made by the method known in the trade as letting-out, or is made of fur which has been sheared or plucked, such facts may be set out in labels, invoices and advertising.

§ 301.46 Reference to guaranty by Government prohibited.

No representation nor suggestion that a fur or fur product is guaranteed under the act by the Government, or any branch thereof, shall be made in the labeling, invoicing or advertising in connection therewith.

§ 301.47 Form of separate guaranty.

The following is a suggested form of separate guaranty under section 10 of the Act which may be used by a guarantor residing in the United States, on and as part of an invoice in which the merchandise covered is listed and specified and which shows the date of such document, the date of shipment of the merchandise and the signature and address of the guarantor:

We guarantee that the fur products or furs specified herein are not misbranded nor falsely nor deceptively advertised or invoiced under the provisions of the Fur Products Labeling Act and rules and regulations thereunder.

§ 301.48 Continuing guaranty filed with Federal Trade Commission.

(a)(1) Under section 10 of the Act any person residing in the United States and handling fur or fur products may file a continuing guaranty with the Federal Trade Commission. When filed with the Commission a continuing guaranty shall be fully executed in duplicate. Forms for use in preparing continuing guaranties shall be supplied by the Commission upon request.

(2) Continuing guaranties filed with the Commission shall continue in effect until revoked. The guarantor shall promptly report any change in business status to the Commission.

(3) The prescribed form for a continuing guaranty is found in § 303.38(b) of this chapter. The form is available upon request from the Textile Section, Enforcement Division, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

(b) Any person who has a continuing guaranty on file with the Commission may, during the effective date of the guaranty, give notice of such fact by setting forth on the invoice or other paper covering the marketing or handling of the product guaranteed the following: ''Continuing guaranty under the Fur Products Labeling Act filed with the Federal Trade Commission.''

(c) Any person who falsely represents in writing that he has a continuing guaranty on file with the Federal Trade Commission when such is not a fact shall be deemed to have furnished a false guaranty under section 10(b) of the Act.

[26 FR 3188, Apr. 14, 1961, as amended at 48 FR 12517, Mar. 25, 1983; 63 FR 7517, Feb. 13, 1998; 63 FR 71583, Dec. 28, 1998]

§ 301.48a Guaranties not received in good faith.

A guaranty shall not be deemed to have been received in good faith within the meaning of section 10(a) of the Act:

(a) Unless the recipient of such guaranty shall have examined the required label, required invoice and advertisement relating to the fur product or fur so guaranteed;

(b) If the recipient of the guaranty has knowledge that the fur or fur product guaranteed is misbranded, falsely invoiced or falsely advertised.

[26 FR 3188, Apr. 14, 1961]

§ 301.49 Deception in general.

No furs nor fur products shall be labeled, invoiced, or advertised in any manner which is false, misleading or deceptive in any respect.

PART 303—RULES AND REGULATIONS UNDER THE TEXTILE FIBER PRODUCTS IDENTIFICATION ACT

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AUTHORITY: 15 U.S.C. 70 *et seq.*

SOURCE: 24 FR 4480, June 2, 1959, unless otherwise noted.

§ 303.1 Terms defined.

As used in this part, unless the context otherwise specifically requires:

(a) The term *Act* means the *Textile Fiber Products Identification Act* (approved September 2, 1958, 85th Congress, 2d Sess.; 15 U.S.C. 70, 72 Stat. 1717).

(b) The terms *rule*, *rules*, *regulations*, and *rules and regulations* mean the rules and regulations prescribed by the Commission pursuant to section 7(c) of the Act.

(c) The definition of terms contained in section 2 of the Act shall be applicable also to such terms when used in rules promulgated under the Act.

(d) The term *United States* means the several States, the District of Columbia, and the Territories and possessions of the United States.

(e) The terms *required information* and *information required* mean such information as is required to be disclosed on labels or invoices and in advertising under the Act and regulations.

(f) The terms *label*, *labels*, *labeled*, and *labeling* mean the stamp, tag, label, or other means of identification, or authorized substitute therefor, required to be on or affixed to textile fiber products by the Act and regulations and on which the information required is to appear.

(g) The terms *marketing or handling* and *marketed or handled*, when applied to textile fiber products, mean any one or all of the transactions set forth in section 3 of the Act.

(h) The terms *invoice* and *invoice or other paper* mean an account, order, memorandum, list, or catalog, which is issued to a purchaser, consignee, bailee, correspondent, agent, or any other person, in writing or in some other form capable of being read and preserved in a tangible form, in connection with the marketing or handling of any textile fiber product transported or delivered to such person.

(i) The term *outer coverings of furniture, mattresses, and box springs* means those coverings as are permanently incorporated in such articles.

(j) The term *wearing apparel* means any costume or article of clothing or covering for any part of the body worn or intended to be worn by individuals.

(k) The term *beddings* means sheets, covers, blankets, comforters, pillows, pillowcases, quilts, bedspreads, pads, and all other textile fiber products used or intended to be used on or about a bed or other place for reclining or sleeping but shall not include furniture, mattresses or box springs.

(l) The term *headwear* means any textile fiber product worn exclusively on or about the head or face by individuals.

(m) The term *backings,* when applied to floor coverings, means that part of a floor covering to which the pile, face, or outer surface is woven, tufted, hooked, knitted, or otherwise attached, and which provides the structural base of the floor covering. The term *backing* shall also include fabrics attached to the structural base of the floor covering in such a way as to form a part of such structural base, but shall not include the pile, face, or outer surface of the floor covering or any part thereof.

(n) The term *elastic material* means a fabric composed of yarn consisting of an elastomer or a covered elastomer.

(o) The term *coated fabric* means any fabric which is coated, filled, impregnated, or laminated with a continuous-film-forming polymeric composition in such a manner that the weight added to the base fabric is at least 35 percent of the weight of the fabric before coating, filling, impregnation, or lamination.

(p) The term *upholstered product* means articles of furniture containing stuffing and shall include mattresses and box springs.

(q) The term *ornamentation* means any fibers or yarns imparting a visibly discernible pattern or design to a yarn or fabric.

(r) The term *fiber trademark* means a word or words used by a person to identify a particular fiber produced or sold by him and to distinguish it from fibers of the same generic class produced or sold by others. Such term shall not include any trade mark, product mark, house mark, trade name or other name which does not identify a particular fiber.

(s) The term *wool* means the fiber from the fleece of the sheep or lamb or hair of the Angora or Cashmere goat (and may include the so-called specialty fibers from the hair of the camel, alpaca, llama, and vicuna) which has never been reclaimed from any woven or felted wool product.

(t) The term *recycled wool* means (1) the resulting fiber when wool has been woven or felted into a wool product which, without ever having been utilized in any way by the ultimate consumer, subsequently has been made into a fibrous state, or (2) the resulting fiber when wool or reprocessed wool has been spun, woven, knitted, or felted into a wool product which, after having been used in any way by the ultimate consumer, subsequently has been made into a fibrous state.

(u) The terms *mail order catalog* and *mail order promotional material* mean any materials, used in the direct sale or direct offering for sale of textile products, that are disseminated to ultimate consumers in print or by electronic means, other than by broadcast, and that solicit ultimate consumers to purchase such textile products by mail, telephone, electronic mail, or some other method without examining the actual product purchased.

[24 FR 4480, June 2, 1959, as amended at 45 FR 44263, July 1, 1980; 50 FR 15106, Apr. 17, 1985; 63 FR 7517, Feb. 13, 1998]

§ 303.2 General requirements.

(a) Each textile fiber product, except those exempted or excluded under section 12 of the Act, shall be labeled or invoiced in conformity with the requirements of the Act and regulations.

(b) Any advertising of textile fiber products subject to the Act shall be in conformity with the requirements of the Act and regulations.

(c) The requirements of the Act and regulations shall not be applicable to products required to be labeled under the Wool Products Labeling Act of 1939 (Pub. L. 76–850, 15 U.S.C. 68, 54 Stat. 1128).

(d) Any person marketing or handling textile fiber products who shall cause or direct a processor or finisher to label, invoice, or otherwise identify any textile fiber product with required information shall be responsible under

the Act and regulations for any failure of compliance with the Act and regulations by reason of any statement or omission in such label, invoice, or other means of identification utilized in accordance with his direction: *Provided*, That nothing herein shall relieve the processor or finisher of any duty or liability to which he may be subject under the Act and regulations.

§ 303.3 Fibers present in amounts of less than 5 percent.

(a) Except as permitted in sections 4(b)(1) and 4(b)(2) of the Act, as amended, no fiber present in the amount of less than 5 percent of the total fiber weight shall be designated by its generic name or fiber trademark in disclosing the constituent fibers in required information, but shall be designated as ''other fiber.'' When more than one of such fibers are present in a product, they shall be designated in the aggregate as ''other fibers.'' Provided, however, that nothing in this section shall be construed as prohibiting the disclosure of any fiber present in a textile fiber product which has a clearly established and definite functional significance when present in the amount contained in such product, as for example:

96 percent Acetate
4 percent Spandex.

(b) In making such disclosure, all of the provisions of the Act and regulations in this part setting forth the manner and form of disclosure of fiber content information, including the provisions of §§ 303.17 and 303.41 of this part relating to the use of generic names and fiber trademarks, shall be applicable.

[63 FR 7518, Feb. 13, 1998]

§ 303.4 English language requirement.

All required information shall be set out in the English language. If the required information appears in a language other than English, it also shall appear in the English language. The provisions of this section shall not apply to advertisements in foreign language newspapers or periodicals, but such advertising shall in all other respects comply with the Act and regulations.

§ 303.5 Abbreviations, ditto marks, and asterisks prohibited.

(a) In disclosing required information, words or terms shall not be designated by ditto marks or appear in footnotes referred to by asterisks or other symbols in required information, and shall not be abbreviated except as permitted in § 303.33(e) of this part.

(b) Where the generic name of a textile fiber is required to appear in immediate conjunction with a fiber trademark in advertising, labeling, or invoicing, a disclosure of the generic name by means of a footnote, to which reference is made by use of an asterisk or other symbol placed next to the fiber trademark, shall not be sufficient in itself to constitute compliance with the Act and regulations.

[24 FR 4480, June 2, 1959, as amended at 65 FR 75156, Dec. 1, 2000]

§ 303.6 Generic names of fibers to be used.

(a) Except where another name is permitted under the Act and regulations, the respective generic names of all fibers present in the amount of 5 per centum or more of the total fiber weight of the textile fiber product shall be used when naming fibers in the required information; as for example: ''cotton,'' ''rayon,'' ''silk,'' ''linen,'' ''nylon,'' etc.

(b) Where a textile fiber product contains the hair or fiber of a fur-bearing animal present in the amount 5 per centum or more of the total fiber weight of the product, the name of the animal producing such fiber may be used in setting forth the required information, provided the name of such animal is used in conjunction with the words ''fiber,'' ''hair,'' or ''blend;'' as for example:

80 percent Rabbit hair.
20 percent Nylon.

or

80 percent Silk.
20 percent Mink fiber.

(c) The term *fur fiber* may be used to describe the hair or fur fiber or mixtures thereof of any animal or animals other than the sheep, lamb, Angora goat, Cashmere goat, camel, alpaca, llama or vicuna where such hair or fur fiber or mixture is present in the

amount of 5 per centum or more of the total fiber weight of the textile fiber product and no direct or indirect representations are made as to the animal or animals from which the fiber so designated was obtained; as for example:

60 percent Cotton.
40 percent Fur fiber.

or

50 percent Nylon.
30 percent Mink hair.
20 percent Fur fiber.

(d) Where textile fiber products subject to the Act contain (1) wool or (2) recycled wool in amounts of five per centum or more of the total fiber weight, such fibers shall be designated and disclosed as wool or recycled wool as the case may be.

[24 FR 4480, June 2, 1959, as amended at 45 FR 44263, July 1, 1980]

§ 303.7 Generic names and definitions for manufactured fibers.

Pursuant to the provisions of section 7(c) of the Act, the Commission hereby establishes the generic names for manufactured fibers, together with their respective definitions, set forth in this section, and the generic names for manufactured fibers, together with their respective definitions, set forth in International Organization for Standardization ISO 2076: 1999(E), ''Textiles—Man-made fibres—Generic names.'' This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American National Standards Institute, 11 West 42nd St., 13th floor, New York, NY 10036. Copies may be inspected at the Federal Trade Commission, Room 130, 600 Pennsylvania Avenue, NW., Washington, DC 20580, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(a) *Acrylic.* A manufactured fiber in which the fiber-forming substance is any long chain synthetic polymer composed of at least 85 percent by weight of acrylonitrile units

$$(-CH_2-\underset{\underset{CN}{|}}{CH}-).$$

(b) *Modacrylic.* A manufactured fiber in which the fiber-forming substance is any long chain synthetic polymer composed of less than 85 percent but at least 35 percent by weight of acrylonitrile units

$$(-CH_2-\underset{\underset{CN}{|}}{CH}-),$$

except fibers qualifying under paragraph (j)(2) of this section and fibers qualifying under paragraph (q) of this section. (Sec. 7, 72 Stat. 1717; 15 U.S.C. section 70e)

(c) *Polyester.* A manufactured fiber in which the fiber-forming substance is any long chain synthetic polymer composed of at least 85% by weight of an ester of a substituted aromatic carboxylic acid, including but not restricted to substituted terephthalate units,

$$p(-R-O-\underset{\underset{O}{\|}}{C}-C_6H_4-\underset{\underset{O}{\|}}{C}-O-),$$

and para substituted hydroxy-benzoate units,

$$p(-R-O-C_6H_4-\underset{\underset{O}{\|}}{C}-O-).$$

Where the fiber is formed by the interaction of two or more chemically distinct polymers (of which none exceeds 85% by weight), and contains ester groups as the dominant functional unit (at least 85% by weight of the total polymer content of the fiber), and which, if stretched at least 100%, durably and rapidly reverts substantially to its unstretched length when the tension is removed, the term *elasterell-p* may be used as a generic description of the fiber.

(d) *Rayon*—A manufactured fiber composed of regenerated cellulose, as well as manufactured fibers composed

of regenerated cellulose in which substituents have replaced not more than 15% of the hydrogens of the hydroxyl groups. Where the fiber is composed of cellulose precipitated from an organic solution in which no substitution of the hydroxyl groups takes place and no chemical intermediates are formed, the term *lyocell* may be used as a generic description of the fiber.

(e) *Acetate*. A manufactured fiber in which the fiber-forming substance is cellulose acetate. Where not less than 92 percent of the hydroxyl groups are acetylated, the term triacetate may be used as a generic description of the fiber.

(f) *Saran*. A manufactured fiber in which the fiber-forming substance is any long chain synthetic polymer composed of at least 80 percent by weight of vinylidene chloride units ($-CH_9-CCl_2-$).

(g) *Azlon*. A manufactured fiber in which the fiber-forming substance is composed of any regenerated naturally occurring proteins.

(h) *Nytril*. A manufactured fiber containing at least 85 percent of a long chain polymer of vinylidene dinitrile ($-CH_2-C(CN)_2-$) where the vinylidene dinitrile content is no less than every other unit in the polymer chain.

(i) *Nylon*. A manufactured fiber in which the fiber-forming substance is a long-chain synthetic polyamide in which less than 85 percent of the amide

$$\left(-\underset{\underset{O}{\|}}{C}-NH-\right)$$

linkages are attached directly to two aromatic rings.

(j) *Rubber*. A manufactured fiber in which the fiber-forming substance is comprised of natural or synthetic rubber, including the following categories:

(1) A manufactured fiber in which the fiber-forming substance is a hydrocarbon such as natural rubber, polyisoprene, polybutadiene, copolymers of dienes and hydrocarbons, or amorphous (noncrystalline) polyolefins.

(2) A manufactured fiber in which the fiber-forming substance is a copolymer of acrylonitrile and a diene (such as butadiene) composed of not more than 50 percent but at least 10 percent by weight of acrylonitrile units

$$\left(-CH_2-\underset{\underset{CN}{|}}{CH}-\right)$$

The term *lastrile* may be used as a generic description for fibers falling within this category.

(3) A manufactured fiber in which the fiber-forming substance is a polychloroprene or a copolymer of chloroprene in which at least 35 percent by weight of the fiber-forming substance is composed of chloroprene units

$$\left(-CH_2-\underset{\underset{Cl}{|}}{C}=CH-CH_2-\right).$$

(k) *Spandex*. A manufactured fiber in which the fiber-forming substance is a long chain synthetic polymer comprised of at least 85 percent of a segmented polyurethane.

(l) *Vinal*. A manufactured fiber in which the fiber-forming substance is any long chain synthetic polymer composed of at least 50 percent by weight of vinyl alcohol units ($-CH_2-CHOH-$), and in which the total of the vinyl alcohol units and any one or more of the various acetal units is at least 85 percent by weight of the fiber.

(m) *Olefin*. A manufactured fiber in which the fiber-forming substance is any long chain synthetic polymer composed of at least 85 percent by weight of ethylene, propylene, or other olefin units, except amorphous (noncrystalline) polyolefins qualifying under paragraph (j)(1) of this section [Rule 7]. Where the fiber-forming substance is a cross-linked synthetic polymer, with low but significant crystallinity, composed of at least 95 percent by weight of ethylene and at least one other olefin unit, and the fiber is substantially elastic and heat resistant, the term *lastol* may be used as a generic description of the fiber.

(n) *Vinyon*. A manufactured fiber in which the fiber-forming substance is

any long chain synthetic polymer composed of at least 85 percent by weight of vinyl chloride units ($-CH_2-CHCl-$).

(o) *Metallic*. A manufactured fiber composed of metal, plastic-coated metal, metal-coated plastic, or a core completely covered by metal.

(p) *Glass*. A manufactured fiber in which the fiber-forming substance is glass.

(q) *Anidex*. A manufactured fiber in which the fiber-forming substance is any long chain synthetic polymer composed of at least 50 percent by weight of one or more esters of a monohydric alcohol and acrylic acid, $CH_2=CH—COOH$.

(r) *Novoloid*. A manufactured fiber containing at least 85 percent by weight of a cross-linked novolac.

(s) *Aramid*. A manufactured fiber in which the fiber-forming substance is a long-chain synthetic polyamide in which at least 85 percent of the amide

$$\left(-\underset{\underset{O}{\|}}{C}-NH- \right)$$

linkages are attached directly to two aromatic rings.

(t) *Sulfar*. A manufactured fiber in which the fiber-forming substance is a long chain synthetic polysulfide in which at least 85% of the sulfide (—S—) linkages are attached directly to two (2) aromatic rings.

(u) *PBI*. A manufactured fiber in which the fiber-forming substance is a long chain aromatic polymer having reoccurring imidazole groups as an integral part of the polymer chain.

(v) *Elastoester*. A manufactured fiber in which the fiber-forming substance is a long-chain synthetic polymer composed of at least 50% by weight of aliphatic polyether and at least 35% by weight of polyester, as defined in 16 CFR 303.7(c).

(w) *Melamine*. A manufactured fiber in which the fiber-forming substance is a synthetic polymer composed of at least 50% by weight of a cross-linked melamine polymer.

(x) *Fluoropolymer*. A manufactured fiber containing at least 95% of a long-chain polymer synthesized from aliphatic fluorocarbon monomers.

(y) *PLA*. A manufactured fiber in which the fiber-forming substance is composed of at least 85% by weight of lactic acid ester units derived from naturally occurring sugars.

(Sec. 6, 72 Stat. 1717; 15 U.S.C. 70e)

[24 FR 4480, June 2, 1959; 24 FR 5737, July 17, 1959, as amended at 31 FR 2652, Feb. 11, 1966; 31 FR 3002, Feb. 22, 1966; 34 FR 14595, Sept. 19, 1969; 38 FR 21782, Aug. 13, 1973; 38 FR 34115, Dec. 11, 1973; 39 FR 1834, Jan. 15, 1974; 51 FR 20807, 20809, June 9, 1986; 61 FR 16387, Apr. 15, 1996; 62 FR 28344, May 23, 1997; 63 FR 7518, Feb. 13, 1998; 63 FR 36174, July 2, 1998; 63 FR 71583, Dec. 28, 1998; 65 FR 75156, Dec. 1, 2000; 67 FR 4903, Feb. 1, 2002; 67 FR 70839, Nov. 27, 2002; 68 FR 3816, Jan. 27, 2003; 69 FR 18803, Apr. 9, 2004]

§ 303.8 Procedure for establishing generic names for manufactured fibers.

(a) Prior to the marketing or handling of a manufactured fiber for which no generic name has been established or otherwise recognized by the Commission, the manufacturer or producer thereof shall file a written application with the Commission, requesting the establishment of a generic name for such fiber, stating therein:

(1) The reasons why the applicant's fiber should not be identified by one of the generic names established by the Commission in § 303.7 of this part;

(2) The chemical composition of the fiber, including the fiber-forming substances and respective percentages thereof, together with samples of the fiber;

(3) Suggested names for consideration as generic, together with a proposed definition for the fiber;

(4) Any other information deemed by the applicant to be pertinent to the application, including technical data in the form of test methods;

(5) The earliest date on which the application proposes to market or handle the fiber in commerce for other than developmental or testing purposes.

(b) Upon receipt of the application, the Commission will, within sixty (60) days, either deny the application or assign to the fiber a numerical or alphabetical symbol for temporary use during further consideration of such application.

(c) After taking the necessary procedure in consideration of the application, the Commission in due course shall establish a generic name or advise the applicant of its refusal to grant the application and designate the proper existing generic name for the fiber.

[24 FR 4480, June 2, 1959, as amended at 63 FR 7518, Feb. 13, 1998]

§ 303.9 Use of fur-bearing animal names and symbols prohibited.

(a) The advertising or the labeling of a textile fiber product shall not contain any names, words, depictions, descriptive matter, or other symbols which connote or signify a fur-bearing animal, unless such product or the part thereof in connection with which the names, words, depictions, descriptive matter, or other symbols are used is a fur product within the meaning of the Fur Products Labeling Act.

(b) Subject to the provisions of paragraph (a) of this section and § 303.6 of this part, a textile fiber product shall not be described or referred to in any manner in an advertisement or label with:

(1) The name or part of the name of a fur-bearing animal, whether as a single word or a combination word, or any coined word which is phonetically similar to a fur-bearing animal name, or which is only a slight variation in spelling of a fur-bearing animal name or part of the name. As for example, such terms as ''Ermine,'' ''Mink,'' ''Persian,'' ''Broadtail,'' ''Beaverton,'' ''Marmink,'' ''Sablelon,'' ''Lam,'' ''Pershian,'' ''Minx,'' or similar terms shall not be used.

(2) Any word or name symbolic of a fur-bearing animal by reason of conventional usage or by reason of its close relationship with fur-bearing animals. As for example, such terms as ''guardhair,'' ''underfur,'' and ''mutation,'' or similar terms, shall not be used.

(c) Nothing contained herein shall prevent:

(1) The nondeceptive use of animal names or symbols in referring to a textile fiber product where the fur of such animal is not commonly or commercially used in fur products, as that term is defined in the Fur Products Labeling Act, as for example ''kitten soft'', ''Bear Brand'', etc.

(2) The nondeceptive use of a trademark or trade name containing the name, symbol, or depiction of a fur-bearing animal unless:

(i) The textile fiber product in connection with which such trademark or trade name is used simulates a fur or fur product; or

(ii) Such trademark or trade name is used in any advertisement of a textile fiber product together with any depiction which has the appearance of a fur or fur product; or

(iii) The use of such trademark or trade name is prohibited by the Fur Products Labeling Act.

[24 FR 4480, June 2, 1959, as amended at 28 FR 722, Jan. 16, 1963]

§ 303.10 Fiber content of special types of products.

(a) Where a textile product is made wholly of elastic yarn or material, with minor parts of non-elastic material for structural purposes, it shall be identified as to the percentage of the elastomer, together with the percentage of all textile coverings of the elastomer and all other yarns or materials used therein.

Where a textile fiber product is made in part of elastic material and in part of other fabric, the fiber content of such fabric shall be set forth sectionally by percentages as in the case of other fabrics. In such cases the elastic material may be disclosed by describing the material as elastic followed by a listing in order of predominance by weight of the fibers used in such elastic, including the elastomer, where such fibers are present by 5 per centum or more with the designation ''other fiber'' or ''other fibers'' appearing last when fibers required to be so designated are present. An example of labeling under this paragraph is:

Front and back non-elastic sections:
50 percent Acetate.
50 percent Cotton.
Elastic: Rayon, cotton, nylon, rubber.

(b) Where drapery or upholstery fabrics are manufactured on hand-operated looms for a particular customer after the sale of such fabric has been consummated, and the amount of the

order does not exceed 100 yards (91.44 m) of fabric, the required fiber content disclosure may be made by listing the fibers present in order of predominance by weight with any fiber or fibers required to be designated as ''other fiber'' or ''other fibers'' appearing last, as for example:

Rayon
Wool
Acetate
Metallic
Other fibers

(c)(1) Where a manufactured textile fiber is essentially a physical combination or mixture of two or more chemically distinct constituents or components combined at or prior to the time of extrusion, which components if separately extruded would each fall within different existing definitions of textile fibers as set forth in § 303.7 of this part (Rule 7), the fiber content disclosure as to such fiber, shall for all purposes under the regulations in this part (i) disclose such fact in the required fiber content information by appropriate nondeceptive descriptive terminology, such as ''biconstituent fiber'' or ''multiconstituent fiber,'' (ii) set out the components contained in the fiber by the appropriate generic name specified in § 303.7 of this part (Rule 7) in the order of their predominance by weight, and (iii) set out the respective percentages of such components by weight.

(2) If the components of such fibers are of a matrix-fibril configuration, the term *matrix-fibril fiber* or *matrix fiber* may be used in setting forth the information required by this paragraph.

(3) Examples of proper fiber content designations under this paragraph are:

100% Biconstituent Fiber
(65% Nylon, 35% Polyester)
80% Matrix Fiber (60% Nylon, 40% Polyester)
15% Polyester
5% Rayon

(4) All of the provisions as to fiber content disclosures contained in the Act and regulations, including the provisions relative to fiber content tolerances and disclosures of fibers present in amounts of less than 5 percentum of the total fiber weight, shall also be applicable to the designations and disclosures prescribed by this paragraph.

[25 FR 7044, July 26, 1960, as amended at 30 FR 14253, Nov. 13, 1965; 34 FR 12134 July 19, 1969; 61 FR 11544, Mar. 21, 1996]

§ 303.11 Floor coverings containing backings, fillings, and paddings.

In disclosing the required fiber content information as to floor coverings containing exempted backings, fillings, or paddings, the disclosure shall be made in such manner as to indicate that it relates only to the face, pile, or outer surface of the floor covering and not to the backing, filling, or padding. Examples of the form of marking these types of floor coverings as to fiber content are as follows:

100% Cotton Pile
Face—60% Rayon, 40% Cotton
Outer Surface—100% Wool

§ 303.12 Trimmings of household textile articles.

(a) Trimmings incorporated in articles of wearing apparel and other household textile articles may, among other forms of trim, include: (1) Rickrack, tape, belting, binding, braid, labels (either required or non-required), collars, cuffs, wrist bands, leg bands, waist bands, gussets, gores, welts, and findings, including superimposed garters in hosiery, and elastic materials and threads inserted in or added to the basic product or garment in minor proportion for holding, reinforcing or similar structural purposes; (2) decorative trim, whether applied by embroidery, overlay, applique, or attachment; and (3) decorative patterns or designs which are an integral part of the fabric out of which the household textile article is made: *Provided,* That such decorative trim or decorative pattern or design, as specified in paragraphs (a) (2) and (3) of this section, does not exceed 15 percent of the surface area of the household textile article. If no representation is made as to the fiber content of the decorative trim or decoration, as provided for in paragraphs (a) (2) and (3) of this section, the fiber content designation of the basic fabric shall be followed by the statement ''exclusive of decoration.''

(b) The term *findings* may also include elastic material which constitutes a part of the basic fabric or material out of which the household textile article is made, where such elastic material does not exceed 20 percent of the surface area of the household textile article: *Provided,* That the required information as to fiber content of products subject to this paragraph is followed by the statement ''exclusive of elastic.''

§ 303.13 Sale of remnants and products made of remnants.

(a) In disclosing the required fiber content information as to remnants of fabric which are for practical purposes of unknown or undeterminable fiber content:

(1) The fiber content disclosure of such remnants of fabrics may be designated in the required information as ''remnants of undetermined fiber content.''

(2) Where such remnants of fabrics are displayed for sale at retail, a conspicuous sign may, in lieu of individual labeling, be used in immediate conjunction with such display, stating with respect to required fiber content disclosure that the goods are ''remnants of undetermined fiber content.''

(3) Where textile fiber products are made of such remnants, the required fiber content information of the products may be disclosed as ''made of remnants of undetermined fiber content.'' If any representations as to fiber content are made with respect to such remnants, the provisions of this paragraph shall not apply.

(b) Where remnants of fabrics are marketed or handled in bales, bundles, or packages and are all of the same fiber content or are designated in the manner permitted by paragraph (a) of this section, the individual remnants need not be labeled if the bales, bundles, or packages containing such remnants are labeled with the required information including fiber content percentages or the designation permitted by paragraph (a) of this section.

(c) Where remnants of fabrics of the same fiber content are displayed for sale at retail, a conspicuous sign may, in lieu of individual labeling, be used in immediate conjunction with such display, stating the fiber content information with respect to such remnants; as for example: ''remnants, 100 percent cotton,'' ''remnants, 50 percent rayon, 50 percent acetate,'' etc.

§ 303.14 Products containing unknown fibers.

(a) Where a textile fiber product is made from miscellaneous scraps, rags, odd lots, secondhand materials, textile by-products, or waste materials of unknown, and for practical purposes, undeterminable fiber content, the required fiber content disclosure may, when truthfully applicable, in lieu of the fiber content disclosure otherwise required by the Act and regulations, indicate that such product is composed of miscellaneous scraps, rags, odd lots, textile by-products, secondhand materials (in case of secondhand materials, words of like import may be used) or waste materials, as the case may be, of unknown or undetermined fiber content, as for example:

Made of miscellaneous scraps of undetermined fiber content
100% unknown fibers—rags
All undetermined fibers—textile by-products
100% miscellaneous odd lots of undetermined fiber content
Secondhand materials—fiber content unknown
Made of unknown fibers—waste materials

(b) Where a textile fiber product is made in part from miscellaneous scraps, rags, odd lots, textile by-products, second-hand materials or waste materials of unknown and, for practical purposes, undeterminable fiber content together with a percentage of known or determinable fibers, the required fiber content disclosure may, when truthfully applicable, in lieu of the fiber content disclosure otherwise required by the Act and regulations, indicate the percentage of miscellaneous scraps, rags, odd lots, secondhand materials (in case of secondhand materials, words of like import may be used), textile by-products, or waste materials of unknown or undetermined fiber content and the percentage of known fibers, as for example:

45% Rayon
30% Acetate
25% Miscellaneous scraps of undetermined fiber content.

60% Cotton
40% Unknown fibers—waste materials.

40% Acrylic
20% Modacrylic
40% Undetermined fibers—odd lots.

50% Polyester
30% Cotton
20% Textile by-products of undetermined fiber content.

50% Rayon
50% Secondhand materials—fiber content unknown.

45% Acetate
30% Cotton
25% Miscellaneous rags—undetermined fiber content.

(c) No representation as to fiber content shall be made as to any textile product or any portion of a textile fiber product designated as composed of unknown or undetermined fibers. If any such representation is made, a full and complete fiber content disclosure shall be required.

(d) Nothing contained in this section shall excuse a full disclosure as to fiber content if the same is known or practically ascertainable.

[25 FR 4317, May 14, 1960]

§ 303.15 Required label and method of affixing.

(a) A label is required to be affixed to each textile product and, where required, to its package or container in a secure manner. Such label shall be conspicuous and shall be of such durability as to remain attached to the product and its package throughout any distribution, sale, resale and until sold and delivered to the ultimate consumer.

(b) Each textile fiber product with a neck must have a label disclosing the country of origin affixed to the inside center of the neck midway between the shoulder seams or in close proximity to another label affixed to the inside center of the neck. The fiber content and RN or name of the company may be disclosed on the same label as the country of origin or on another conspicuous and readily accessible label or labels on the inside or outside of the garment. On all other textile products, the required information shall be disclosed on a conspicuous and readily accessible label or labels on the inside or outside of the product. The country of origin disclosure must always appear on the front side of the label. Other required information may appear either on the front side or the reverse side of a label, provided that the information is conspicuous and readily accessible.

(c) In the case of hosiery products, this section shall not be construed as requiring the affixing of a label to each hosiery product contained in a package if, (1) such hosiery products are intended for sale to the ultimate consumer in such package, (2) such package has affixed to it a label bearing the required information for the hosiery products contained in the package, and (3) the information on the label affixed to the package is equally applicable to each textile fiber product contained therein.

(d) Socks provided for in subheading 6115.92.90, 6115.93.90, 6115.99.18, 6111.20.60, 6111.30.50, or 6111.90.50 of the Harmonized Tariff Schedule of the United States, as in effect on September 1, 2003, shall be marked, as legibly, indelibly, and permanently as the nature of the article or package will permit, to disclose the English name of the country of origin. This disclosure shall appear on the front of the package, adjacent to the size designation of the product, and shall be set forth in such a manner as to be clearly legible, conspicuous, and readily accessible to the ultimate consumer. *Provided, however,* any package that contains several different types of goods and includes socks classified under subheading 6115.92.90, 6115.93.90, 6115.99.18, 6111.20.60, 6111.30.50, or 6111.90.50 of the Harmonized Tariff Schedule of the United States, as in effect on September 1, 2003, shall not be subject to the requirements of this subsection.

[50 FR 15106, Apr. 17, 1985, as amended at 63 FR 7518, Feb. 13, 1998; 70 FR 73369, Dec. 12, 2005]

§ 303.16 Arrangement and disclosure of information on labels.

(a) Subject to the provisions of § 303.15(b), information required by the Act and regulations in this part may appear on any label or labels attached to the textile fiber product, including the care label required by 16 CFR part 423, provided all the pertinent requirements of the Act and regulations in

this part are met and so long as the combination of required information and non-required information is not misleading. The required information shall include the following:

(1) The generic names and percentages by weight of the constituent fibers present in the textile fiber product, excluding permissive ornamentation, in amounts of 5 percent or more and any fibers disclosed in accordance with § 303.3(a) shall appear in order of predominance by weight with any percentage of fiber or fibers required to be designated as ''other fiber'' or ''other fibers'' appearing last.

(2) The name, provided for in § 303.19, or registered identification number issued by the Commission, of the manufacturer or of one or more persons marketing or handling the textile fiber product.

(3) The name of the country where such product was processed or manufactured, as provided for in § 303.33.

(b) All parts of the required information shall be set forth in such a manner as to be clearly legible, conspicuous, and readily accessible to the prospective purchaser. All parts of the fiber content information shall appear in type or lettering of equal size and conspicuousness.

(c) Subject to the provisions of § 303.17, any non-required information or representations placed on the product shall not minimize, detract from, or conflict with required information and shall not be false, deceptive, or misleading.

(d) Non-deceptive terms which are properly and truthfully descriptive of a fiber may be used in conjunction with the generic name of such fiber; as for example: ''100 percent cross-linked rayon,'' ''100 percent solution dyed acetate,'' ''100 percent combed cotton,'' ''100 percent nylon 66,'' etc.

[24 FR 4480, June 2, 1959, as amended at 25 FR 4317, May 14, 1960; 30 FR 14254, Nov. 13, 1965; 30 FR 15313, Dec. 11, 1965; 50 FR 15107, Apr. 17, 1985; 53 FR 31315, Aug. 18, 1988; 63 FR 7518, Feb. 13, 1998]

§ 303.17 Use of fiber trademarks and generic names on labels.

(a) A non-deceptive fiber trademark may be used on a label in conjunction with the generic name of the fiber to which it relates. Where such a trademark is placed on a label in conjunction with the required information, the generic name of the fiber must appear in immediate conjunction therewith, and such trademark and generic name must appear in type or lettering of equal size and conspicuousness.

(b) Where a generic name or a fiber trademark is used on any label, whether required or non-required, a full and complete fiber content disclosure shall be made in accordance with the Act and regulations the first time the generic name or fiber trademark appears on the label.

(c) If a fiber trademark is not used in the required information, but is used elsewhere on the label as non-required information, the generic name of the fiber shall accompany the fiber trademark in legible and conspicuous type or lettering the first time the trademark is used.

(d) No fiber trademark or generic name shall be used in non-required information on a label in such a manner as to be false, deceptive, or misleading as to fiber content, or to indicate directly or indirectly that a textile fiber product is composed wholly or in part of a particular fiber, when such is not the case.

§ 303.18 Terms implying fibers not present.

Words, coined words, symbols or depictions, (a) which constitute or imply the name or designation of a fiber which is not present in the product, (b) which are phonetically similar to the name or designation of such a fiber, or (c) which are only a slight variation of spelling from the name or designation of such a fiber shall not be used in such a manner as to represent or imply that such fiber is present in the product.

[30 FR 13693, Oct. 28, 1965]

§ 303.19 Name or other identification required to appear on labels.

(a) The name required by the Act to be used on labels shall be the name under which the person is doing business. Where a person has a word trademark, used as a house mark, registered in the United States Patent Office, such word trademark may be used on

labels in lieu of the name otherwise required: *Provided*, The owner of such word trademark furnishes the Commission a copy of the registration prior to its use. No trademark, trade names, or other names except those provided for above shall be used for required identification purposes.

(b) Registered identification numbers, as provided for in § 303.20 of this part, may be used for identification purposes in lieu of the required name.

§ 303.20 Registered identification numbers.

(a) Registered numbers for use as the required identification in lieu of the name on textile fiber product labels, as provided in section 4(b)(3) of the Act, will be issued by the Commission to qualified persons residing in the United States upon receipt of an application duly executed in the form set out in paragraph (d) of this section.

(b)(1) Registered identification numbers shall be used only by the person or concern to whom they are issued, and such numbers are not transferable or assignable.

(2) Registered identification numbers shall be subject to cancellation whenever any such number was procured or has been used improperly or contrary to the requirements of the Acts administered by the Federal Trade Commission, and regulations promulgated thereunder, or when otherwise deemed necessary in the public interest.

(3) Registered identification numbers shall be subject to cancellation if the Commission fails to receive prompt notification of any change in name, business address, or legal business status of a person or firm to whom a registered identification number has been assigned, by application duly executed in the form set out in paragraph (d) of this section, reflecting the current name, business address, and legal business status of the person or firm.

(c) Registered identification numbers assigned under this section may be used on labels required in labeling products subject to the provisions of the Wool Products Labeling Act and Fur Products Labeling Act, and numbers previously assigned by the Commission under such Acts may be used as and for the required name in labeling under this Act. When so used by the person or firm to whom assigned, the use of the numbers shall be construed as identifying and binding the applicant as fully and in all respects as though assigned under the specific Act for which it is used.

(d) Form to apply for a registered identification number or to update information pertaining to an existing number (the form is available upon request from: Enforcement Division, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580, or on the Internet at *http://www.ftc.gov;* application may also be made directly on the Internet):

APPLICATION FOR A REGISTERED IDENTIFICATION NUMBER ("RN")

DO NOT WRITE IN THIS SPACE

DATE ISSUED: _____ **DATE UPDATED:** _____ **RN:** _____ **BY:** _____

1. PURPOSE OF APPLICATION (Both new applicants and update applicants must complete all entries on this form)

☐ APPLY FOR A NEW RN
☐ UPDATE INFORMATION ON AN EXISTING RN OR WPL NUMBER. ENTER EXISTING RN OR WPL NUMBER _____

2. LEGAL NAME OF APPLICANT FIRM (Note: Proprietorships, please provide full legal name of the person who is the proprietor)

3. NAME UNDER WHICH APPLICANT DOES BUSINESS (Only if different from legal name)

4. TYPE OF COMPANY (if "OTHER" is checked, please state the type of company)

☐ PROPRIETORSHIP ☐ PARTNERSHIP ☐ CORPORATION ☐ LLC / LLP ☐ OTHER _____

5. ADDRESS OF PRINCIPAL OFFICE OR PLACE OF BUSINESS (Include zip code. Address must be actual location where business is conducted in the US. An *additional* mailing address or PO Box address may also be listed, if desired) STREET ADDRESS (Required)	OPTIONAL ADDITIONAL MAILING ADDRESS	CONTACT INFORMATION TELEPHONE NUMBER (___)_____ FAX NUMBER (___)_____ E-MAIL ADDRESS _____@_____ INTERNET URL ADDRESS _____

6. TYPE OF BUSINESS (Mark *all* that apply)

☐ MANUFACTURING ☐ IMPORTING ☐ WHOLESALING ☐ RETAILING ☐ MAIL-ORDER ☐ INTERNET ☐ OTHER _____

7. LIST PRODUCTS (To qualify for an RN, a company must be engaged in the importation, manufacturing, selling or other marketing of at least one (1) product line subject to the Textile, Wool or Fur Act)

8. CERTIFICATION

By filing this form with the Federal Trade Commission, the company named above applies for a registered number to use on labels required by one or more of the following acts: the Textile Fiber Products Identification Act (15 U.S.C. §§70-70k), the Wool Products Labeling Act (15 U.S.C. §§68-68j), or the Fur Products Labeling Act (15 U.S.C. §§69-69k). The company official (proprietor, partner, or corporate officer) listed below verifies that the information supplied on this form is true and correct.

9. NAME OF COMPANY OFFICIAL (Type or print legibly)	10. TITLE OF COMPANY OFFICIAL	11. DATE SUBMITTED
INSTRUCTIONS Regulations under the Textile Fiber Products Identification Act, the Wool Products Labeling Act, and the Fur Products Labeling Act provide that any USA company that is a manufacturer or marketer of fiber or fur products may, in lieu of the name under which it does business, be identified by its RN on labels required by these statutes. In completing this form, please observe the following: (a) All numbered boxes must be filled in except for optional information. (b) PLEASE, Type or Print legibly.	(c) Submit one (1) completed application: By Mail to: Federal Trade Commission Division of Enforcement 600 Pennsylvania Avenue NW Washington, DC 20580 Or By Fax to: (202) 326-3197 Or On-Line at: www.ftc.gov	CANCELLATION POLICY RNs are subject to cancellation if the holder fails to promptly submit an updated FTC Form 31 upon any change(s) in its legal name (Line #2), type of company information (Line #4), or business address (Line #5).

FTC Form 31 (rev. 9/2000)

[24 FR 4480, June 2, 1959, as amended at 48 FR 12516, Mar. 25, 1983; 63 FR 7518, Feb. 13, 1998; 63 FR 71583, Dec. 28, 1998; 65 FR 75156, Dec. 1, 2000]

§ 303.21 Marking of samples, swatches, or specimens and products sold therefrom.

(a) Where samples, swatches, or specimens of textile fiber products subject to the Act are used to promote or effect sales of such textile fiber products, the samples, swatches, or specimens, as well as the products themselves, shall be labeled to show their respective fiber contents and other required information: *Provided*, That such samples, swatches or specimens need not be labeled:

(1) If the samples, swatches, or specimens are less than two square inches (12.9 cm^2) in area and the information otherwise required to appear on the label is clearly, conspicuously, and non-deceptively disclosed on accompanying promotional matter in accordance with the Act and regulations.

(2) If the samples, swatches, or specimens are keyed to a catalogue to which reference is necessary in order to complete the sale of the textile fiber products, and which catalogue at the necessary point of reference clearly, conspicuously, and non-deceptively discloses the information otherwise required to appear on the label in accordance with the Act and regulations; or

(3) If such samples, swatches, or specimens are not used to effect sales to ultimate consumers and are not in the form intended for sale or delivery to, or for use by, the ultimate consumer, and are accompanied by an invoice or other paper showing the required information.

(b) Where properly labeled samples, swatches, or specimens are used to effect the sale of articles of wearing apparel or other household textile articles which are manufactured specifically for a particular customer after the sale is consummated, the articles of wearing apparel or other household textile articles need not be labeled if they are of the same fiber content as the samples, swatches, or specimens from which the sale was effected and an invoice or other paper accompanies them showing the information otherwise required to appear on the label.

[24 FR 4480, June 2, 1959, as amended at 61 FR 11544, Mar. 21, 1996]

§ 303.22 Products containing linings, interlinings, fillings, and paddings.

In disclosing the required information as to textile fiber products, the fiber content of any linings, interlinings, fillings, or paddings shall be set forth separately and distinctly if such linings, interlinings, fillings, or paddings are incorporated in the product for warmth rather than for structural purposes, or if any express or implied representations are made as to their fiber content. Examples are as follows:

100% Nylon
Interlining: 100% Rayon
Covering: 100% Rayon
Filling: 100% Cotton.

§ 303.23 Textile fiber products containing superimposed or added fibers.

Where a textile fiber product is made wholly of one fiber or a blend of fibers with the exception of an additional fiber in minor proportion superimposed or added in certain separate and distinct areas or sections for reinforcing or other useful purposes, the product may be designated according to the fiber content of the principal fiber or blend of fibers, with an exception naming the superimposed or added fiber, giving the percentage thereof in relation to the total fiber weight of the principal fiber or blend of fibers, and indicating the area or section which contains the superimposed or added fiber. Examples of this type of fiber content disclosure, as applied to products having reinforcing fibers added to a particular area or section, are as follows:

55% Cotton
45% Rayon
Except 5% Nylon added to toe and heel.
All Cotton except 1% Nylon added to neckband.

§ 303.24 Pile fabrics and products composed thereof.

The fiber content of pile fabrics or products composed thereof may be stated on the label in such segregated form as will show the fiber content of the face or pile and of the back or base, with percentages of the respective fibers as they exist in the face or pile and in the back or base: *Provided*, That

in such disclosure the respective percentages of the face and back be given in such manner as will show the ratio between the face and the back. Examples of the form of marking pile fabric as to fiber content provided for in this section are as follows:

100% Nylon Pile
100% Cotton Back
(Back constitutes 60% of fabric and pile 40%).
Face—60% Rayon, 40% Nylon
Back—70% Cotton, 30% Rayon
(Face constitutes 60% of fabric and back 40%).

§ 303.25 Sectional disclosure of content.

(a) *Permissive*. Where a textile fiber product is composed of two or more sections which are of different fiber composition, the required information as to fiber content may be separated in the same label in such manner as to show the fiber composition of each section.

(b) *Mandatory*. The disclosure as above provided shall be made in all instances where such form of marking is necessary to avoid deception.

§ 303.26 Ornamentation.

(a)(1) Where the textile fiber product contains fiber ornamentation not exceeding five per centum of the total fiber weight of the product and the stated percentages of the fiber content are exclusive of such ornamentation, the label or any invoice used in lieu thereof shall contain a phrase or statement showing such fact; as for example:

60% Cotton
40% Rayon
Exclusive of Ornamentation;
or
All Cotton
Exclusive of Ornamentation.

(2) The fiber content of such ornamentation may be disclosed where the percentage of the ornamentation in relation to the total fiber weight of the principal fiber or blend of fibers is shown; as for example:

70% Nylon
30% Acetate
Exclusive of 4% Metallic Ornamentation;
or
100% Rayon
Exclusive of 3% Silk Ornamentation.

(b) Where the fiber ornamentation exceeds five per centum, it shall be included in the statement of required percentages of fiber content.

(c) Where the ornamentation constitutes a distinct section of the product, sectional disclosure may be made in accordance with § 303.25 of this part.

§ 303.27 Use of the term "All" or "100%."

Where a textile fiber product or part thereof is comprised wholly of one fiber, other than any fiber ornamentation, decoration, elastic, or trimming as to which fiber content disclosure is not required, either the word *All* or the term *100%* may be used in labeling, together with the correct generic name of the fiber and any qualifying phrase, when required; as for example: ''100% Cotton,'' ''All Rayon, Exclusive of Ornamentation,'' ''100% Acetate, Exclusive of Decoration,'' ''All Nylon, Exclusive of Elastic,'' etc.

§ 303.28 Products contained in packages.

When textile products are marketed and delivered in a package which is intended to remain unbroken and intact until after delivery to the utlimate consumer, each textile product in the package, except hosiery, and the package shall be labeled with the required information. If the package is transparent to the extent it allows for a clear reading of the required information on the textile product, the package is not required to be labeled.

[50 FR 15107, Apr. 17, 1985]

§ 303.29 Labeling of pairs or products containing two or more units.

(a) Where a textile fiber product consists of two or more parts, units, or items of different fiber content, a separate label containing the required information shall be affixed to each of such parts, units or items showing the required information as to such part, unit, or item: *Provided*, That where such parts, units, or items are marketed or handled as a single product or ensemble and are sold and delivered to the ultimate consumer as a single

product or ensemble, the required information may be set out on a single label in such a manner as to separately show the fiber composition of each part, unit, or item.

(b) Where garments, wearing apparel, or other textile fiber products are marketed or handled in pairs or ensembles of the same fiber content, only one unit of the pair or ensemble need be labeled with the required information when sold and delivered to the ultimate consumer.

[24 FR 4480, June 2, 1959, as amended at 25 FR 4318, May 14, 1960]

§ 303.30 Textile fiber products in form for consumer.

A textile fiber product shall be considered to be in the form intended for sale or delivery to, or for use by, the ultimate consumer when the manufacturing or processing of the textile fiber product is substantially complete. The fact that minor or insignificant details of the manufacturing or processing have not been completed shall not excuse the labeling of such products as to the required information. For example, a garment must be labeled even though such matters as the finishing of a hem or cuff or the affixing of buttons thereto remain to be completed.

§ 303.31 Invoice in lieu of label.

Where a textile fiber product is not in the form intended for sale, delivery to, or for use by the ultimate consumer, an invoice or other paper may be used in lieu of a label, and such invoice or other paper shall show, in addition to the name and address of the person issuing the invoice or other paper, the fiber content of such product as provided in the Act and regulations as well as any other required information.

§ 303.32 Products containing reused stuffing.

Any upholstered product, mattress, or cushion which contains stuffing which has been previously used as stuffing in any other upholstered product, mattress, or cushion shall have securely attached thereto a substantial tag or label, at least 2 inches (5.08 cm) by 3 inches (7.62 cm) in size, and statements thereon conspicuously stamped or printed in the English language and in plain type not less than ⅓ inch (8.38 mm) high, indicating that the stuffing therein is composed in whole or in part of ''reused stuffing,'' ''secondhand stuffing,'' ''previously used stuffing,'' or ''used stuffing.''

[61 FR 11544, Mar. 21, 1996]

§ 303.33 Country where textile fiber products are processed or manufactured.

(a) In addition to the other information required by the Act and Regulations:

(1) Each imported textile fiber product shall be labeled with the name of the country where such imported product was processed or manufactured;

(2) Each textile fiber product completely made in the United States of materials that were made in the United States shall be labeled using the term *Made in U.S.A.* or some other clear and equivalent term.

(3) Each textile fiber product made in the United States, either in whole or in part of imported materials, shall contain a label disclosing these facts; for example:

Made in USA of imported fabric

or

Knitted in USA of imported yarn

and

(4) Each textile fiber product partially manufactured in a foreign country and partially manufactured in the United States shall contain on a label the following information:

(i) The manufacturing process in the foreign country and in the USA; for example:

''Imported cloth, finished in USA''

or

''Sewn in USA of imported components''

or

''Made in [foreign country], finished in USA''

or

''Scarf made in USA of fabric made in China''

or

''Comforter Filled, Sewn and Finished in the U.S. With Shell Made in China''

or

''Made in [Foreign Country]/fabric made in USA''

or

''Knit in USA, assembled in [Foreign Country]''.

(ii) When the U.S. Customs Service requires an origin label on the unfinished product, the manufacturing processes as required in paragraph (a)(4)(i) of this section or the name of the foreign country required by Customs, for example:

''Made in (foreign country)''

(b) For the purpose of determining whether a product should be marked under paragraphs (a) (2), (3), or (4) of this section, a manufacturer needs to consider the origin of only those materials that are covered under the Act and that are one step removed from that manufacturing process. For example, a yarn manufacturer must identify fiber if it is imported, a cloth manufacturer must identify imported yarn and a household product manufacturer must identify imported cloth or imported yarn for household products made directly from yarn, or imported fiber used as filling for warmth.

(c) The term *country* means the political entity known as a nation. Except for the United States, colonies, possessions or protectorates outside the boundaries of the mother country shall be considered separate countries, and the name thereof shall be deemed acceptable in designating the country where the textile fiber product was processed or manufactured unless the Commission shall otherwise direct.

(d) The country where the imported textile fiber product was principally made shall be considered to be the country where such textile fiber product was processed or manufactured. Further work or material added to the textile fiber product in another country must effect a basic change in form in order to render such other country the place where such textile fiber product was processed or manufactured.

(e) The English name of the country where the imported textile fiber product was processed or manufactured shall be used. The adjectival form of the name of the country will be accepted as the name of the country where the textile fiber product was processed or manufactured, provided the adjectival form of the name does not appear with such other words so as to refer to a kind or species of product. Variant spellings which clearly indicate the English name of the country, such as Brasil for Brazil and Italie for Italy, are acceptable. Abbreviations which unmistakably indicate the name of a country, such as ''Gt. Britain'' for ''Great Britain,'' are acceptable.

(f) Nothing in this rule shall be construed as limiting in any way the information required to be disclosed on labels under the provisions of any Tariff Act of the United States or regulations prescribed by the Secretary of the Treasury.

[24 FR 4480, June 2, 1959, as amended at 50 FR 15107, Apr. 17, 1985; 63 FR 7521, Feb. 13, 1998; 65 FR 75158, Dec. 1, 2000]

§ 303.34 Country of origin in mail order advertising.

When a textile fiber product is advertised in any mail order catalog or mail order promotional material, the description of such product shall contain a clear and conspicuous statement that the product was either made in U.S.A., imported, or both. Other words or phrases with the same meaning may be used. The statement of origin required by this section shall not be inconsistent with the origin labeling of the product being advertised.

[50 FR 15107, Apr. 17, 1985]

§ 303.35 Use of terms "virgin" or "new."

The terms *virgin* or *new* as descriptive of a textile fiber product, or any fiber or part thereof, shall not be used when the product or part so described is not composed wholly of new or virgin fiber which has never been reclaimed from any spun, woven, knitted, felted, bonded, or similarly manufactured product.

§ 303.36 Form of separate guaranty.

(a) The following are suggested forms of separate guaranties under section 10 of the Act which may be used by a guarantor residing in the United States on or as part of an invoice or other paper relating to the marketing or handling of any textile fiber products listed and designated therein, and showing the date of such invoice or other paper and the signature and address of the guarantor.

(1) *General form.* We guarantee that the textile fiber products specified herein are not misbranded nor falsely nor deceptively advertised or invoiced under the provisions of the Textile Fiber Products Identification Act and rules and regulations thereunder.

(2) *Guaranty based on guaranty.* Based upon a guaranty received, we guarantee that the textile fiber products specified herein are not misbranded nor falsely nor deceptively advertised or invoiced under the provisions of the Textile Fiber Products Identification Act and rules and regulations thereunder.

NOTE: The printed name and address on the invoice or other paper will suffice to meet the signature and address requirements.

(b) The mere disclosure of required information including the fiber content of a textile fiber product on a label or on an invoice or other paper relating to its marketing or handling shall not be considered a form of separate guaranty.

§ 303.37 Form of continuing guaranty from seller to buyer.

Under section 10 of the Act, a seller residing in the United States may give a buyer a continuing guaranty to be applicable to all textile fiber products sold or to be sold. The following is the prescribed form of continuing guaranty from seller to buyer.

We, the undersigned, guaranty that all textile fiber products now being sold or which may hereafter be sold or delivered to _____ are not, and will not be misbranded nor falsely nor deceptively advertised or invoiced under the provisions of the Textile Fiber Products Identification Act and rules and regulations thereunder. This guaranty effective until _____.

Dated, signed, and certified this ____ day of ____, 19____, at _____ (City), _____ (State or Territory) _____ (name under which business is conducted.)

Under penalty of perjury, I certify that the information supplied in this form is true and correct.

_____

Signature of Proprietor, Principal Partner, or Corporate Official

_____

Name (Print or Type) Title

[48 FR 12518, Mar. 25, 1983]

§ 303.38 Continuing guaranty filed with Federal Trade Commission.

(a)(1) Under section 10 of the act any person residing in the United States and marketing or handling textile fiber products may file a continuing guaranty with the Federal Trade Commission. When filed with the Commission a continuing guaranty shall be fully executed in duplicate. Forms for use in preparing continuing guaranties will be supplied by the Commission upon request.

(2) Continuing guaranties filed with the Commission shall continue in effect until revoked. The guarantor shall promptly report any change in business status to the Commission.

(b) Prescribed form for a continuing guaranty:

CONTINUING GUARANTY

1. LEGAL NAME OF GUARANTOR FIRM

2. NAME UNDER WHICH GUARANTOR FIRM DOES BUSINESS, IF DIFFERENT FROM LEGAL NAME

3. TYPE OF COMPANY
☐ PROPRIETORSHIP ☐ PARTNERSHIP ☐ CORPORATION

4. ADDRESS OF PRINCIPAL OFFICE OR PLACE OF BUSINESS *(Include Zip Code)*

OPTIONAL INFORMATION
TELEPHONE NUMBER:
FAX NUMBER:
INTERNET ADDRESS:

5. LAW UNDER WHICH THE CONTINUING GUARANTY IS TO BE FILED *(Put an 'X' in the appropriate boxes)*

☐ Under the **Textile Fiber Products Identification Act** (15 U.S.C. § § 70-70k): The company named above, which manufactures, markets, or handles textile fiber products, guarantees that when it ships or delivers any textile fiber product, the product will not be misbranded, falsely or deceptively invoiced, or falsely or deceptively advertised, within the meaning of the Textile Fiber Products Identification Act and the rules and regulations under that Act.

☐ Under the **Wool Products Labeling Act** (15 U.S.C. § § 68-68j): The company named above, which manufactures, markets, or handles wool products, guarantees that when it ships or delivers any wool product, the product will not be misbranded within the meaning of the Wool Products Labeling Act and the rules and regulations under that Act.

☐ Under the **Fur Products Labeling Act** (15 U.S.C. § § 69-69k): The company named above, which manufactures, markets, or handles fur products, guarantees that when it ships or delivers any fur product, the product will not be misbranded, falsely or deceptively invoiced, or falsely or deceptively advertised, within the meaning of the Fur Products Labeling Act and the rules and regulations under that Act.

6. CERTIFICATION

Under penalty of perjury, I certify that the information supplied on this form is true and correct.

SIGNATURE OF PROPRIETOR, PRINCIPAL PARTNER, OR CORPORATE OFFICIAL

7. NAME *(Please print or type)*

8. TITLE

9. CITY AND STATE WHERE SIGNED

10. DATE

INSTRUCTIONS

The Textile Fiber Products Identification Act, the Wool Products Labeling Act, and the Fur Products Labeling Act provide that any marketer or manufacturer of fiber or fur products covered by those Acts may file a continuing guaranty with the Federal Trade Commission. A continuing guaranty on file assures customer firms that the guarantor's products are in conformance with the Act(s) under which the guarantor has filed. Customer firms rely on the continuing guaranties for protection from liability if violations occur.

In completing this form, please observe the following:

(a) All appropriate blanks on the form should be filled in. Include your Zip Code in Item 4.

(b) In Item 6, signature of proprietor, partner, or corporate official of guarantor firm.

(c) Send two completed, signed original copies to:
Federal Trade Commission
Division of Enforcement
600 Pennsylvania Ave, NW
Washington, DC 20580

(d) Do not fax application - mail signed originals only.

Continuing guaranties filed with the Commission continue in effect until revoked. The guarantor must immediately notify the Commission in writing of any change in business status. Any change in the address of the guarantor's principal office and place of business must also be promptly reported.

DO NOT USE THIS SPACE

Filed _____ 19 ____

FEDERAL TRADE COMMISSION

FTC Form **31-A** (rev. 11/98)

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(c) Any person who has a continuing guaranty on file with the Commission may, during the effective dates of the guaranty, give notice of such fact by setting forth on the invoice or other paper covering the marketing or handling of the product guaranteed the following:

Continuing guaranty under the Textile Fiber Products Identification Act filed with the Federal Trade Commission.

(d) Any person who falsely represents in writing that he has a continuing guaranty on file with the Federal Trade Commission when such is not a fact shall be deemed to have furnished a false guaranty under section 10(b) of the Act.

[24 FR 4486, June 2, 1959, as amended at 48 FR 12517, Mar. 25, 1983; 63 FR 7521, Feb. 18, 1998; 63 FR 71585, Dec. 28, 1998]

§ 303.39 Maintenance of records.

(a) Pursuant to the provisions of section 6 of the Act, every manufacturer of a textile fiber product subject to the Act, irrespective of whether any guaranty has been given or received, shall maintain records showing the information required by the Act and Regulations with respect to all such textile fiber products made by such manufacturer. Such records shall show:

(1) The generic names and percentages by weight of the constituent fibers present in the textile fiber product, exclusive of permissive ornamentation, in amounts of five per centum or more.

(2) The name, provided for in § 303.19, or registered identification number issued by the Commission, of the manufacturer or of one or more persons marketing or handling the textile fiber product.

(3) The name of the country where such product was processed or manufactured as provided for in § 303.33.

The purpose of the records is to permit a determination that the requirements of the Act and Regulations have been met and to establish a traceable line of continuity from raw material through processing to finished product.

(b) Any person substituting a stamp, tag, label, or other identification pursuant to section 5(b) of the Act shall keep such records as will show the information set forth on the stamp, tag, label, or other identification that he removed and the name or names of the person or persons from whom such textile fiber product was received.

(c) The records required to be maintained pursuant to the provisions of this rule shall be preserved for at least three years.

[24 FR 4480, June 2, 1959, as amended at 53 FR 31315, Aug. 18, 1988]

§ 303.40 Use of terms in written advertisements that imply presence of a fiber.

The use of terms in written advertisements, including advertisements disseminated through the Internet and similar electronic media, that are descriptive of a method of manufacture, construction, or weave, and that by custom and usage are also indicative of a textile fiber or fibers, or the use of terms in such advertisements that constitute or connote the name or presence of a fiber or fibers, shall be deemed to be an implication of fiber content under section 4(c) of the Act, except that the provisions of this section shall not be applicable to non-deceptive shelf or display signs in retail stores indicating the location of textile fiber products and not intended as advertisements.

[63 FR 7523, Feb. 13, 1998]

§ 303.41 Use of fiber trademarks and generic names in advertising.

(a) In advertising textile fiber products, the use of a fiber trademark shall require a full disclosure of the fiber content information required by the Act and regulations in at least one instance in the advertisement.

(b) Where a fiber trademark is used in advertising textile fiber products containing more than one fiber, other than permissible ornamentation, such fiber trademark and the generic name of the fiber must appear in the required fiber content information in immediate proximity and conjunction with each other in plainly legible type or lettering of equal size and conspicuousness.

(c) Where a fiber trademark is used in advertising textile fiber products containing only one fiber, other than permissive ornamentation, such fiber trademark and the generic name of the fiber must appear in immediate proximity and conjunction with each other in plainly legible and conspicuous type or lettering at least once in the advertisement.

(d) Where a fiber trademark or generic name is used in non-required information in advertising, such fiber trademark or generic name, shall not be used in such a manner as to be false, deceptive, or misleading as to fiber content, or to indicate, directly or indirectly, that a textile fiber product is composed wholly or in part of a particular fiber, when such is not the case.

§ 303.42 Arrangement of information in advertising textile fiber products.

(a) Where a textile fiber product is advertised in such manner as to require disclosure of the information required by the Act and regulations, all parts of the required information shall be stated in immediate conjunction with each other in legible and conspicuous type or lettering of equal size and prominence. In making the required disclosure of the fiber content of the product, the generic names of fibers present in an amount 5 percent or more of the total fiber weight of the product, together with any fibers disclosed in accordance with § 303.3(a), shall appear in order of predominance by weight, to be followed by the designation ''other fiber'' or ''other fibers'' if a fiber or fibers required to be so designated are present.

(b) Non-required information or representations shall in no way be false, deceptive, or misleading as to fiber content and shall not include any names, terms, or representations prohibited by the Act and regulations. Such non-required information or representations shall not be set forth or so used as to interfere with, minimize, or detract from the required information.

(c) Non-deceptive terms which are properly and truthfully descriptive of a fiber may be used in conjunction with the generic name of such fiber; as for example: ''cross-linked rayon,'' ''solution dyed acetate,'' ''combed cotton,'' ''nylon 66,'' etc.

[24 FR 4480, June 2, 1959, as amended at 30 FR 14254, Nov. 13, 1965; 30 FR 15313, Dec. 11, 1965; 63 FR 7523, Feb. 13, 1998]

§ 303.43 Fiber content tolerances.

(a) A textile fiber product which contains more than one fiber shall not be deemed to be misbranded as to fiber content percentages if the percentages by weight of any fibers present in the total fiber content of the product, exclusive of permissive ornamentation, do not deviate or vary from the percentages stated on the label in excess of 3 percent of the total fiber weight of the product. For example, where the label indicates that a particular fiber is present in the amount of 40 percent, the amount of such fiber present may vary from a minimum of 37 percent of the total fiber weight of such product to a maximum of 43 percent of the total fiber weight of such product.

(b) Where the percentage of any fiber or fibers contained in a textile fiber product deviates or varies from the percentage stated on the label by more than the tolerance or variation provided in paragraph (a) of this section, such product shall be misbranded unless the person charged proves that the entire deviation or variation from the fiber content percentages stated on the label resulted from unavoidable variations in manufacture and despite the exercise of due care.

(c) Where representations are made to the effect that a textile fiber product is composed wholly of one fiber, the tolerance provided in section 4(b)(2) of the Act and paragraph (a) of this section shall not apply, except as to permissive ornamentation where the textile fiber product is represented to be composed of one fiber ''exclusive of ornamentation.''

§ 303.44 Products not intended for uses subject to the act.

Textile fiber products intended for uses not within the scope of the Act and regulations or intended for uses in other textile fiber products which are exempted or excluded from the Act shall not be subject to the labeling and invoicing requirements of the Act and regulations: *Provided*, An invoice or other paper covering the marketing or handling of such products is given, which indicates that the products are not intended for uses subject to the Textile Fiber Products Identification Act.

§ 303.45 Exclusions from the act.

(a) Pursuant to section 12(b) of the Act, the Commission hereby excludes from the operation of the Act:

(1) All textile fiber products except:

(i) Articles of wearing apparel:

(ii) Handkerchiefs;

(iii) Scarfs;

(iv) Beddings;

(v) Curtains and casements;

(vi) Draperies;

(vii) Tablecloths, napkins, and doilies;

(viii) Floor coverings;

(ix) Towels;

(x) Wash cloths and dish cloths;

(xi) Ironing board covers and pads;

(xii) Umbrellas and parasols;

(xiii) Batts;

(xiv) Products subject to section 4(h) of the Act;

(xv) Flags with heading or more than 216 square inches (13.9 dm^2) in size;

(xvi) Cushions;

(xvii) All fibers, yarns and fabrics (including narrow fabrics except packaging ribbons);

(xviii) Furniture slip covers and other covers or coverlets for furniture;

(xix) Afghans and throws;

(xx) Sleeping bags;

(xxi) Antimacassars and tidies;

(xxii) Hammocks;

(xxiii) Dresser and other furniture scarfs.

(2) Belts, suspenders, arm bands, permanently knotted neckties, garters, sanitary belts, diaper liners, labels (either required or non-required) individually and in rolls, looper clips intended for handicraft purposes, book cloth, artists' canvases, tapestry cloth, and shoe laces.

(3) All textile fiber products manufactured by the operators of company stores and offered for sale and sold exclusively to their own employees as ultimate consumers.

(4) Coated fabrics and those portions of textile fiber products made of coated fabrics.

(5) Secondhand household textile articles which are discernibly secondhand or which are marked to indicate their secondhand character.

(6) Non-woven products of a disposable nature intended for one-time use only.

(7) All curtains, casements, draperies, and table place mats, or any portions thereof otherwise subject to the Act, made principally of slats, rods, or strips, composed of wood, metal, plastic, or leather.

(8) All textile fiber products in a form ready for the ultimate consumer procured by the military services of the United States which are bought according to specifications, but shall not include those textile fiber products sold and distributed through post exchanges, sales commissaries, or ship stores; provided, however, that if the military services sell textile fiber products for nongovernmental purposes the information with respect to the fiber content of such products shall be furnished to the purchaser thereof who shall label such products in conformity with the Act and regulations before such products are distributed for civilian use.

(9) All hand woven rugs made by Navajo Indians which have attached thereto the ''Certificate of Genuineness'' supplied by the Indian Arts and Crafts Board of the United States Department of Interior. The term *Navajo Indian* means any Indian who is listed on the register of the Navajo Indian Tribe or is eligible for listing thereon.

(b) The exclusions provided for in paragraph (a) of this section shall not be applicable (1) if any representations as to the fiber content of such products are made on any label or in any advertisement without making a full and complete fiber content disclosure on such label or in such advertisement in accordance with the Act and regulations with the exception of those products excluded by paragraph (a)(6) of this section, or (2) if any false, deceptive, or misleading representations are made as to the fiber content of such products.

(c) The exclusions from the Act provided in paragraph (a) of this section are in addition to the exemptions from the Act provided in section 12(a) of the Act and shall not affect or limit such exemptions.

(Sec. 12, 72 Stat. 1723; 15 U.S.C. 70j)

[24 FR 4480, June 2, 1959, as amended at 25 FR 4318, May 14, 1960; 25 FR 7044, July 26, 1960; 29 FR 48, Jan. 3, 1964; 61 FR 11544, Mar. 21, 1996]

PART 304—RULES AND REGULATIONS UNDER THE HOBBY PROTECTION ACT

Sec.
304.1 Terms defined.
304.2 General requirement.
304.3 Applicability.
304.4 Application of other law or regulation.
304.5 Marking requirements for imitation political items.
304.6 Marking requirements for imitation numismatic items.

AUTHORITY: 15 U.S.C. 2101 et seq.

SOURCE: 40 FR 5496, Feb. 6, 1975, unless otherwise noted.

§ 304.1 Terms defined.

(a) *Act* means the Hobby Protection Act (approved November 29, 1973; Pub. L. 93–167, 87 Stat. 686, (15 U.S.C. 2101 et seq.)).

(b) *Commerce* has the same meanings as such term has under the Federal Trade Commission Act.

(c) *Commission* means the Federal Trade Commission.

(d) *Imitation numismatic item* means an item which purports to be, but in fact is not, an original numismatic item or which is a reproduction, copy, or counterfeit of an original numismatic item. Such term includes an original numismatic item which has been altered or modified in such a manner that it could reasonably purport to be an original numismatic item other than the one which was altered or modified. The term shall not include any re-issue or re-strike of any original numismatic item by the United States or any foreign government.

(e) *Imitation political item* means an item which purports to be, but in fact is not, an original political item, or which is a reproduction, copy or counterfeit of an original item.

(f) *Original numismatic item* means anything which has been a part of a coinage or issue which has been used in exchange or has been used to commemorate a person, object, place, or event. Such term includes coins, tokens, paper money, and commemorative medals.

(g) *Original political item* means any political button, poster, literature, sticker, or any advertisement produced for use in any political cause.

(h) *Person* means any individual, group, association, partnership, or any other business entity.

(i) *Regulations* means any or all regulations prescribed by the Federal Trade Commission pursuant to the Act.

(j) *United States* means the States, the District of Columbia, and the Commonwealth of Puerto Rico.

(k) *Diameter of a reproduction* means the length of the longest possible straight line connecting two points on the perimeter of the reproduction.

[40 FR 5496, Feb. 6, 1975, as amended at 53 FR 38942, Oct. 4, 1988]

§ 304.2 General requirement.

Imitation political or numismatic items subject to the Act shall be marked in conformity with the requirements of the Act and the regulations promulgated thereunder. Any violation of these regulations shall constitute a violation of the Act and of the Federal Trade Commission Act.

§ 304.3 Applicability.

Any person engaged in the manufacturing, or importation into the United States for introduction into or distribution in commerce, of imitation political or imitation numismatic items shall be subject to the requirements of the Act and the regulations promulgated thereunder.

§ 304.4 Application of other law or regulation.

The provisions of these regulations are in addition to, and not in substitution for or limitation of, the provisions of any other law or regulation of the United States (including the existing statutes and regulations prohibiting the reproduction of genuine currency) or of the law or regulation of any State.

§ 304.5 Marking requirements for imitation political items.

(a) An imitation political item which is manufactured in the United States, or imported into the United States for introduction into or distribution in commerce, shall be plainly and permanently marked with the calendar year in which such item was manufactured.

(b) The calendar year shall be marked upon the item legibly, conspicuously and nondeceptively, and in accordance with the further requirements of these regulations.

(1) The calendar year shall appear in arabic numerals, shall be based upon the Gregorian calendar and shall consist of four digits.

(2) The calendar year shall be marked on either the obverse or the reverse surface of the item. It shall not be marked on the edge of the item.

(3) An imitation political item of incusable material shall be incused with the calendar year in sans-serif numerals. Each numeral shall have a vertical dimension of not less than two millimeters (2.0 mm) and a minimum depth of three-tenths of one millimeter (0.3 mm) or one-half (½) the thickness of the reproduction, whichever is the lesser. The minimum total horizontal dimension for the four numerals composing the calendar year shall be six millimeters (6.0 mm).

(4) An imitation political button, poster, literature, sticker, or advertisement composed of nonincusable material shall be imprinted with the calendar year in sans-serif numerals. Each numeral shall have a vertical dimension of not less than two millimeters (2.0 mm). The minimum total horizontal dimension of the four numerals composing the calendar year shall be six millimeters (6.0 mm).

§ 304.6 Marking requirements for imitation numismatic items.

(a) An imitation numismatic item which is manufactured in the United States, or imported into the United States for introduction into or distribution in commerce, shall be plainly and permanently marked ''COPY''.

(b) The word ''COPY'' shall be marked upon the item legibly, conspicuously, and nondeceptively, and in accordance with the further requirements of these regulations.

(1) The word ''COPY'' shall appear in capital letters, in the English language.

(2) The word ''COPY'' shall be marked on either the obverse or the reverse surface of the item. It shall not be marked on the edge of the item.

(3) An imitation numismatic item of incusable material shall be incused with the word ''COPY'' in sans-serif letters having a vertical dimension of not less than two millimeters (2.0 mm) or not less than one-sixth of the diameter of the reproduction, and a minimum depth of three-tenths of one millimeter (0.3 mm) or to one-half (½) the thickness of the reproduction, whichever is the lesser. The minimum total horizontal dimension of the word ''COPY'' shall be six millimeters (6.0 mm) or not less than one-half of the diameter of the reproduction.

(4) An imitation numismatic item composed of nonincusable material shall be imprinted with the word ''COPY'' in sans-serif letters having a vertical dimension of not less than two millimeters (2.0 mm) or not less than one-sixth of the diameter of the reproduction. The minimum total horizontal dimension of the word ''COPY'' shall be six millimeters (6.0 mm) or not less than one-half of the diameter of the reproduction.

[40 FR 5496, Feb. 6, 1975, as amended at 53 FR 38942, Oct. 4, 1988]

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'')

SCOPE

Sec.
305.1 Scope of the regulations in this part.

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305.3 Description of covered products.

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305.4 Prohibited acts.

TESTING

305.5 Determinations of estimated annual energy consumption, estimated annual operating cost, and energy efficiency rating, and of water use rate.
305.6 Sampling.
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REPRESENTATIVE AVERAGE UNIT ENERGY COSTS

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305.11 Labeling for covered products.
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EFFECT OF THIS PART

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APPENDIX B1 TO PART 305—UPRIGHT FREEZERS WITH MANUAL DEFROST
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APPENDIX J1 TO PART 305—POOL HEATERS—GAS
APPENDIX J2 TO PART 305—POOL HEATERS—OIL
APPENDIX K TO PART 305—SUGGESTED DATA REPORTING FORMAT
APPENDIX L TO PART 305—SAMPLE LABELS

AUTHORITY: 42 U.S.C. 6294.

SOURCE: 52 FR 46894, Dec. 10, 1987, unless otherwise noted.

SCOPE

§ 305.1 Scope of the regulations in this part.

The rule in this part establishes requirements for consumer appliance products, as hereinafter described, in commerce, as ''commerce'' is defined in the Energy Policy and Conservation Act, 42 U.S.C. 6291, with respect to:

(a) Labeling and/or marking the products with information required by this part indicating their operating cost (or different useful measure of energy consumption) and related information, disclosing their water use rate and related information, or stating their compliance with applicable standards under section 325 of the Energy Policy and Conservation Act, 42 U.S.C. 6295;

(b) Including in printed matter displayed or distributed at the point of sale of such products, or including in any catalog from which the products may be purchased, information concerning their water use or their energy consumption;

(c) Including on the labels, separately attaching to the products, or shipping with the products, additional information relating to energy consumption, energy efficiency, or energy cost; and

(d) Making representations, in writing or in broadcast advertising, respecting the water use, energy consumption, or energy efficiency of the products, or the cost of water used or energy consumed by the products.

[52 FR 46894, Dec. 10, 1987, as amended at 54 FR 28034, July 5, 1989]

DEFINITIONS

§ 305.2 Definitions.

(a) *Act* means the Energy Policy and Conservation Act (Pub. L. 94–163), and amendments thereto.

(b) *Commission* means the Federal Trade Commission.

(c) *Manufacturer* means any person who manufactures, produces, assembles, or imports a consumer appliance product. Assembly operations which are solely decorative are not included.

(d) *Retailer* means a person to whom a consumer appliance product is delivered or sold, if such delivery or sale is for purposes of sale or distribution in commerce to purchasers who buy such product for purposes other than resale. The term *retailer* includes purchasers of appliances who install such appliances in newly constructed or newly rehabilitated housing, or mobile homes, with the intent to sell the covered appliances as part of the sale of such housing or mobile homes.

(e) *Distributor* means a person (other than a manufacturer or retailer) to whom a consumer appliance product is delivered or sold for purposes of distribution in commerce.

(f) *Private labeler* means an owner of a brand or trademark on the label of a consumer appliance product which bears a private label.

(g) *Range of comparability* means a group of models within a class of covered products, each model of which satisfies approximately the same consumer needs.

(h) *Estimated annual energy consumption and estimated annual operating cost*—(1) *Estimated annual energy consumption* means the energy or (for products described in sections 305.3(n)–(q)) water that is likely to be consumed annually in representative use of a consumer product, as determined in accordance with tests prescribed under section 323 of the Act (42 U.S.C. 6293).

(i) *Kilowatt-hour use per year*, or *kWh/yr.*, means estimated annual energy consumption expressed in kilowatt-hours of electricity.

(ii) *Therm use per year*, or *therms/yr.*, means estimated annual energy consumption expressed in therms of natural gas.

(iii) *Gallon use per year*, or *gallons/yr.*, means estimated annual energy consumption expressed in gallons of propane or No. 2 heating oil.

(2) *Estimated annual operating cost* means the aggregate retail cost of the energy that is likely to be consumed annually in representative use of a consumer product, as determined in accordance with tests prescribed under section 323 of the Act (42 U.S.C. 6293).

(i) *Energy efficiency rating* means the following product-specific energy usage descriptors: *annual fuel utilization efficiency (AFUE)* for furnaces; *energy efficiency ratio (EER)* for room air conditioners; *seasonal energy efficiency ratio (SEER)* for the cooling function of central air conditioners and heat pumps; *heating seasonal performance factor (HSPF)* for the heating function of heat pumps; and, *thermal efficiency (TE)* for pool heaters, as these descriptors are determined in accordance with tests prescribed under section 323 of the Act (42 U.S.C. 6293). These product-specific energy usage descriptors shall be used in satisfying all the requirements of this part.

(j) *Range of estimated annual energy consumption* means the range of estimated annual energy consumption per year of all models within a designated range of comparability.

(k) *Range of energy efficiency ratings* means the range of energy efficiency ratings for all models within a designated range of comparability.

(l) *New covered product*, as used in § 305.4, means a covered product the title of which has not passed to a purchaser who buys the product for purposes other than resale or leasing for a period in excess of one year.

(m) *Catalog* means printed material which contains the terms of sale, retail price, and instructions for ordering, from which a retail consumer can order a covered product.

(n) *Consumer product* means any article (other than an automobile, as ''automobile'' is defined in 15 U.S.C. 2001(1) [sec. 501(1) of the Motor Vehicle Information and Cost Savings Act]) of a type—

(1) which in operation consumes, or is designed to consume, energy or, with respect to showerheads, faucets, water closets, and urinals, water; and

(2) which, to any significant extent, is distributed in commerce for personal use or consumption by individuals;

without regard to whether such article or such type is in fact distributed in commerce for personal use or consumption by an individual, except that such term includes fluorescent lamp ballasts, general service fluorescent lamps, medium base compact fluorescent lamps, general service incandescent lamps (including incandescent reflector lamps), showerheads, faucets, water closets, and urinals distributed in commerce for personal or commercial use or consumption.

(o) *Consumer appliance product* means any of the following consumer products, excluding those products designed solely for use in recreational vehicles and other mobile equipment:

(1) Refrigerators, refrigerator-freezers, and freezers which can be operated by alternating current electricity, excluding—

(i) any type designed to be used without doors; and

(ii) any type which does not include a compressor and condenser unit as an integral part of the cabinet assembly.

(2) Dishwashers.

(3) Water heaters.

(4) Room air conditioners.

(5) Clothes washers.

(6) Clothes dryers.

(7) Central air conditioners and central air conditioning heat pumps.

(8) Furnaces.

(9) Direct heating equipment.

(10) Pool heaters.

(11) Kitchen ranges and ovens.

(12) Television sets.

(13) Fluorescent lamp ballasts.

(14) General service fluorescent lamps.

(15) Medium base compact fluorescent lamps.

(16) General service incandescent lamps, including incandescent reflector lamps.

(17) Showerheads.

(18) Faucets.

(19) Water closets.

(20) Urinals.

(21) Any other type of consumer product which the Department of Energy classifies as a covered product under section 322(b) of the Act (42 U.S.C. 6292).

(p) *Covered product* means any consumer product or consumer appliance product described in § 305.3 of this part.

(q) *Luminaire* means a complete lighting unit consisting of a fluorescent lamp or lamps, together with parts designed to distribute the light, to position and protect such lamps, and to connect such lamps to the power supply through the ballast.

(r) *Ballast efficacy factor* means the relative light output divided by the power input of a fluorescent lamp ballast, as measured under test conditions specified in American National Standards Institute (''ANSI'') standard C82.2–1984, or as may be prescribed by the Secretary of Energy. Copies of ANSI standard C82.2–1984 may be obtained from the American National Standards Institute, 11 West 42nd St., New York, NY 10036.

(s) *Bulb shape* means the shape of the lamp, especially the glass portion.

(t) *Base* for lamps means the portion of the lamp which screws into the socket.

(u) *Color rendering index* or *CRI* for lamps means the measure of the degree of color shift objects undergo when illuminated by a light source as compared with the color of those same objects when illuminated by a reference source of comparable color temperature.

(v) *Correlated color temperature* for lamps means the absolute temperature of a blackbody whose chromaticity

most nearly resembles that of the light source.

(w) *Lamp type* means all lamps designated as having the same electrical and lighting characteristics and made by one manufacturer.

(x) *Wattage* for lamps means the total electrical power consumed by a lamp in watts, after an initial seasoning period and including, for fluorescent lamps, arc watts plus cathode watts.

(y) *Light output* for lamps means the total luminous flux (power) of a lamp in lumens.

(z) *Life* and *lifetime* for lamps mean length of operating time of a statistically large group of lamps between first use and failure of 50 percent of the group.

(aa) *Lamp efficacy* means the light output of a lamp divided by its wattage, expressed in lumens per watt (LPW).

(bb) *Average lamp efficacy* means the lamp efficacy readings taken over a statistically significant period of manufacture with the readings averaged over that period.

(cc) *IES* means the Illuminating Engineering Society of North America and, as used herein, is the prefix for test procedures adopted by IES.

(dd) *ASME* means the American Society of Mechanical Engineers and, as used herein, is the prefix for national standards and codes adopted by ASME.

(ee) *ANSI* means the American National Standards Institute and, as used herein, is the prefix for national standards and codes adopted by ANSI.

(ff) *Water use* means the quantity of water flowing through a showerhead, faucet, water closet, or urinal at point of use, determined in accordance with test procedures under section 323 of the Act, 42 U.S.C. 6293.

(gg) *Flushometer valve* means a valve attached to a pressured water supply pipe and so designed that, when actuated, it opens the line for direct flow into the fixture at a rate and quantity to operate properly the fixture, and then gradually closes to provide trap reseal in the fixture in order to avoid water hammer. The pipe to which this device is connected is in itself of sufficient size that, when opened, will allow the device to deliver water at a sufficient rate of flow for flushing purposes.

(hh) *Flow restricting or controlling spout end device* means an aerator used in a faucet.

[52 FR 46894, Dec. 10, 1987, as amended at 59 FR 34031, July 1, 1994; 59 FR 49563, Sept. 28, 1994; 59 FR 67524, Dec. 29, 1994]

EFFECTIVE DATE NOTE: At 71 FR 78063, Dec. 28, 2006, § 305.2 was amended by revising paragraphs (i) and (o)(21) and adding paragraph (o)(22), effective Jan. 1, 2009. For the convenience of the user, the added and revised text is set forth as follows:

§ 305.2 Definitions.

* * * * *

(i) *Energy efficiency rating* means the following product-specific energy usage descriptors: *annual fuel utilization efficiency (AFUE)* for furnaces; *energy efficiency ratio (EER)* for room air conditioners; *seasonal energy efficiency ratio (SEER)* for the cooling function of central air conditioners and heat pumps; *heating seasonal performance factor (HSPF)* for the heating function of heat pumps; *airflow efficiency for ceiling fans; and, thermal efficiency (TE)* for pool heaters, as these descriptors are determined in accordance with tests prescribed under section 323 of the Act (42 U.S.C. 6293). These product-specific energy usage descriptors shall be used in satisfying all the requirements of this part.

* * * * *

(o) * * *

(21) Ceiling fans.

(22) Any other type of consumer product which the Department of Energy classifies as a covered product under section 322(b) of the Act (42 U.S.C. 6292).

* * * * *

§ 305.3 Description of covered products.

(a) *Refrigerators and refrigerator-freezers.* (1) *Electric refrigerator* means a cabinet designed for the refrigerated storage of food at temperatures above 32 °F., and having a source of refrigeration requiring single phase, alternating current electric energy input only. An electric refrigerator may include a compartment for the freezing and storage of food at temperatures below 32 °F., but does not provide a separate low temperature compartment designed for the freezing and storage of food at temperatures below 8 °F. An ''all-refrigerator'' is an electric refrigerator

which does not include a compartment for the freezing and long time storage of food at temperatures below 32 °F (0.0 °C). An ''all-refrigerator'' may include a compartment of 0.50 cubic capacity (14.2 liters) or less for the freezing and storage of ice.

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

(b) *Freezer* means a cabinet designed as a unit for the freezing and storage of food at temperatures of 0 °F. or below, and having a source of refrigeration requiring single phase, alternating current electric energy input only.

(c) *Dishwasher* means a cabinetlike appliance which, with the aid of water and detergent, washes, rinses, and dries (when a drying process is included) dishware, glassware, eating utensils and most cooking utensils by chemical, mechanical, and/or electrical means and discharges to the plumbing drainage system.

(1) *Water Heating Dishwasher* means a dishwasher which is designed for heating cold inlet water (nominal 50 °F.) or a dishwasher for which the manufacturer recommends operation with a nominal inlet water temperature of 120 °F. and may operate at either of these inlet water temperatures by providing internal water heating to above 120 °F. in at least one wash phase of the normal cycle.

(2) [Reserved]

(d)(1) *Water heater* means a product which utilizes oil, gas, or electricity to heat potable water for use outside the heater upon demand, including—

(i) Storage type units which heat and store water at a thermostatically controlled temperature, including gas storage water heaters with an input of 75,000 Btu per hour or less, oil storage water heaters with an input of 105,000 Btu per hour or less, and electric storage water heaters with an input of 12 kilowatts or less;

(ii) Instantaneous type units which heat water but contain no more than one gallon of water per 4,000 Btu per hour of input, including gas instantaneous water heaters with an input of 200,000 Btu per hour or less, oil instantaneous water heaters with an input of 210,000 Btu per hour or less, and electric instantaneous water heaters with an input of 12 kilowatts or less; and

(iii) Heat pump type units, with a maximum current rating of 24 amperes at a voltage no greater than 250 volts, which are products designed to transfer thermal energy from one temperature level to a higher temperature level for the purpose of heating water, including all ancillary equipment such as fans, storage tanks, pumps, or controls necessary for the device to perform its function.

(2) The requirements of this part are limited to those water heaters for which the Department of Energy has adopted and published test procedures for measuring energy usage.

(e) *Room air conditioner* means a consumer product, other than a packaged terminal air conditioner, which is powered by a single phase electric current and which is an encased assembly designed as a unit for mounting in a window or through the wall for the purpose of providing delivery of conditioned air to an enclosed space. It includes a prime source of refrigeration and may include a means for ventilating and heating.

(f) *Clothes washer* means a consumer product designed to clean clothes, utilizing a water solution of soap and/or detergent and mechanical agitation or other movement, and must be one of the following classes: automatic clothes washers, semi-automatic clothes washers, and other clothes washers.

(1) *Automatic clothes washer* means a class of clothes washer which has a control system capable of scheduling a pre-selected combination of operations, such as regulation of water fill level, and performance of wash, rinse, drain and spin functions, without the need for the user to intervene subsequent to the initiation of machine operation.

Some models may require user intervention to initiate these different segments of the cycle after the machine has begun operation, but they do not require the user to intervene to regulate the water temperature by adjusting the external water faucet valves.

(2) *Semi-automatic clothes washer* means a class of clothes washer that is the same as an automatic clothes washer except that the user must intervene to regulate the water temperature by adjusting the external water faucet valves.

(3) *Other clothes washer* means a class of clothes washer which is not an automatic or semi-automatic clothes washer.

(g) *Furnaces.* (1) *Furnace* means a product which utilizes only single-phase electric current, or single-phase electric current or DC current in conjunction with natural gas, propane, or home heating oil, and which—

(i) Is designed to be the principal heating sources for the living space of a residence;

(ii) Is not contained within the same cabinet with a central air conditioner whose rated cooling capacity is above 65,000 Btu per hour;

(iii) Is an electric central furnace, electric boiler, forced-air central furnace, gravity central furnace, or low pressure steam or hot water boiler; and

(iv) Has a heat input rate of less than 300,000 Btu per hour for electric boilers and low pressure steam or hot water boilers and less than 225,000 Btu per hour for forced-air central furnaces, gravity central furnaces, and electric central furnaces.

(2) *Electric central furnace* means a furnace designed to supply heat through a system of ducts with air as the heating medium, in which heat is generated by one or more electric resistance heating elements and the heated air is circulated by means of a fan or blower.

(3) *Forced air central furnace* means a gas or oil burning furnace designed to supply heat through a system of ducts with air as the heating medium. The heat generated by combustion of gas or oil is transferred to the air within a casing by conduction through heat exchange surfaces and is circulated through the duct system by means of a fan or blower.

(4) *Gravity central furnace* means a gas fueled furnace which depends primarily on natural convection for circulation of heated air and which is designed to be used in conjunction with a system of ducts.

(5) *Electric boiler* means an electrically powered furnace designed to supply low pressure steam or hot water for space heating application. A low pressure steam boiler operates at or below 15 pounds per square inch gauge (psig) steam pressure; a hot water boiler operates at or below 160 psig water pressure and 250 °F. water temperature.

(6) *Low pressure steam or hot water boiler* means an electric, gas or oil burning furnace designed to supply low pressure steam or hot water for space heating application. A low pressure steam boiler operates at or below 15 pounds psig steam pressure; a hot water boiler operates at or below 160 psig water pressure and 250 °F. water temperature.

(7) *Outdoor furnace or boiler* is a furnace or boiler normally intended for installation out-of-doors or in an unheated space (such as an attic or a crawl space).

(8) *Weatherized warm air furnace or boiler* means a furnace or boiler designed for installation outdoors, approved for resistance to wind, rain, and snow, and supplied with its own venting system.

(h) *Central air conditioner* means a product, other than a packaged terminal air conditioner, which is powered by single phase electric current, air cooled, rated below 65,000 Btu per hour, not contained within the same cabinet as a furnace, the rated capacity of which is above 225,000 Btu per hour, and is a heat pump or a cooling only unit.

(1) *Condenser-evaporator coil combination* means a condensing unit made by one manufacturer and one of several evaporator coils, either manufactured by the same manufacturer or another manufacturer, intended to be combined with that particular condensing unit.

(2) *Condensing unit* means a component of a ''central air conditioner'' which is designed to remove heat absorbed by the refrigerant and to transfer it to the outside environment, and

which consists of an outdoor coil, compressor(s), and air moving device.

(3) *Evaporator coil* means a component of a central air conditioner which is designed to absorb heat from an enclosed space and transfer the heat to a refrigerant.

(4) *Single package unit* means any central air conditioner in which all the major assemblies are enclosed in one cabinet.

(5) *Split system* means any central air conditioner in which one or more of the major assemblies are separate from the others.

(i) *Heat pump* means a product, other than a packaged terminal heat pump, which consists of one or more assemblies, powered by single phase electric current, rated below 65,000 Btu per hour, utilizing an indoor conditioning coil, compressor, and refrigerant-to-outdoor air heat exchanger to provide air heating, and may also provide air cooling, dehumidifying, humidifying, circulating, and air cleaning.

(j) *Fluorescent lamp ballast* means a device that is used to start and operate fluorescent lamps by providing a starting voltage and current and limiting the current during normal operation, and that is designed to operate at nominal input voltages of 120 or 277 volts with a frequency of 60 Hertz and is for use in connection with F40T12, F96T12 or F96T12HO lamps.

(k) *Fluorescent lamp:* (1) Means a low pressure mercury electric-discharge source in which a fluorescing coating transforms some of the ultra-violet energy generated by the mercury discharge into light, including only the following:

(i) Any straight-shaped lamp (commonly referred to as 4-foot medium bi-pin lamps) with medium bi-pin bases of nominal overall length of 48 inches and rated wattage of 28 or more;

(ii) Any U-shaped lamp (commonly referred to as 2-foot U-shaped lamps) with medium bi-pin bases of nominal overall length between 22 and 25 inches and rated wattage of 28 or more;

(iii) Any rapid start lamp (commonly referred to as 8-foot high output lamps) with recessed double contact bases of nominal overall length of 96 inches and 0.800 nominal amperes, as defined in ANSI C78.1–1978 and related supplements (copies of ANSI C78.1–1978 and related supplements may be obtained from the American National Standards Institute, 11 West 42nd St., New York, NY 10036); and

(iv) Any instant start lamp (commonly referred to as 8-foot slimline lamps) with single pin bases of nominal overall length of 96 inches and rated wattage of 52 or more, as defined in ANSI C78.3–1978 (R1984) and related supplement ANSI C78.3a–1985 (copies of ANSI C78.3–1978 (R1984) and related supplement ANSI C78.3a–1985 may be obtained from the American National Standards Institute, 11 West 42nd St., New York, NY 10036); but

(2) *Fluorescent lamp* does not mean any lamp excluded by the Department of Energy, by rule, as a result of a determination that standards for such lamp would not result in significant energy savings because such lamp is designed for special applications or has special characteristics not available in reasonably substitutable lamp types; and

(3) *General service fluorescent lamp* means a fluorescent lamp which can be used to satisfy the majority of fluorescent applications, but does not mean any lamp designed and marketed for the following nongeneral lighting applications:

(i) Fluorescent lamps designed to promote plant growth;

(ii) Fluorescent lamps specifically designed for cold temperature installations;

(iii) Colored fluorescent lamps;

(iv) Impact-resistant fluorescent lamps;

(v) Reflectorized or aperture lamps;

(vi) Fluorescent lamps designed for use in reprographic equipment;

(vii) Lamps primarily designed to produce radiation in the ultra-violet region of the spectrum; and

(viii) Lamps with a color rendering index of 82 or greater.

(l) *Medium base compact fluorescent lamp* means an integrally ballasted fluorescent lamp with a medium screw base, a rated input voltage range of 115 to 130 volts and which is designed as direct replacement for a general service incandescent lamp; however, the term does not include—

(1) Any lamp that is—

(i) Specifically designed to be used for special purpose applications; and

(ii) Unlikely to be used in general purpose applications, such as the applications described in the definition of ''General Service Incandescent Lamp'' in this section; or

(2) Any lamp not described in the definition of ''General Service Incandescent Lamp'' in this section that is excluded by the Department of Energy, by rule, because the lamp is—

(i) Designed for special applications; and

(ii) Unlikely to be used in general purpose applications.

(m) *Incandescent lamp:* (1) Means a lamp in which light is produced by a filament heated to incandescence by an electric current, including only the following:

(i) Any lamp (commonly referred to as lower wattage nonreflector general service lamps, including any tungsten-halogen lamp) that has a rated wattage between 30 and 199 watts, has an E26 medium screw base, has a rated voltage or voltage range that lies at least partially within 115 and 130 volts, and is not a reflector lamp;

(ii) Any lamp (commonly referred to as a reflector lamp) which is not colored or designed for rough or vibration service applications, that contains an inner reflective coating on the outer bulb to direct the light, an R, PAR, or similar bulb shapes (excluding ER or BR) with E26 medium screw bases, a rated voltage or voltage range that lies at least partially within 115 and 130 volts, a diameter which exceeds 2.75 inches, and is either—

(A) A low(er) wattage reflector lamp which has a rated wattage between 40 and 205 watts; or

(B) A high(er) wattage reflector lamp which has a rated wattage above 205 watts;

(iii) Any general service incandescent lamp (commonly referred to as a high- or higher-wattage lamp) that has a rated wattage above 199 watts (above 205 watts for a high wattage reflector lamp); but

(2) *Incandescent lamp* does not mean any lamp excluded by the Secretary of Energy, by rule, as a result of a determination that standards for such lamp would not result in significant energy savings because such lamp is designed for special applications or has special characteristics not available in reasonably substitutable lamp types; and

(3) *General service incandescent lamp* means any incandescent lamp (other than a miniature or photographic lamp), including an incandescent reflector lamp, that has an E26 medium screw base, a rated voltage range at least partially within 115 and 130 volts, and which can be used to satisfy the majority of lighting applications, but does not include any lamp specifically designed for:

(i) Traffic signal, or street lighting service;

(ii) Airway, airport, aircraft, or other aviation service;

(iii) Marine or marine signal service;

(iv) Photo, projection, sound reproduction, or film viewer service;

(v) Stage, studio, or television service;

(vi) Mill, saw mill, or other industrial process service;

(vii) Mine service;

(viii) Headlight, locomotive, street railway, or other transportation service;

(ix) Heating service;

(x) Code beacon, marine signal, lighthouse, reprographic, or other communication service;

(xi) Medical or dental service;

(xii) Microscope, map, microfilm, or other specialized equipment service;

(xiii) Swimming pool or other underwater service;

(xiv) Decorative or showcase service;

(xv) Producing colored light;

(xvi) Shatter resistance which has an external protective coating; or

(xvii) Appliance service; and

(4) *Incandescent reflector lamp* means a lamp described in paragraph (m)(1)(ii) of this section; and

(5) *Tungsten-halogen lamp* means a gas-filled tungsten filament incandescent lamp containing a certain proportion of halogens in an inert gas.

(n) *Showerhead* means any showerhead (including a handheld showerhead), except a safety shower showerhead.

(o) *Faucet* means a lavatory faucet, kitchen faucet, metering faucet, or replacement aerator for a lavatory or kitchen faucet.

(p) *Water closet* means a plumbing fixture having a water-containing receptor which receives liquid and solid body waste and, upon actuation, conveys the waste through an exposed integral trap seal into a gravity drainage system, except such term does not include fixtures designed for installation in prisons.

(q) *Urinal* means a plumbing fixture which receives only liquid body waste and, on demand, conveys the waste through a trap seal into a gravity drainage system, except such term does not include fixtures designed for installation in prisons.

(r) *Pool heater* means an appliance designed for heating nonpotable water contained at atmospheric pressure, including heating water in swimming pools, spas, hot tubs and similar applications. The requirements of this part are limited to those pool heaters for which the Department of Energy has adopted and published test procedures for measuring energy usage (see 10 CFR part 430, subpart B, appendix P).

[52 FR 46894, Dec. 10, 1987, as amended at 59 FR 34031, 34032, July 1, 1994; 59 FR 49563, Sept. 28, 1994; 59 FR 67525, Dec. 29, 1994; 71 FR 4984, Jan. 31, 2006]

EFFECTIVE DATE NOTE: At 71 FR 78063, Dec. 28, 2006, § 305.3 was amended by adding paragraph (s), effective Jan. 1, 2009. For the convenience of the user, the added text is set forth as follows:

§ 305.3 Description of covered products.

* * * * *

(s) *Ceiling fan* means a nonportable device that is suspended from a ceiling for circulating air via the rotation of fan blades. The requirements of this part are limited to those ceiling fans for which the Department of Energy has adopted and published test procedures for measuring energy usage.

GENERAL

§ 305.4 Prohibited acts.

(a) It shall be unlawful and subject to the enforcement penalties of section 333 of the Act, as adjusted for inflation pursuant to § 1.98 of this chapter, for each unit of any new covered product to which the part applies:

(1) For any manufacturer or private labeler knowingly to distribute in commerce any new covered product unless such covered product is marked and/or labeled in accordance with § 305.11 with a marking, label, flap tag, hang tag, or energy fact sheet which conforms to the provisions of the Act and this part.

(2) For any manufacturer, distributor, retailer, or private labeler knowingly to remove or render illegible any marking or label required to be provided with such product by this part.

(3) For any manufacturer or private labeler knowingly to distribute in commerce any new covered product, if there is not included (i) on the label, (ii) separately attached to the product, or (iii) shipped with the product, additional information relating to energy consumption or energy efficiency which conforms to the requirements in this part.

(b) It shall be unlawful and subject to the enforcement penalties of section 333 of the Act, as adjusted for inflation pursuant to § 1.98 of this chapter, for any manufacturer or private labeler knowingly to:

(1) Refuse a request by the Commission or its designated representative for access to, or copying of, records required to be supplied under this part.

(2) Refuse to make reports or provide upon request by the Commission or its designated representative any information required to be supplied under this part.

(3) Refuse upon request by the Commission or its designated representative to permit a representative designated by the Commission to observe any testing required by this part while such testing is being conducted or to inspect the results of such testing. This section shall not limit the Commission from requiring additional testing under this part.

(4) Refuse, when requested by the Commission or its designated representative, to supply at the manufacturer's expense, no more than two of each model of each covered product to any laboratory designated by the Commission for the purpose of ascertaining whether the information in catalogs or set out on the label or marked on the product as required by this part is accurate. This action will be taken only

after review of a manufacturer's testing records and an opportunity to revalidate test data has been extended to the manufacturer.

(5) Distribute in commerce any catalog containing a listing for a covered product without the information required by § 305.14 of this part. This subsection shall also apply to distributors and retailers.

(c) Pursuant to section 333(c) of the Act, it shall be an unfair or deceptive act or practice in violation of section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C. 45(a)(1)) for any manufacturer, distributor, retailer or private labeler in or affecting commerce to display or distribute at point of sale any printed material applicable to a covered product under this rule if such printed material does not contain the information required by § 305.13. This requirement does not apply to any broadcast advertisement or to any advertisement in a newspaper, magazine, or other periodical.

(d)(1) It shall be an unfair or deceptive act or practice in violation of section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1), for any manufacturer, distributor, retailer or private labeler to make any representation in or affecting commerce, in writing (including a representation on a label) or in any broadcast advertisement, with respect to the energy use or efficiency or, in the case of showerheads, faucets, water closets, and urinals, water use of a covered product to which a test procedure is applicable under section 323 of the Act, 42 U.S.C. 6293, or the cost of energy consumed by such product, unless such product has been tested in accordance with such test procedure and such representation fairly discloses the results of such testing.

(2) Effective 180 days after an amended or new test procedure applicable to a covered product is prescribed or established under section 323(b) of the Act, 42 U.S.C. 6293(b), it shall be an unfair or deceptive act or practice in violation of section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1), for any manufacturer, distributor, retailer or private labeler to make any representation in or affecting commerce, in writing (including a representation on a label) or in any broadcast advertisement, with respect to the energy use or efficiency or, in the case of showerheads, faucets, water closets and urinals, water use of such product, or cost of energy consumed by such product, unless the product has been tested in accordance with such amended or new test procedures and such representation fairly discloses the results of such testing. This requirement is not limited to consumer appliance products covered by the labeling requirements of this part.

(3) Any manufacturer, distributor, retailer, or private labeler may file a petition with the Commission not later than sixty (60) days before the expiration of the period involved for an extension of the 180 day period. If the Commission finds that the requirements would impose an undue hardship on the petitioner, the Commission may extend the 180 day period with respect to the petitioner up to an additional 180 days.

(e) This part shall not apply to:

(1) Any covered product if it is manufactured, imported, sold, or held for sale for export from the United States, so long as such product is not in fact distributed in commerce for use in the United States, and such covered product or the container thereof bears a stamp or label stating that such covered product is intended for export.

(2) Any covered product, other than central air conditioners, pulse combustion and condensing furnaces, fluorescent lamp ballasts, showerheads, faucets, water closets, urinals, pool heaters, instantaneous water heaters, heat pump water heaters, general service fluorescent lamps, medium base compact fluorescent lamps, and general service incandescent lamps (including incandescent reflector lamps), if the manufacture of the product was completed prior to May 19, 1980. Any central air conditioner or any pulse combustion or condensing furnace if its manufacture was completed prior to June 7, 1988. Any fluorescent lamp ballast if its manufacture was completed prior to January 1, 1990. Any showerhead, faucet, water closet or urinal if its manufacture was completed prior to October 24, 1994. Any pool heater, instantaneous water heater, or heat

pump water heater if its manufacture was completed prior to December 29, 1994. Any general service fluorescent lamp, medium base compact fluorescent lamp, or general service incandescent lamp (including any incandescent reflector lamp), if its manufacture was completed prior to May 15, 1995.

(3) Any catalog or point-of-sale printed material pertaining to any covered products that were manufactured prior to May 19, 1980; any catalog or point-of-sale printed material pertaining to any central air conditioners or pulse combustion or condensing furnaces manufactured prior to June 7, 1988; any catalog or point-of-sale printed material pertaining to any fluorescent lamp ballasts manufactured prior to June 23, 1989; any catalog or point-of-sale printed material pertaining to any showerheads, faucets, water closets or urinals manufactured prior to October 24, 1994; any catalog or point-of-sale printed material pertaining to any pool heaters, instantaneous water heaters, or heat pump water heaters manufactured prior to December 29, 1994; or any catalog or point-of-sale printed material pertaining to general service fluorescent lamps, medium base compact fluorescent lamps, or general service incandescent lamps (including incandescent reflector lamps), that were manufactured prior to May 15, 1995; except that any representations respecting the energy consumption, energy efficiency, or water use of any covered product or other consumer appliance product, or respecting the cost of energy consumed or water used by such product, are subject to the requirements of paragraph (d) of this section.

(f) As used in paragraphs (a) and (b) of this section, the term *knowingly* means:

(1) The having of actual knowledge, or

(2) The presumed having of knowledge deemed to be possessed by a reasonable person who acts in the circumstances, including knowledge obtainable upon the exercise of due care.

[52 FR 46894, Dec. 10, 1987, as amended at 54 FR 28035, July 5, 1989; 58 FR 54964, Oct. 25, 1993; 59 FR 49563, Sept. 28, 1994; 59 FR 67526, Dec. 29, 1994; 61 FR 54549, Oct. 21, 1996]

TESTING

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

(a) Procedures for determining the estimated annual energy consumption, the estimated annual operating costs, the energy efficiency ratings and the efficacy factors of covered products are those found in 10 CFR part 430, subpart B, in the following sections:

(1) Refrigerators and refrigerator-freezers § 430.23(a).

(2) Freezers—§ 430.23(b).

(3) Dishwashers—§ 430.23(c).

(4) Water heaters—§ 430.23(e).

(5) Room air conditioners—§ 430.23(f).

(6) Clothes washers—§ 430.23(j).

(7) Central air conditioners and heat pumps—§ 430.23(m).

(8) Furnaces—§ 430.23(n).

(9) Pool Heaters—§ 430.23(p)

(10) Fluorescent lamp ballasts—§ 430.23(q).

(b) Manufacturers and private labelers of any covered product that is a general service fluorescent lamp, medium base compact fluorescent lamp, or general service incandescent lamp (including an incandescent reflector lamp), must, for any representation of the design voltage, wattage, light output or life of such lamp or for any representation made by the encircled ''E'' that such a lamp is in compliance with an applicable standard established by section 325 of the Act, possess and rely upon a reasonable basis consisting of competent and reliable scientific tests substantiating the representation. For representations of the light output and life ratings of any covered product that is a medium base compact fluorescent lamp or incandescent lamp (including an incandescent reflector lamp), the Commission will accept as a reasonable basis competent and reliable scientific tests conducted according to the following applicable IES test protocols that substantiate the representations:

For measuring light output (in lumens):	
General Service Fluorescent ..	IES LM 9
Compact Fluorescent	IES LM 66
General Service Incandescent (Other than Reflector Lamps).	IES LM 45

General Service Incandescent (Reflector Lamps)	IES LM 20
For measuring laboratory life (in hours):	
General Service Fluorescent	IES LM 40
Compact Fluorescent	IES LM 65
General Service Incandescent (Other than Reflector Lamps).	IES LM 49
General Service Incandescent (Reflector Lamps)	IES LM 49

(c) Procedures for determining the water use rates of covered products are those found in the following standards:

(1) Showerheads and faucets—- ASME A112.18.1M–1989, Plumbing Fixture Fittings. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of ASME A112.18.1M may be obtained from the American Society of Mechanical Engineers, 345 East 47th Street, New York, NY 10017, or may be inspected at the Federal Trade Commission, room 130, 600 Pennsylvania Avenue, N.W., Washington, DC, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(2) Water closets and urinals—ASME A112.19.2M–1990, Vitreous China Plumbing Fixtures. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of ASME A112.19.2M may be obtained from the American Society of Mechanical Engineers, 345 East 47th Street, New York, NY 10017, or may be inspected at the Federal Trade Commission, room 130, 600 Pennsylvania Avenue, N.W., Washington, DC, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

[58 FR 54964, Oct. 25, 1993, as amended at 59 FR 34033, July 1, 1994; 59 FR 49564, Sept. 28, 1994; 59 FR 67527, Dec. 29, 1994; 66 FR 27858, May 21, 2001; 69 FR 18803, Apr. 9, 2004]

EFFECTIVE DATE NOTE: At 71 FR 78063, Dec. 28, 2006, § 305.5 was amended by adding paragraph (a)(11), effective Jan. 1, 2009. For the convenience of the user, the added and revised text is set forth as follows:

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

(a) * * *

(11) Ceiling Fans—§ 430.23.

§ 305.6 Sampling.

(a) For any covered product (except general service flouroscent lamps, medium base compact florescent lamps, and general service incandescent lamps, including incandescent reflector lamps), any representation with respect to or based upon a measure or measures of energy consumption incorporated into § 305.5 shall be based upon the sampling procedures set forth in § 430.24 of 10 CFR part 430, subpart B.

(b) For any covered product that is a medium base compact fluorescent lamp or a general service incandescent lamp (including an incandescent reflector lamp), any representation of design voltage, wattage, light output or life and, for any covered product that is a general service fluorescent lamp or incandescent reflector lamp, any representation made by the encircled ''E'' that such lamp is in compliance with an applicable standard established by section 325 of the Act shall be based upon tests using a competent and reliable scientific sampling procedure. The Commission will accept ''Military Standard 105—Sampling Procedures and Tables for Inspection by Attributes'' as such a sampling procedure.

[59 FR 67527, Dec. 29, 1994, as amended at 66 FR 27858, May 21, 2001]

§ 305.7 Determinations of capacity.

The capacity of covered products shall be determined as follows:

(a) *Refrigerators and refrigerator-freezers.* The capacity shall be the total refrigerated volume (VT) in cubic feet, rounded to the nearest one-tenth of a cubic foot, as determined according to appendix A1 to 10 CFR part 430, subpart B.

(b) *Freezers.* The capacity shall be the total refrigerated volume (VT) in cubic feet, rounded to the nearest one-tenth

of a cubic foot, as determined according to appendix B1 to 10 CFR part 430, subpart B.

(c) *Dishwashers*. The capacity shall be the place-setting capacity, determined according to appendix C to 10 CFR part 430, subpart B.

(d) *Water heaters*. The capacity shall be the first hour rating, as determined according to appendix E to 10 CFR part 430, subpart B.

(e) *Pool heaters*. The capacity shall be the heating capacity in Btu's per hour, rounded to the nearest 1,000 Btu's per hour, as determined according to appendix P to 10 CFR part 430, subpart B.

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

(g) *Clothes washers*. The capacity shall be the tub capacity as determined according to appendix J1 to 10 CFR part 430, subpart B, in the terms ''standard'' or ''compact'' as defined in appendix J1.

(h) *Furnaces*. The capacity shall be the heating capacity in Btu's per hour, rounded to the nearest 1,000 Btu's per hour, as determined according to appendix N to 10 CFR part 430, subpart B.

(i) *Central air conditioners, cooling*. The capacity shall be the cooling capacity in Btu's per hour, as determined according to appendix M to 10 CFR part 430, subpart B, rounded to the nearest 100 Btu's per hour for capacities less than 20,000 Btu's per hour; to the nearest 200 Btu's per hour for capacities between 20,000 and 37,999 Btu's per hour; and to the nearest 500 Btu's per hour for capacities between 38,000 and 64,999 Btu's per hour.

(j) *Central air conditioners, heating*. The capacity shall be the heating capacity in Btu's per hour, as determined according to appendix M to 10 CFR part 430, subpart B, rounded to the nearest 100 Btu's per hour for capacities less than 20,000 Btu's per hour; to the nearest 200 Btu's per hour for capacities between 20,000 and 37,999 Btu's per hour; and to the nearest 500 Btu's per hour for capacities between 38,000 and 64,999 Btu's per hour.

(k) *Fluorescent lamp ballasts*. The capacity shall be the ballast input voltage, as determined according to appendix Q to 10 CFR part 430, subpart B.

[59 FR 34033, July 1, 1994, as amended at 59 FR 49564, Sept. 28, 1994; 70 FR 3875, Jan. 27, 2005]

EFFECTIVE DATE NOTE: At 71 FR 78064, Dec. 28, 2006, § 305.7 was amended by adding paragraph (l), effective Jan. 1, 2009. For the convenience of the user, the added text is set forth as follows:

§ 305.7 Determinations of capacity.

* * * * *

(l) *Ceiling fans*. The capacity shall be the airflow in cubic feet per minute as determined according to appendix U of 10 CFR part 430, subpart B.

§ 305.8 Submission of data.

(a)(1) Each manufacturer of a covered product (except manufacturers of fluorescent lamp ballasts, showerheads, faucets, water closets, urinals, general service fluorescent lamps, medium base compact fluorescent lamps, or general service incandescent lamps including incandescent reflector lamps) shall submit annually to the Commission a report listing the estimated annual energy consumption (for refrigerators, refrigerator-freezers, freezers, clothes washers, dishwashers and water heaters) or the energy efficiency rating (for room air conditioners, central air conditioners, heat pumps, furnaces, and pool heaters) for each basic model in current production, determined according to § 305.5 and statistically verified according to § 305.6. The report must also list, for each basic model in current production: the model numbers for each basic model; the total energy consumption, determined in accordance with § 305.5, used to calculate the estimated annual energy consumption or energy efficiency rating; the number of tests performed; and, its capacity, determined in accordance with § 305.7. For those models that use more than one energy source or more than one cycle,

each separate amount of energy consumption or energy cost, measured in accordance with § 305.5, shall be listed in the report. appendix K illustrates a suggested reporting format. Starting serial numbers or other numbers identifying the date of manufacture of covered products shall be submitted whenever a new basic model is introduced on the market.

(2) Each manufacturer of a covered fluorescent lamp ballast shall submit annually to the Commission a report for each basic model of fluorescent lamp ballast in current production. The report shall contain the following information:

(i) Name and address of manufacturer;

(ii) All trade names under which the fluorescent lamp ballast is marketed;

(iii) Model number;

(iv) Starting serial number, date code or other means of identifying the date of manufacture (date of manufacture information must be included with only the first submission for each basic model);

(v) Nominal input voltage and frequency;

(vi) Ballast efficacy factor; and

(vii) Type (F40T12, F96T12 or F96T12HO) and number of lamp or lamps with which the fluorescent lamp ballast is designed to be used.

(3) Each manufacturer of a covered product that is a general service fluorescent lamp, medium base compact fluorescent lamp, or general service incandescent lamp (including an incandescent reflector lamp), shall submit annually to the Commission a report for each lamp type in current production. The report shall contain the following information:

(i) Name and address of manufacturer;

(ii) All trade names under which the lamp is marketed;

(iii) Model number;

(iv) Starting serial number, date code or other means of identifying the date of manufacture (date of manufacture information must be included with only the first submission for each lamp type); and

(v) For all covered lamps, the test results for the lamp's wattage and light output ratings and, in addition, for all covered fluorescent lamps, the test results for the lamp's color rendering index.

(4) Each manufacturer of a covered showerhead, faucet, water closet or urinal shall submit annually to the Commission a report for each basic model of such products in current production. The report shall contain the following information:

(i) Name and address of manufacturer;

(ii) All trade names under which the product is marketed;

(iii) Model number;

(iv) Starting serial number, date code or other means of identifying the date of manufacture (date of manufacture information must be included with only the first submission for each basic model);

(v) The product's water use, expressed in gallons and liters per flush (gpf and Lpf) or gallons and liters per minute (gpm and L/min) or per cycle (gpc and L/cycle) as determined in accordance with § 305.5.

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

Product category	Deadline for data submission
Refrigerators	Aug. 1
Refrigerator-freezers	Aug. 1
Freezers	Aug. 1
Central air conditioners	July 1
Heat pumps	July 1
Dishwashers	June 1
Water heaters	May 1
Room air conditioners	May 1
Furnaces	May 1
Pool heaters	May 1
Clothes washers	Oct. 1
Fluorescent lamp ballasts	Mar. 1
Showerheads	Mar. 1
Faucets	Mar. 1
Water closets	Mar. 1
Urinals	Mar. 1
Fluorescent lamps	Mar. 1 [Stayed]
Medium Base Compact Fluorescent Lamps	Mar. 1 [Stayed]
Incandescent Lamps, incl. Reflector Lamps	Mar. 1 [Stayed]

(2) All revisions to such data (both additions to and deletions from the preceding data) shall be submitted to the Commission as part of the next annual report period.

(c) All information required by paragraph (a) of this section must be submitted for new models prior to any distribution of such model. Models subject to design or retrofit alterations which change the data contained in any annual report shall be reported in the manner required for new models. Models which are discontinued shall be reported in the next annual report.

[52 FR 46894, Dec. 10, 1987, as amended at 54 FR 28035, July 5, 1989; 59 FR 54965, Oct. 25, 1993; 59 FR 49564, Sept. 28, 1994; 59 FR 67527, Dec. 29, 1994; 60 FR 14210, Mar. 16, 1995; 67 FR 35008, May 17, 2002; 68 FR 8449, Feb. 21, 2003]

EFFECTIVE DATE NOTE: At 71 FR 78064, Dec. 28, 2006, § 305.8 was amended by revising paragraphs (a)(1) and (b)(1), effective Jan. 1, 2009. For the convenience of the user, the revised text is set forth as follows:

§ 305.8 Submission of data.

(a)(1) Each manufacturer of a covered product (except manufacturers of fluorescent lamp ballasts, showerheads, faucets, water closets, urinals, general service fluorescent lamps, medium base compact fluorescent lamps, or general service incandescent lamps including incandescent reflector lamps) shall submit annually to the Commission a report listing the estimated annual energy consumption (for refrigerators, refrigerator-freezers, freezers, clothes washers, dishwashers and water heaters) or the energy efficiency rating (for room air conditioners, central air conditioners, heat pumps, furnaces, ceiling fans, and pool heaters) for each basic model in current production, determined according to § 305.5 and statistically verified according to § 305.6. The report must also list, for each basic model in current production: the model numbers for each basic model; the total energy consumption, determined in accordance with § 305.5, used to calculate the estimated annual energy consumption or energy efficiency rating; the number of tests performed; and, its capacity, determined in accordance with § 305.7. For those models that use more than one energy source or more than one cycle, each separate amount of energy consumption or energy cost, measured in accordance with § 305.5, shall be listed in the report. Appendix K illustrates a suggested reporting format. Starting serial numbers or other numbers identifying the date of manufacture of covered products shall be submitted whenever a new basic model is introduced on the market. For ceiling fans, the report shall contain the fan diameter in inches and also shall contain efficiency ratings, energy consumption, and capacity at high speed.

* * * * *

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

Product category	Deadline for data submission
Refrigerators	Aug. 1.
Refrigerator-freezers	Aug. 1.
Freezers	Aug. 1.
Central air conditioners	July 1.
Heat pumps	July 1.
Dishwashers	June 1.
Water heaters	May 1.
Room air conditioners	May 1.
Furnaces	May 1.
Pool heaters	May 1.
Clothes washers	Oct. 1.
Fluorescent lamp ballasts	Mar. 1.
Showerheads	Mar. 1.
Faucets	Mar. 1.
Water closets	Mar. 1.
Urinals	Mar. 1.
Ceiling fans	Mar. 1.
Fluorescent lamps	Mar. 1 [Stayed].
Medium Base Compact Fluorescent Lamps	Mar. 1 [Stayed].
Incandescent Lamps, incl. Reflector Lamps	Mar. 1 [Stayed].

* * * * *

§ 305.9 Representative average unit energy cost.

(a) Table 1, below, contains the representative unit energy costs to be utilized for operating cost disclosures for furnaces and central air conditioners on fact sheets or in directories as required by § 305.11(b)&(c) of this part.

TABLE 1—REPRESENTATIVE AVERAGE UNIT COSTS OF ENERGY FOR FIVE RESIDENTIAL ENERGY SOURCES (2005)

Type of energy	In commonly used terms	As required by DOE test procedure	Dollars per million Btu [1]
Electricity	9.06¢/kWh [2,3]	$0.0906/kWh	$26.55
Natural gas	$1.092/therm [4] or $11.23 MCF [5,6]	$0.00001092/Btu	10.92
No. 2 heating oil	$1.76/gallon [7]	$0.00001268/Btu	12.68
Propane	$1.55/gallon [8]	$0.00001694/Btu	16.94
Kerosene	$2.20/gallon [9]	$0.00001632/Btu	16.32

[1] Btu stands for British thermal unit.
[2] Wh stands for kiloWatt hour.
[3] 1 kWh = 3,412 Btu.
[4] 1 therm = 100,000 Btu. Natural gas prices include taxes.
[5] MCF stands for 1,000 cubic feet.
[6] For the purposes of this table, 1 cubic foot of natural gas has an energy equivalence of 1,028 Btu.
[7] For the purposes of this table, 1 gallon of No. 2 heating oil has an energy equivalence of 138,690 Btu.
[8] For the purposes of this table, 1 gallon of liquid propane has an energy equivalence of 91,333 Btu.
[9] For the purposes of this table, 1 gallon of kerosene has an energy equivalence of 135,000 Btu.

(b) Table 1, above, will be revised on the basis of future information provided by the Secretary of the Department of Energy, but not more often than annually.

[52 FR 46894, Dec. 10, 1987, as amended at 59 FR 5700, Feb. 8, 1994; 59 FR 34033, July 1, 1994; 60 FR 9296, Feb. 17, 1995; 61 FR 5680, Feb. 14, 1996; 62 FR 67562, Dec. 29, 1997; 64 FR 7784, Feb. 17, 1999; 65 FR 20354, Apr. 17, 2000; 66 FR 27858, May 21, 2001; 67 FR 39271, June 7, 2002; 68 FR 23586, May 5, 2003; 69 FR 23653, Apr. 30, 2004; 70 FR 32486, June 3, 2005]

§ 305.10 Ranges of estimated annual energy consumption and energy efficiency ratings.

(a) The range of estimated annual energy consumption or energy efficiency ratings for each covered product (except fluorescent lamp ballasts, showerheads, faucets, water closets or urinals) shall be taken from the appropriate appendix to this rule in effect at the time the labels are affixed to the product. The Commission shall publish revised ranges annually in the FEDERAL REGISTER, if appropriate, or a statement that the specific prior ranges are still applicable for the new year. Ranges will be changed if the estimated annual energy consumption or energy efficiency ratings of the products within the range change in a way that would alter the upper or lower estimated annual energy consumption or energy efficiency rating limits of the range by 15% or more from that previously published. When a range is revised, all information disseminated after 90 days following the publication of the revision shall conform to the revised range. Products that have been labeled prior to the effective date of a modification under this section need not be relabeled.

(b) When the estimated annual energy consumption or energy efficiency rating of a given model of a covered product falls outside the limits of the current range for that product, which could result from the introduction of a new or changed model, the manufacturer shall

(1) Omit placement of such product on the scale, and

(2) Add one of the two sentences below, as appropriate, in the space just below the scale, as follows:

The estimated annual energy consumption of this model was not available at the time the range was published.

The energy efficiency rating of this model was not available at the time the range was published.

[59 FR 34033, July 1, 1994, as amended at 67 FR 35008, May 17, 2002; 68 FR 8449, Feb. 21, 2003]

EFFECTIVE DATE NOTE: At 71 FR 78064, Dec. 28, 2006, § 305.10 was amended by revising paragraph (a), effective Jan. 1, 2009. For the convenience of the user, the revised text is set forth as follows:

§ 305.10 Ranges of estimated annual energy consumption and energy efficiency ratings.

(a) The range of estimated annual energy consumption or energy efficiency ratings for each covered product (except fluorescent lamp ballasts, showerheads, faucets, water closets, urinals, or ceiling fans) shall be taken from the appropriate appendix to this rule in effect at the time the labels are affixed to the product. The Commission shall publish revised ranges annually in the FEDERAL REGISTER, if appropriate, or a statement that the specific prior ranges are still applicable for the new year. Ranges will be changed if the estimated annual energy consumption or energy efficiency ratings of the products within the range change in a way that would alter the upper or lower estimated annual energy consumption or energy efficiency rating limits of the range by 15% or more from that previously published. When a range is revised, all information disseminated after 90 days following the publication of the revision shall conform to the revised range. Products that have been labeled prior to the effective date of a modification under this section need not be relabeled.

* * * * *

REQUIRED DISCLOSURES

§ 305.11 Labeling for covered products.

(a) *Labels for covered products other than fluorescent lamp ballasts, general service fluorescent lamps, medium base compact fluorescent lamps, general service incandescent lamps (including incandescent reflector lamps), showerheads, faucets, water closets and urinals*—(1) *Layout.* All energy labels for each category of covered product shall use one size, similar colors and typefaces with consistent positioning of headline, copy and charts to maintain uniformity for immediate consumer recognition and readability. Trim size dimensions for all labels shall be as follows: width must be between 5¼ inches and 5½ inches (13.34 cm. and 13.97 cm.); length must be 7⅜ inches (18.73 cm.). Copy is to be set between 27 picas and 29 picas and copy page should be centered (right to left and top to bottom). Depth is variable but should follow closely the prototype labels appearing at the end of this part illustrating the basis layout. All positioning, spacing, type sizes and line widths should be similar to and consistent with the prototype labels.

(2) *Type style and setting.* The Helvetica Condensed series typeface or equivalent shall be used exclusively on the label. Specific sizes and faces to be used are indicated on the prototype labels. No hyphenation should be used in setting headline or copy text. Positioning and spacing should follow the prototypes closely. Generally, text must be set flush left with two points leading except where otherwise indicated. Helvetica Condensed Regular shall be used for all copy except the large number indicating the estimated annual energy consumption or energy efficiency rating, which shall be in Helvetica Condensed Black, and all other numerals and letters used in immediate connection with the Energy Efficiency Scale, which shall be in Helvetica Condensed Bold. See the prototype labels for specific directions.

(3) *Colors.* The basic colors of all labels shall be process yellow or equivalent and process black. The label shall be printed full bleed process yellow. All type and graphics shall be print process black.

(4) *Paper stock*—(i) *Adhesive labels.* All adhesive labels should be applied so they can be easily removed without the use of tools or liquids, other than water, but should be applied with an adhesive with an adhesion capacity sufficient to prevent their dislodgment during normal handling throughout the chain of distribution to the retailer or consumer. 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″×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. The pressure-sensitive adhesive shall be applied in no fewer than two strips not less than 0.5 inches (1.27 cm.) wide. The strips shall be within 0.25 inches (.64 cm.) of the opposite edges of the label. For a ''flap-tag'' label, the pressure-sensitive adhesive shall be applied in one strip not less that 0.5 inches (1.27 cm.) wide. The strip shall be within 0.25

inches (.64 cm.) of the top edge of the label.

(ii) *Hang tags.* The paper stock for hang tags shall have a basic weight of not less than 110 pounds per 500 sheets (25½″×30½″ index). When materials are used to attach the hang tags to appliance products, the materials shall be of sufficient strength to insure that if gradual pressure is applied to the hang tag by pulling it away from where it is affixed to the product, the hang tag will tear before the material used to affix the hang tag to the product breaks.

(5) *Contents*—(i) *Labels for refrigerators, refrigerator-freezers, freezers, dishwashers, clothes washers, water heaters and room air conditioners.* (A) Headlines and texts, as illustrated in the Prototype Labels in Appendix L to this Part, are standard for all labels except clothes washer labels, which must have the text and features described in 305.11(a)(5)(i)(L) of this part.

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

(C) Model number(s) will be the designation given by the manufacturer or private labeler.

(D) Capacity or size is that determined in accordance with § 305.7.

(E) Estimated annual energy consumption for refrigerators, refrigerator-freezers, freezers, clothes washers, dishwashers and water heaters and energy efficiency ratings for room air conditioners are as determined in accordance with § 305.5.

(F) Ranges of comparability and of estimated annual energy consumption and energy efficiency ratings, as applicable, are found in the appropriate appendices accompanying this part.

(G) Placement of the labeled product on the scale shall be proportionate to the lowest and highest estimated annual energy consumption or energy efficiency ratings forming the scale.

(H) Labels must contain a statement disclosing the product's estimated annual operating cost derived using the DOE National Average Representative Unit Cost for the appropriate fuel that was current when the label was printed. The statement must disclose the specific cost per unit for the fuel and the year DOE published it.

(*1*) For refrigerators, refrigerator-freezers, freezers, and water heaters, the statement will read as follows (fill in the blanks with the appropriate appliance name, the operating cost, the year, and the energy cost figures):

[Refrigerators, or Freezers, or Water Heaters] using more energy cost more to operate.

This model's estimated yearly operating cost is: [Cost figure will be boxed] Based on a [Year] U.S. Government national average cost of $____ per [kWh, therm, or gallon] for [electricity, natural gas, propane, or oil]. Your actual operating cost will vary depending on your local utility rates and your use of the product.

(2) For clothes washers and dishwashers, the statement will read as follows (fill in the blanks with the appropriate appliance name, the operating cost, the number of loads per week, the year, and the energy cost figures): [Clothes Washers, or Dishwashers] using more energy cost more to operate. This model's estimated yearly operating cost is: [Electric cost figure will be boxed] when used with an electric water heater [Gas cost figure will be boxed] when used with a natural gas water heater. Based on [4 washloads a week for dishwashers, or 8 washloads a week for clothes washers], and a [Year] U.S. Government national average cost of $__ per kWh for electricity and $__ per therm for natural gas. Your actual operating cost will vary depending on your local utility rates and your use of the product.

(*3*) For room air conditioners, the statement will read as follows (fill in the blanks with the appropriate operating cost, the year, and the energy cost figures):

More efficient air conditioners cost less to operate.

This model's estimated yearly operating cost is: [Cost figure will be boxed] Based on a

[Year] U.S. Government national average cost of $____ per kWh for electricity. Your actual operating cost will vary depending on your local utility rates and your use of the product.

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

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

(J) A statement that the estimated annual energy consumption and energy efficiency ratings, as applicable, are based on U.S. Government standard tests is required on all labels, as indicated in the prototype labels.

(K) No marks or information other than that specified in this part shall appear on or directly adjoining this label, except a part or publication number identification may be included on this label, as desired by the manufacturer, and the energy use disclosure labels required by the governments of Canada or Mexico may appear directly adjoining this label, as desired by the manufacturer. If a manufacturer elects to use a part or publication number, it must appear in the lower right-hand corner of the label and be set in 6-point type or smaller.

(L) Clothes washer labels must have the headlines and texts as illustrated in Prototype Label 2 of Appendix L of this Part. In particular, clothes washer labels must have the following headline as illustrated in Prototype Label 2: ''Compare the energy use of this clothes washer only with other models tested using the 2004 test procedure.'' In addition to the requirements for other labels, clothes washer labels must have a 10/16 inch (1.59 cm.) in height, process black bar across the top that contains the following text in process yellow as illustrated in Prototype Label 2: ''This model has been tested using the 2004 test procedure. Compare only with models displaying this statement.''

(ii) *Labels for furnaces and pool heaters.* (A) The headline, as illustrated in Figure 3, is standard for all labels.

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

(C) The annual fuel utilization efficiency for furnaces and the thermal efficiency for pool heaters are determined in accordance with § 305.5.

(D) Each furnace and pool heater label shall contain a generic range consisting of the lowest and highest annual fuel utilization efficiencies (for furnaces) or thermal efficiencies (for pool heaters) for all furnaces or pool heaters that utilize the same energy source.

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

(F) The following statement shall appear on furnace labels beneath the range(s) in bold print:

Federal law requires the seller or installer of this appliance to make available a fact sheet or directory giving further information regarding the efficiency and operating cost of this equipment. Ask for this information.

(G) A statement that the annual fuel utilization efficiency ratings or thermal efficiency ratings are based on U.S. Government standard tests is required on all labels.

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

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

(I) No marks or information other than that specified in this part shall appear on or directly adjoining this label, except a part or publication number identification may be included on this label, as desired by the manufacturer, and the energy use disclosure labels required by the governments of Canada or Mexico may appear directly adjoining this label, as desired by the manufacturer. If a manufacturer elects to use a part or publication number, it must appear in the lower right-hand

corner of the label and be set in 6-point type or smaller.

(J) Manufacturers of boilers that are shipped without jackets must label their products with hang-tags that also have adhesive backing on them that complies with the specifications contained in § 305.11(a)(4).

(K) Manufacturers of boilers shipped with more than one input nozzle to be installed in the field must label such boilers with the AFUE of the system when it is set up with the nozzle that results in the lowest annual fuel utilization efficiency rating.

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

(iii) *Labels for central air conditioners.* (A) The headline, as illustrated in Figures 4, 5 and 6, is standard for all labels.

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

(C) The seasonal energy efficiency ratio for the cooling function of central air conditioners is determined in accordance with § 305.5. For the heating function, the heating seasonal performance factor shall be calculated for heating Region IV for the standardized design heating requirement nearest the capacity measured in the High Temperature Test in accordance with § 305.5. In addition, the energy efficiency rating(s) for split system condenser-evaporator coil combinations shall be either:

(*1*) The energy efficiency rating of the condenser-evaporator coil combination that is the particular manufacturer's most commonly sold combination for that condenser model; or

(*2*) The energy efficiency rating of the actual condenser-evaporator coil combination comprising the system to which the label is to be attached.

(D)(*1*) Each cooling only central air conditioner label shall contain a generic range consisting of the lowest and highest seasonal energy efficiency ratios for all cooling only central air conditioners.

(*2*) Each heat pump label, except as noted in paragraph (a)(5)(iii)(D)(*3*) of this section, shall contain two generic ranges. The first range shall consist of the lowest and highest seasonal energy efficiency ratios for the cooling side of all heat pumps. The second range shall consist of the lowest and highest heating seasonal performance factors for the heating side of all heat pumps.

(*3*) Each heating only heat pump label shall contain a generic range consisting of the lowest and highest heating seasonal performance factors for all heating only heat pumps.

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

(F) The following statement shall appear on the label beneath the range(s) in bold print:

Federal law requires the seller or installer of this appliance to make available a fact sheet or directory giving further information regarding the efficiency and operating cost of this equipment. Ask for this information.

(G) A statement that the efficiency ratings are based on U.S. Government standard tests is required on all labels.

In addition, all labels disclosing energy efficiency ratings for the ''most common'' condenser-evaporator coil combinations must contain one of the following three statements:

(*1*) For labels disclosing the seasonal energy efficiency ratio for cooling, the statement should read:

This energy rating is based on U.S. Government standard tests of this condenser model combined with the most common coil. The rating may vary slightly with different coils.

(*2*) For labels disclosing both the seasonal energy efficiency ratio for cooling and the heating seasonal performance factor for heating, the statement should read:

This energy rating is based on U.S. Government standard tests of this condenser model combined with the most common coil. The

rating will vary slightly with different coils and in different geographic regions.

(*3*) For labels disclosing the heating seasonal performance factor for heating, the statement should read:

This energy rating is based on U.S. Government standard tests of this condenser model combined with the most common coil. The rating will vary slightly with different coils and in different geographic regions.

Central air conditioner labels disclosing the efficiency ratings for specific condenser/coil combinations do not have to contain any of the above three statements. They must contain only the general disclosure that the energy costs and efficiency ratings are based on U.S. Government tests.

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

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

(6) *Placement*. Manufacturers shall affix a label to the exterior surface on covered products in such a position that it can easily be read while standing in front of the product as it is displayed for sale. The label should be generally located on the upper-right-front corner of the product, except that for low-standing products or products with configurations that make application in that location impractical, some other prominent location may be used. The top of the label should not exceed 74 inches from the base of taller products. The label in the form of a ''flap tag'' shall be adhered to the top of the appliance and bent (folded at 90°) to hang over the front, if this can be done with assurance that it will be readily visible. Labels for split system central air conditioners shall be affixed to the condensing unit.

(7) *Use of hang tags*. Information prescribed above for labels may be displayed in the form of a hang tag, which may be used in place of an affixed label. If a hang tag is used, it shall be affixed in such a position that it will be prominent to a consumer examining the product.

(b) *Fact sheets*—(1) *Distribution*. (i) Except as provided in Subsection c, manufacturers and private labelers must give distributors and retailers, including assemblers, fact sheets for the furnaces and central air conditioners they sell to them. Distributors must give the fact sheets to the retailers, including assemblers, they supply. Each fact sheet must contain the information listed in § 305.11(b)(3).

(ii) Retailers, including assemblers, who sell furnaces or central air conditioners to consumers must have fact sheets for the furnaces and central air conditioners they sell. They must make the fact sheets available to their customers. The fact sheets may be made available to customers in any manner, as long as customers are likely to notice them. For example, they can be available in a display, where customers can take copies of them. They can be kept in a binder at a counter or service desk, with a sign telling customers where the fact sheets are. Retailers, including assemblers, who negotiate or make sales at a place other than their regular places of business must show the fact sheets to their customers and let them read the fact sheets before they agree to purchase the product.

(2) *Format*. All information required to be contained in fact sheets must be disclosed clearly and conspicuously.

(3) *Contents*. (i) ''Energy Guide'' headline is standard for all fact sheets, as for labels.

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

(iii) Model number(s) will be the designation given by the manufacturer or private labeler.

(iv) Capacity or size is that determined in accordance with § 305.7.

(v) Energy efficiency rating is that determined in accordance with § 305.5.

(vi) Ranges of comparability and of energy efficiency ratings are found in section 1 of the appropriate appendices accompanying this part.

(vii) Placement of the labeled product on the scale shall be proportionate

to energy efficiency ratings of the lowest and highest efficiency ratings forming the scale.

(viii) Yearly cost information text and tables are found in section 2 of Appendices G, H and I accompanying this part. Cost figures are to be determined in accordance with § 305.5 using the unit energy costs found in table 1 of § 305.9.

(ix) A statement that the energy costs and energy efficiency ratings are based on U.S. Government standard tests is required in all fact sheets.

(x) For central air conditioner fact sheets disclosing efficiency ratings for the ''most common'' condenser-evaporator coil combinations, the statement should be made in one of the following three ways:

(A) For fact sheets disclosing the seasonal energy efficiency ratio for cooling, the statement should read:

This energy rating is based on U.S. Government standard tests of this condenser model combined with the most common coil. The rating may vary slightly with different coils.

(B) For fact sheets disclosing both the seasonal energy efficiency ratio for cooling and the heating seasonal performance factor for heating, the statement should read:

This energy rating is based on U.S. Government standard tests of this condenser model combined with the most common coil. The rating will vary slightly with different coils and in different geographic regions.

(C) For fact sheets disclosing the heating seasonal performance factor for heating, the statement should read:

This energy rating is based on U.S. Government standard tests of this condenser model combined with the most common coil. The rating will vary slightly with different coils and in different geographic regions.

(xi) Central air conditioner fact sheets disclosing the efficiency ratings for specific condenser/coil combinations do not have to contain any of the above three statements. Instead, they must contain a general disclosure that the energy costs and efficiency ratings are based on U.S. Government tests.

(c) Manufacturers of furnaces and central air conditioners may elect to disseminate information regarding the efficiencies and costs of operation of their products by means of a directory or similar publication, rather than on fact sheets, provided the publication meets the following criteria:

(1) *Distribution*. (i) It must be distributed to substantially all retailers and assemblers of central air conditioners and furnaces selling or assembling models listed in the directory.

(ii) It must be made available at cost to all other interested parties.

(2) *Format*. All required information must be disclosed clearly and conspicuously.

(3) *Contents*. (i) Model number(s) will be the designation given by the manufacturer or private labeler.

(ii) Capacity or size is that determined in accordance with § 305.7.

(iii) Efficiency rating is that determined in accordance with § 305.5.

(iv) Cost disclosures must be substantially equivalent to those required on fact sheets.

(v) A statement that the energy costs and efficiency ratings are based on U.S. Government standard tests.

(vi) Ranges of comparability and of energy efficiency ratings are found in section 1 of the appropriate appendices accompanying this part.

(d) *Fluorescent Lamp Ballasts and Luminaires*—(1) *Contents*. Fluorescent lamp ballasts that are ''covered products,'' as defined in § 305.2(o), and to which standards are applicable under section 325 of the Act, shall be marked conspicuously, in color-contrasting ink, with a capital letter ''E'' printed within a circle. Packaging for such fluorescent lamp ballasts, as well as packaging for luminaires into which they are incorporated, shall also be marked conspicuously with a capital letter ''E'' printed within a circle. For purposes of this section, the encircled capital letter ''E'' will be deemed ''conspicuous,'' in terms of size, if it is as large as either the manufacturer's name or another logo, such as the ''UL,'' ''CBM'' or ''ETL'' logos, whichever is larger, that appears on the fluorescent lamp ballast, the packaging for such ballast or the packaging for the luminaire into which the covered ballast is incorporated, whichever is applicable for purpose of labeling.

(2) *Product Labeling*. The encircled capital letter ''E'' on fluorescent lamp ballasts must appear conspicuously, in

color-contrasting ink, (i.e., in a color that contrasts with the background on which the encircled capital letter ''E'' is placed) on the surface that is normally labeled. It may be printed on the label that normally appears on the fluorescent lamp ballast, printed on a separate label, or stamped indelibly on the surface of the fluorescent lamp ballast.

(3) *Package Labeling*. For purposes of labeling under this section, packaging for such fluorescent lamp ballasts and the luminaires into which they are incorporated consists of the plastic sheeting, or ''shrink-wrap,'' covering pallet loads of fluorescent lamp ballasts or luminaires as well as any containers in which such fluorescent lamp ballasts or the luminaires into which they are incorporated are marketed individually or in small numbers. The encircled capital letter ''E'' on packages containing fluorescent lamp ballasts or the luminaires into which they are incorporated must appear conspicuously, in color-contrasting ink, on the surface of the package on which printing or a label normally appears. If the package contains printing on more than one surface, the label must appear on the surface on which the product inside the package is described. The encircled capital letter ''E'' may be printed on the surface of the package, printed on a label containing other information, printed on a separate label, or indelibly stamped on the surface of the package. In the case of pallet loads containing fluorescent lamp ballasts or the luminaires into which they are incorporated, the encircled capital letter ''E'' must appear conspicuously, in color-contrasting ink, on the plastic sheeting, unless clear plastic sheeting is used and the encircled capital letter ''E'' is legible underneath this packaging. The encircled capital letter ''E'' must also appear conspicuously on any documentation that would normally accompany such a pallet load. The encircled capital letter ''E'' may appear on a label affixed to the sheeting or may be indelibly stamped on the sheeting. It may be printed on the documentation, printed on a separate label that is affixed to the documentation or indelibly stamped on the documentation.

(e) *Lamps*—(1)(i) Any covered product that is a compact fluorescent lamp or general service incandescent lamp (including an incandescent reflector lamp) shall be labeled clearly and conspicuously on the product's principal display panel with the following information:

(A) The number of lamps included in the package, if more than one;

(B) The design voltage of each lamp included in the package, if other than 120 volts;

(C) The light output of each lamp included in the package, expressed in average initial lumens;

(D) The electrical power consumed (energy used) by each lamp included in the package, expressed in average initial wattage;

(E) The life of each lamp included in the package, expressed in hours.

(ii) The light output, energy usage and life ratings of any covered product that is a medium base compact fluorescent lamp or general service incandescent lamp (including an incandescent reflector lamp), shall appear in that order and with equal clarity and conspicuousness on the product's principal display panel. The light output, energy usage and life ratings shall be disclosed in terms of ''lumens,'' ''watts'' and ''hours'' respectively, with the lumens, watts and hours rating numbers each appearing in the same type style and size and with the words ''lumens,'' ''watts'' and ''hours'' each appearing in the same type style and size. The words ''light output,'' ''energy used'' and ''life'' shall precede and have the same conspicuousness as both the rating numbers and the words ''lumens,'' ''watts'' and ''hours,'' except that the letters of the words ''lumens,'' ''watts'' and ''hours'' shall be approximately 50% of the sizes of those used for the words ''light output,'' ''energy used'' and ''life'' respectively.

(iii) The light output, energy usage and life ratings of any covered product that is a medium base compact fluorescent lamp or general service incandescent lamp (including an incandescent reflector lamp), shall be measured at 120 volts, regardless of the lamp's design voltage. If a lamp's design voltage is 125 volts or 130 volts, the disclosures

of the wattage, light output and life ratings shall in each instance be:

(A) At 120 volts and followed by the phrase ''at 120 volts.'' In such case, the labels for such lamps also may disclose the lamp's wattage, light output and life at the design voltage (e.g., ''Light Output 1710 Lumens at 125 volts''); or

(B) At the design voltage and followed by the phrase ''at (125 volts/130 volts)'' if the ratings at 120 volts are disclosed clearly and conspicuously on another panel of the package, and if all panels of the package that contain a claimed light output, wattage or life clearly and conspicuously identify the lamp as ''(125 volt/130 volt),'' and if the principal display panel clearly and conspicuously discloses the following statement:

This product is designed for (125/130) volts. When used on the normal line voltage of 120 volts, the light output and energy efficiency are noticeably reduced. See (side/back) panel for 120 volt ratings.

(iv) For any covered product that is an incandescent reflector lamp, the required disclosure of light output shall be given for the lamp's total forward lumens.

(v) For any covered product that is a compact fluorescent lamp, the required light output disclosure shall be measured at a base-up position; but, if the manufacturer or private labeler has reason to believe that the light output at a base-down position would be more than 5% different, the label also shall disclose the light output at the base-down position or, if no test data for the base-down position exist, the fact that at a base-down position the light output might be more than 5% less.

(vi) For any covered product that is a compact fluorescent lamp or a general service incandescent lamp (including an incandescent reflector lamp), there shall be clearly and conspicuously disclosed on the principal display panel the following statement:

To save energy costs, find the bulbs with the (beam spread and) light output you need, then choose the one with the lowest watts.''

(vii) For any covered product that is a general service incandescent lamp and operates with multiple filaments, the principal display panel shall disclose clearly and conspicuously, in the manner required by paragraph (e)(1)(i)–(iii) and (vi) of this section, the lamp's wattage and light output at each of the lamp's levels of light output and the lamp's life measured on the basis of the filament that fails first.

(2) Any covered product that is a general service fluorescent lamp or an incandescent reflector lamp shall be labeled clearly and conspicuously with a capital letter ''E'' printed within a circle and followed by an asterisk. The label shall also clearly and conspicuously disclose, either in close proximity to that asterisk or elsewhere on the label, the following statement:

*[The encircled ''E''] means this bulb meets Federal minimum efficiency standards.

(i) If the statement is not disclosed on the principal display panel, the asterisk shall be followed by the following statement:

See [Back,Top, Side] panel for details.

(ii) For purposes of this paragraph (e), the encircled capital letter ''E'' shall be clearly and conspicuously disclosed in color-contrasting ink on the label of any covered product that is a general service fluorescent lamp and will be deemed ''conspicuous,'' in terms of size, if it appears in typeface at least as large as either the manufacturer's name or logo or another logo disclosed on the label, such as the ''UL'' or ''ETL'' logos, whichever is larger.

(3)(i) A manufacturer or private labeler who distributes general service fluorescent lamps, compact fluorescent lamps, or general service incandescent lamps (including incandescent reflector lamps) without labels attached to the lamps or without labels on individual retail-sale packaging for one or more lamps may meet the disclosure requirements of paragraphs (e)(1) and (e)(2) of this section by making the required disclosures, in the manner and form required by those paragraphs, on the bulk shipping cartons that are to be used to display the lamps for retail sale.

(ii) Instead of labeling any covered product that is a general service fluorescent lamp with the encircled ''E'' and with the statement described in paragraph (e)(2) of this section, a manufacturer or private labeler who would not otherwise put a label on such a

lamp may meet the disclosure requirements of that paragraph by permanently marking the lamp clearly and conspicuously with the encircled ''E''.

(4) Any manufacturer or private labeler who makes any representation on a label of any covered product that is a general service fluorescent lamp, medium base compact fluorescent lamp, or general service incandescent lamp (including an incandescent reflector lamp), regarding the cost of operation of such lamp shall clearly and conspicuously disclose in close proximity to such representation the assumptions upon which it is based, including, e.g., purchase price, unit cost of electricity, hours of use, patterns of use.

(5) Any cartons in which any covered products that are general service fluorescent lamps, medium base compact fluorescent lamps, or general service incandescent lamps (including incandescent reflector lamps), are shipped within the United States or imported into the United States shall disclose clearly and conspicuously the following statement:

These lamps comply with Federal energy efficiency labeling requirements.

(f) *Plumbing Fixtures*—(1) *Showerheads and Faucets.* Showerheads and faucets shall be marked and labeled as follows:

(i) Each showerhead and flow restricting or controlling spout end device shall bear a permanent legible marking indicating the flow rate, expressed in gallons per minute (gpm) or gallons per cycle (gpc), and the flow rate value shall be the actual flow rate or the maximum flow rate specified by the standards established in subsection (j) of section 325 of the Act, 42 U.S.C. 6295(j). Except where impractical due to the size of the fitting, each flow rate disclosure shall also be given in liters per minute (L/min) or liters per cycle (L/cycle). For purposes of this section, the marking indicating the flow rate will be deemed ''legible,'' in terms of placement, if it is located in close proximity to the manufacturer's identification marking.

(ii) Each showerhead and faucet shall bear a permanent legible marking to identify the manufacturer. This marking shall be the trade name, trademark, or other mark known to identify the manufacturer. Such marking shall be located where it can be seen after installation.

(iii) Each showerhead and faucet shall be marked ''A112.18.1M'' to demonstrate compliance with the applicable ASME standard. The marking shall be by means of either a permanent mark on the product, a label on the product, or a tag attached to the product.

(iv) The package for each showerhead and faucet shall disclose the manufacturer's name and the model number.

(v) The package or any label attached to the package for each showerhead or faucet shall contain at least the following: ''A112.18.1M'' and the flow rate expressed in gallons per minute (gpm) or gallons per cycle (gpc), and the flow rate value shall be the actual flow rate or the maximum flow rate specified by the standards established in subsection (j) of section 325 of the Act, 42 U.S.C. 6295(j). Each flow rate disclosure shall also be given in liters per minute (L/min) or liters per cycle (L/cycle).

(2) *Water Closets and Urinals.* Water closets and urinals shall be marked and labeled as follows:

(i) Each such fixture (and flushometer valve associated with such fixture) shall bear a permanent legible marking indicating the flow rate, expressed in gallons per flush (gpf), and the water use value shall be the actual water use or the maximum water use specified by the standards established in subsection (k) of section 325 of the Act, 42 U.S.C. 6295(k). Except where impractical due to the size of the fixture, each flow rate disclosure shall also be given in liters per flush (Lpf). For purposes of this section, the marking indicating the flow rate will be deemed ''legible,'' in terms of placement, if it is located in close proximity to the manufacturer's identification marking.

(ii) Each water closet (and each component of the water closet if the fixture is comprised of two or more components) and urinal shall be marked with the manufacturer's name or trademark or, in the case of private labeling, the name or registered trademark of the customer for whom the unit was manufactured. This mark shall be legible, readily identified, and applied so as to

be permanent. The mark shall be located so as to be visible after the fixture is installed, except for fixtures built into or for a counter or cabinet.

(iii) Each water closet (and each component of the water closet if the fixture is comprised of two or more components) and urinal shall be marked at a location determined by the manufacturer with the designation ''ASME A112.19.2M'' to signify compliance with the applicable standard. This mark need not be permanent, but shall be visible after installation.

(iv) The package, and any labeling attached to the package, for each water closet and urinal shall disclose the flow rate, expressed in gallons per flush (gpf), and the water use value shall be the actual water use or the maximum water use specified by the standards established in subsection (k) of section 325 of the Act, 42 U.S.C. 6295(k). Each flow rate disclosure shall also be given in liters per flush (Lpf).

(v) With respect to any gravity tank-type white 2-piece toilet offered for sale or sold before January 1, 1997, which has a water use greater than 1.6 gallons per flush (gpf), any printed matter distributed or displayed in connection with such product (including packaging and point-of-sale material, catalog material, and print advertising) shall include, in a conspicuous manner, the words ''For Commercial Use Only.''

(3) *Annual Operating Cost Claims for Covered Plumbing Products.* Until such time as the Commission has prescribed a format and manner of display for labels conveying estimated annual operating costs of covered showerheads, faucets, water closets, and urinals or ranges of estimated annual operating costs for the types or classes of such plumbing products, the Act prohibits manufacturers from making such representations on the labels of such covered products. 42 U.S.C. 6294(c)(8). If, before the Commission has prescribed such a format and manner of display for labels of such products, a manufacturer elects to provide for any such product a label conveying such a claim, it shall submit the proposed claim to the Commission so that a format and manner of display for a label may be prescribed.

[52 FR 46894, Dec. 10, 1987, as amended at 54 FR 28035, July 5, 1989; 59 FR 54965, Oct. 25, 1993; 59 FR 34033–34035, July 1, 1994; 59 FR 49564, Sept. 28, 1994; 59 FR 67528, Dec. 29, 1994; 60 FR 14210, Mar. 16, 1995; 60 FR 31081, June 13, 1995; 61 FR 33653, June 28, 1996; 63 FR 38745, July 20, 1998; 65 FR 17563, Apr. 3, 2000; 67 FR 47444, July 19, 2002; 68 FR 36463, June 18, 2003; 68 FR 55821, Sept. 20, 2003]

EFFECTIVE DATE NOTE: At 71 FR 78064, Dec. 28, 2006, § 305.11 was amended by revising paragraph (a)(1) and adding paragraph (g), effective Jan. 1, 2009. For the convenience of the user, the added and revised text is set forth as follows:

§ 305.11 Labeling for covered products.

(a) *Labels for covered products other than fluorescent lamp ballasts, general service fluorescent lamps, medium base compact fluorescent lamps, general service incandescent lamps (including incandescent reflector lamps), showerheads, faucets, water closets, urinals, and ceiling fans*—(1) *Layout.* All energy labels for each category of covered product shall use one size, similar colors and typefaces with consistent positioning of headline, copy and charts to maintain uniformity for immediate consumer recognition and readability. Trim size dimensions for all labels shall be as follows: width must be between 5 ¼ inches and 5 ½ inches (13.34 cm. and 13.97 cm.); length must be 7 ⅜ inches (18.73 cm.). Copy is to be set between 27 picas and 29 picas and copy page should be centered (right to left and top to bottom). Depth is variable but should follow closely the prototype labels appearing at the end of this part illustrating the basic layout. All positioning, spacing, type sizes and line widths should be similar to and consistent with the prototype labels.

* * * * *

(g) *Ceiling Fans*—(1) *Content.* Any covered product that is a ceiling fan shall be labeled clearly and conspicuously on the principal display panel with the following information in order from top to bottom on the label:

(i) The words ''ENERGY INFORMATION'' shall appear at the top of the label with the words ''at High Speed'' directly underneath;

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

(iii) The product's electricity usage at high speed expressed in watts and determined pursuant to § 305.5 of this part, including the phrase ''excludes lights'' as indicated in Ceiling Fan Label Illustration of Appendix L of this part;

(iv) The product's airflow efficiency rating at high speed expressed in cubic feet per

minute per watt and determined pursuant to § 305.5 of this part;

(v) The following statement shall appear on the label for fans fewer than 49 inches in diameter: ''Compare: 36'' to 48'' ceiling fans have airflow efficiencies ranging from approximately 71 to 86 cubic feet per minute per watt at high speed.'';

(vi) The following statement shall appear on the label for fans 49 inches or more in diameter: ''Compare: 49'' to 60'' ceiling fans have airflow efficiencies ranging from approximately 51 to 176 cubic feet per minute per watt at high speed.''; and

(vii) The following statements shall appear at the bottom of the label as indicated in Ceiling Fan Label Illustration of Appendix L of this part: ''Money-Saving Tip: Turn off fan when leaving room.''

(2) *Label Size and Text Font.* The label shall be four inches wide and three inches high. The text font shall be Arial or another equivalent font. The text on the label shall be black with a white background. The label's text size and content, and the order of the required disclosures shall be consistent with Ceiling Fan Label Illustration of Appendix L of this part.

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

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

§ 305.12 Additional information relating to energy consumption.

Additional information relating to energy consumption which must be included on labels, separately attached to the product, or shipped with the product will be published as a separate section 3 of the appendices accompanying this part. No additional information will be required without public notice and an opportunity for written comments.

§ 305.13 Promotional material displayed or distributed at point of sale.

(a)(1) Any manufacturer, distributor, retailer or private labeler who prepares printed material for display or distribution at point of sale concerning a covered product (except fluorescent lamp ballasts, general service fluorescent lamps, medium base compact fluorescent lamps, or general service incandescent lamps including incandescent reflector lamps, showerheads, faucets, water closets or urinals) shall clearly and conspicuously include in such printed material the following required disclosure:

Before purchasing this appliance, read important information about its estimated annual energy consumption or energy efficiency rating that is available from your retailer.

(2) Any manufacturer, distributor, retailer or private labeler who prepares printed material for display or distribution at point of sale concerning a covered product that is a fluorescent lamp ballast to which standards are applicable under section 325 of the Act, shall disclose conspicuously in such printed material, in each description of such fluorescent lamp ballast, an encircled capital letter ''E''.

(3) Any manufacturer, distributer, retailer, or private labeler who prepares printed material for display or distribution at point of sale concerning a covered product that is a general service fluorescent lamp, medium base compact fluorescent lamp, or general service incandescent lamp (including an incandescent reflector lamp), and who makes any representation in such promotional material regarding the cost of operation of such lamp shall clearly and conspicuously disclose in close proximity to such representation the assumptions upon which it is based, including, e.g., purchase price, unit cost of electricity, hours of use, and patterns of use.

(4) Any manufacturer, distributor, retailer, or private labeler who prepares printed material for display or distribution at point-of-sale concerning a covered product that is a showerhead, faucet, water closet, or urinal shall clearly and conspicuously include in such printed material the product's water use, expressed in gallons and liters per minute (gpm and L/min) or per cycle (gpc and L/cycle) or gallons and liters per flush (gpf and Lpf) as specified in § 305.11(f).

(b) This section shall not apply to:

(1) Written warranties.

(2) Use and care manuals, installation instructions, or other printed material containing primarily post-purchase information for the purchaser.

(3) Printed material containing only the identification of a covered product,

pricing information and/or non-energy related representations concerning that product.

(4) Any printed material distributed prior to the effective date listed in § 305.4(e).

[59 FR 34036, July 1, 1994, as amended at 59 FR 67530, Dec. 29, 1994; 60 FR 14211, Mar. 16, 1995]

§ 305.14 Catalogs.

(a) Any manufacturer, distributor, retailer, or private labeler who advertises in a catalog a covered product (except fluorescent lamp ballasts, general service fluorescent lamps, medium base compact fluorescent lamps, general service incandescent lamps including incandescent reflector lamps, showerheads, faucets, water closets or urinals) shall include in such catalog, on each page that lists the covered product, the following information required to be disclosed on the label:

(1) The capacity of the model.

(2) The estimated annual energy consumption for refrigerators, refrigerator-freezers, freezers, clothes washers, dishwashers and water heaters.

(3) The energy efficiency rating for room air conditioners, central air conditioners, furnaces, and pool heaters.

(4) The range of estimated annual energy consumption or energy efficiency ratings, which shall be those that are current at the closing date for printing or the printing deadline of the catalog.

(b) Any manufacturer, distributor, retailer, or private labeler who advertises fluorescent lamp ballasts that are ''covered products,'' as defined in § 305.2(o), and to which standards are applicable under section 325 of the Act, in a catalog, from which they may be purchased by cash, charge account or credit terms, shall disclose conspicuously in such catalog, in each description of such fluorescent lamp ballasts, a capital letter ''E'' printed within a circle.

(c)(1) Any manufacturer, distributor, retailer, or private labeler who advertises in a catalog a covered product that is a general service fluorescent lamp, medium base compact fluorescent lamp, or general service incandescent lamp (including an incandescent reflector lamp), shall disclose clearly and conspicuously in such catalog:

(i) On each page listing any covered product that is a compact fluorescent lamp or a general service incandescent lamp (including an incandescent reflector lamp), all the information concerning that lamp, except for the number of units in the package, required by § 305.11(e)(1) of this part to be disclosed on the lamp's label; *provided, however,* that, for a catalog not distributed to consumers for making purchases for personal use or consumption by individuals, the disclosures need not comply with the format provisions of § 305.11 (e)(1)(ii) of this part, but must be clear and conspicuous; and

(ii) On each page listing a covered product that is a general service fluorescent lamp or an incandescent reflector lamp, all the information required by § 305.11(e)(2) of this part to be disclosed on the lamp's label according to the following format:

(A) The encircled ''E'' shall appear with each lamp entry; and

(B) The accompanying statement shall appear at least once on the page.

(2) Any manufacturer, distributor, retailer, or private labeler who advertises a covered product that is a general service fluorescent lamp, medium base compact fluorescent lamp, or general service incandescent lamp (including an incandescent reflector lamp), in a catalog who makes any representation in such catalog regarding the cost of operation of such lamp shall clearly and conspicuously disclose in close proximity to such representation the assumptions upon which it is based, including, e.g., purchase price, unit cost of electricity, hours of use, patterns of use.

(d) Any manufacturer, distributor, retailer, or private labeler who advertises a covered product that is a showerhead, faucet, water closet, or urinal in a catalog, from which it may be purchased, shall include in such catalog, on each page that lists the covered product, the product's water use, expressed in gallons and liters per minute (gpm and L/min) or per cycle (gpc and L/cycle) or gallons and liters per flush (gpf and Lpf) as specified in § 305.11(f).

[59 FR 34036, July 1, 1994, as amended at 59 FR 49564, Sept. 28, 1994; 59 FR 67530, Dec. 29, 1994; 60 FR 14211, Mar. 16, 1995]

EFFECTIVE DATE NOTE: At 71 FR 78065, Dec. 28, 2006, § 305.14 was amended by adding paragraph (e), effective Jan. 1, 2009. For the convenience of the user, the added text is set forth as follows:

§ 305.14 Catalogs.

* * * * *

(e) Any manufacturer, distributor, retailer, or private labeler who advertises a covered product that is a ceiling fan in a catalog, from which it may be purchased, shall disclose clearly and conspicuously in such catalog, on each page that lists the covered product, all the information concerning the product required by § 305.11(g)(1).

ADDITIONAL REQUIREMENTS

§ 305.15 Test data records.

(a) Test data shall be kept on file by the manufacturer of a covered product for a period of two years after production of that model has been terminated.

(b) Upon notification by the Commission or its designated representative, a manufacturer or private labeler shall provide, within 30 days of the date of such request, the underlying test data from which the water use or energy consumption rate, the energy efficiency rating, the estimated annual cost of using each basic model, or the light output, energy usage and life ratings and, for fluorescent lamps, the color rendering index, for each basic model or lamp type were derived.

[52 FR 46894, Dec. 10, 1987, as amended at 59 FR 67530, Dec. 29, 1994]

§ 305.16 Required testing by designated laboratory.

Upon notification by the Commission or its designated representative, a manufacturer of a covered product shall supply, at the manufacturer's expense, no more than two of each model of each product to a laboratory, which will be identified by the Commission or its designated representative in the notice, for the purpose of ascertaining whether the estimated annual energy consumption, the estimated annual operating cost, or the energy efficiency rating, or the light output, energy usage and life ratings or, for general service fluorescent lamps, the color rendering index, disclosed on the label or fact sheet or in an industry directory, or, as required in a catalog, or the representation made by the label that the product is in compliance with applicable standards in section 325 of the Act, 42 U.S.C. 6295, is accurate. Such a procedure will only be followed after the Commission or its staff has examined the underlying test data provided by the manufacturer as required by § 305.15(b) and after the manufacturer has been afforded the opportunity to reverify test results from which the estimated annual energy consumption, the estimated annual operating cost, or the energy efficiency rating for each basic model was derived, or the light output, energy usage and life ratings or, for general service fluorescent lamps, the color rendering index, for each basic model or lamp type was derived. A representative designated by the Commission shall be permitted to observe any reverification procedures required by this part, and to inspect the results of such reverification. The Commission will pay the charges for testing by designated laboratories.

[59 FR 67530, Dec. 29, 1994]

EFFECT OF THIS PART

§ 305.17 Effect on other law.

This regulation supersedes any State regulation to the extent required by section 327 of the Act. Pursuant to the Act, all State regulations that require the disclosure for any covered product of information with respect to energy consumption, other than the information required to be disclosed in accordance with this part, are superseded.

§ 305.18 Stayed or invalid parts.

If any section or portion of a section of this part is stayed or held invalid, the remainder of the part will not be affected.

[52 FR 46894, Dec. 10, 1987. Redesignated at 59 FR 34036, July 1, 1994]

§ 305.19 Exemptions.

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

exemptions is conditioned on alternative performance by manufacturers, private labelers, distributors, and/or retailers.

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

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

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

(3) Manufacturers that choose to avail themselves of the conditional exemption may print the ENERGY STAR logo on EnergyGuides for qualified products as part of the usual label printing process or may place the logo on EnergyGuides for qualified products by whatever means is most efficient for them, provided such placement complies with the requirements of paragraph (a)(4), of this section.

(4) Manufacturers must place the logo on the EnergyGuide above the comparability bar in the box that contains the applicable range of comparability. The precise location of the logo will vary depending on where the caret indicating the position of the labeled model on the scale appears (see the sample label). The required dimensions of the logo must be one and one-eighth inches (3 cm.) in width and three-quarters of an inch (2 cm.) in height. Manufacturers are prohibited from placing the logo in a way that would obscure, detract from, alter the dimensions of, or touch any element of the EnergyGuide, which in all other respects must conform to the requirements of this part. The ENERGY STAR logo must be in process black ink to match the print specifications for the EnergyGuide. The background must remain in process yellow to match the rest of the label.

(5) Manufacturers must add a sentence in process black ink that explains the significance of the ENERGY STAR logo in ten-point Helvetica Condensed Black typeface. The sentence must be next to the logo, above the comparability bar that shows the ''least'' and ''most'' numbers. The sentence must read:

ENERGY STAR A symbol of energy efficiency.

(b) [Reserved]

[65 FR 17563, Apr. 3, 2000]

APPENDIX A1 TO PART 305—REFRIGERATORS WITH AUTOMATIC DEFROST

RANGE INFORMATION

Manufacturer's rated total refrigerated volume (in cubic feet)	Range of estimated annual energy consumption (kWh/yr)	
	Low	High
Less than 2.5	327	327
2.5 to 4.4	307	385
4.5 to 6.4	305	511
6.5 to 8.4	(*)	(*)

RANGE INFORMATION—Continued

Manufacturer's rated total refrigerated volume (in cubic feet)	Range of estimated annual energy consumption (kWh/yr)	
	Low	High
8.5 to 10.4	348	348
10.5 to 12.4	(*)	(*)
12.5 to 14.4	311	311
14.5 to 16.4	428	428

RANGE INFORMATION—Continued

Manufacturer's rated total refrigerated volume (in cubic feet)	Range of estimated annual energy consumption (kWh/yr)	
	Low	High
16.5 and over	372	438

(*) No data submitted for units meeting the Department of Energy's Energy Conservation Standards effective July 1, 2001.

[71 FR 4984, Jan. 31, 2006]

APPENDIX A2 TO PART 305—REFRIGERATORS AND REFRIGERATORS-FREEZERS WITH MANUAL DEFROST

RANGE INFORMATION

Manufacturer's rated total refrigerated volume (in cubic feet)	Range of estimated annual energy consumption (kWh/yr)	
	Low	High
Less than 2.5	253	318
2.5 to 4.4	260	343
4.5 to 6.4	268	357
6.5 to 8.4	277	277
8.5 to 10.4	230	336
10.5 to 12.4	288	345
12.5 to 14.4	(*)	(*)
14.5 to 16.4	(*)	(*)
16.5 to 18.4	335	404

RANGE INFORMATION—Continued

Manufacturer's rated total refrigerated volume (in cubic feet)	Range of estimated annual energy consumption (kWh/yr)	
	Low	High
18.5 to 20.4	(*)	(*)
20.5 to 22.4	(*)	(*)
22.5 to 24.4	449	449
24.5 to 26.4	(*)	(*)
26.5 to 28.4	(*)	(*)
28.5 and over	(*)	(*)

(*) No data submitted for units meeting the Department of Energy's Energy Conservation Standards effective July 1, 2001.

[71 FR 4984, Jan. 31, 2006]

APPENDIX A3 TO PART 305—REFRIGERATOR-FREEZERS WITH PARTIAL AUTOMATIC DEFROST

RANGE INFORMATION

Manufacturer's rated total refrigerated volume (in cubic feet)	Range of estimated annual energy consumption (kWh/yr)	
	Low	High
Less than 10.5	254	434
10.5 to 12.4	314	314
12.5 to 14.4	(*)	(*)
14.5 to 16.4	(*)	(*)
16.5 to 18.4	(*)	(*)
18.5 to 20.4	(*)	(*)
20.5 to 22.4	(*)	(*)

RANGE INFORMATION—Continued

Manufacturer's rated total refrigerated volume (in cubic feet)	Range of estimated annual energy consumption (kWh/yr)	
	Low	High
22.5 to 24.4	(*)	(*)
24.5 to 26.4	(*)	(*)
26.5 to 28.4	(*)	(*)
28.5 and over	(*)	(*)

(*) No data submitted for units meeting the Department of Energy's Energy Conservation Standards effective July 1, 2001.

[71 FR 4984, Jan. 31, 2006]

APPENDIX A4 TO PART 305—REFRIGERATOR-FREEZERS WITH AUTOMATIC DEFROST WITH TOP-MOUNTED FREEZER WITHOUT THROUGH-THE-DOOR ICE SERVICE

RANGE INFORMATION

Manufacturer's rated total refrigerated volume (in cubic feet)	Range of estimated annual energy consumption (kWh/yr)	
	Low	High
Less than 10.5	325	460
10.5 to 12.4	369	408
12.5 to 14.4	373	440
14.5 to 16.4	372	455
16.5 to 18.4	391	484
18.5 to 20.4	387	489
20.5 to 22.4	405	527

RANGE INFORMATION—Continued

Manufacturer's rated total refrigerated volume (in cubic feet)	Range of estimated annual energy consumption (kWh/yr)	
	Low	High
22.5 to 24.4	450	499
24.5 to 26.4	445	520
26.5 to 28.4	(*)	(*)
28.5 and over	(*)	(*)

(*) No data submitted for units meeting the Department of Energy's Energy Conservation Standards effective July 1, 2001.

[71 FR 4985, Jan. 31, 2006]

APPENDIX A5 TO PART 305—REFRIGERATOR-FREEZERS WITH AUTOMATIC DEFROST WITH SIDE-MOUNTED FREEZER WITHOUT THROUGH-THE-DOOR ICE SERVICE

RANGE INFORMATION

Manufacturer's rated total refrigerated volume (in cubic feet)	Range of estimated annual energy consumption (kWh/yr)	
	Low	High
Less than 10.5	530	530
10.5 to 12.4	(*)	(*)
12.5 to 14.4	(*)	(*)
14.5 to 16.4	(*)	(*)
16.5 to 18.4	(*)	(*)
18.5 to 20.4	610	624
20.5 to 22.4	510	640

RANGE INFORMATION—Continued

Manufacturer's rated total refrigerated volume (in cubic feet)	Range of estimated annual energy consumption (kWh/yr)	
	Low	High
22.5 to 24.4	643	653
24.5 to 26.4	561	661
26.5 to 28.4	668	668
28.5 and over	585	689

(*) No data submitted for units meeting the Department of Energy's Energy Conservation Standards effective July 1, 2001.

[71 FR 4985, Jan. 31, 2006]

APPENDIX A6 TO PART 305—REFRIGERATOR-FREEZERS WITH AUTOMATIC DEFROST WITH BOTTOM-MOUNTED FREEZER WITHOUT THROUGH-THE-DOOR ICE SERVICE

RANGE INFORMATION

Manufacturer's rated total refrigerated volume (in cubic feet)	Range of estimated annual energy consumption (kWh/yr)	
	Low	High
Less than 10.5	430	451
10.5 to 12.4	439	500
12.5 to 14.4	(*)	(*)
14.5 to 16.4	453	544
16.5 to 18.4	465	548
18.5 to 20.4	476	573
20.5 to 22.4	483	569

RANGE INFORMATION—Continued

Manufacturer's rated total refrigerated volume (in cubic feet)	Range of estimated annual energy consumption (kWh/yr)	
	Low	High
22.5 to 24.4	440	520
24.5 to 26.4	465	594
26.5 to 28.4	475	530
28.5 and over	499	499

(*) No data submitted for units meeting the Department of Energy's Energy Conservation Standards effective July 1, 2001.

[71 FR 4985, Jan. 31, 2006]

APPENDIX A7 TO PART 305—REFRIGERATOR-FREEZERS WITH AUTOMATIC DEFROST WITH TOP-MOUNTED FREEZER WITH THROUGH-THE-DOOR ICE SERVICE

RANGE INFORMATION

Manufacturer's rated total refrigerated volume (in cubic feet)	Range of estimated annual energy consumption (kWh/yr)	
	Low	High
Less than 10.5	(*)	(*)
10.5 to 12.4	(*)	(*)
12.5 to 14.4	(*)	(*)
14.5 to 16.4	(*)	(*)
16.5 to 18.4	(*)	(*)
18.5 to 20.4	(*)	(*)
20.5 to 22.4	(*)	(*)

RANGE INFORMATION—Continued

Manufacturer's rated total refrigerated volume (in cubic feet)	Range of estimated annual energy consumption (kWh/yr)	
	Low	High
22.5 to 24.4	(*)	(*)
24.5 to 26.4	(*)	(*)
26.5 to 28.4	(*)	(*)
28.5 and over	(*)	(*)

(*) No data submitted for units meeting the Department of Energy's Energy Conservation Standards effective July 1, 2001.

[71 FR 4985, Jan. 31, 2006; 71 FR 28921, May 18, 2006]

APPENDIX A8 TO PART 305—REFRIGERATOR-FREEZERS WITH AUTOMATIC DEFROST WITH SIDE-MOUNTED FREEZER WITH THROUGH-THE-DOOR ICE SERVICE

RANGE INFORMATION

Manufacturer's rated total refrigerated volume (in cubic feet)	Range of estimated annual energy consumption (kWh/yr)	
	Low	High
Less than 10.5	(*)	(*)
10.5 to 12.4	(*)	(*)
12.5 to 14.4	(*)	(*)
14.5 to 16.4	(*)	(*)
16.5 to 18.4	(*)	(*)
18.5 to 20.4	553	651
20.5 to 22.4	432	671

RANGE INFORMATION—Continued

Manufacturer's rated total refrigerated volume (in cubic feet)	Range of estimated annual energy consumption (kWh/yr)	
	Low	High
22.5 to 24.4	539	698
24.5 to 26.4	578	732
26.5 to 28.4	615	751
28.5 and over	565	790

(*) No data submitted for units meeting the Department of Energy's Energy Conservation Standards effective July 1, 2001.

COST INFORMATION FOR APPENDICES A1 THROUGH A8

When the ranges of comparability in Appendices A1 through A8 are used on EnergyGuide labels for refrigerators and refrigerator-freezers, the estimated annual operating cost disclosure appearing in the box at the bottom of the labels must be derived using the 2005 Representative Average Unit Cost for electricity (9.06¢ per kilowatt-hour), and the text below the box must identify the cost as such.

[71 FR 4985, Jan. 31, 2006]

APPENDIX B1 TO PART 305—UPRIGHT FREEZERS WITH MANUAL DEFROST

RANGE INFORMATION

Manufacturer's rated total refrigerated volume (in cubic feet)	Range of estimated annual energy consumption (kWh/yr)	
	Low	High
Less than 5.5	272	328
5.5 to 7.4	354	354
7.5 to 9.4	292	341
9.5 to 11.4	353	392
11.5 to 13.4	354	410
13.5 to 15.4	409	454
15.5 to 17.4	430	477
17.5 to 19.4	392	392
19.5 to 21.4	512	512
21.5 to 23.4	(*)	(*)

RANGE INFORMATION—Continued

Manufacturer's rated total refrigerated volume (in cubic feet)	Range of estimated annual energy consumption (kWh/yr)	
	Low	High
23.5 to 25.4	580	580
25.5 to 27.4	(*)	(*)
27.5 to 29.4	477	477
29.5 and over	512	512

(*) No data submitted for units meeting the Department of Energy's Energy Conservation Standards effective July 1, 2001.

[71 FR 4985, Jan. 31, 2006; 71 FR 28921, May 18, 2006]

APPENDIX B2 TO PART 305—UPRIGHT FREEZERS WITH AUTOMATIC DEFROST

RANGE INFORMATION

Manufacturer's rated total refrigerated volume (in cubic feet)	Range of estimated annual energy consumption (kWh/yr)	
	Low	High
Less than 5.5	482	491
5.5 to 7.4	(*)	(*)
7.5 to 9.4	(*)	(*)
9.5 to 11.4	(*)	(*)
11.5 to 13.4	575	575
13.5 to 15.4	582	655
15.5 to 17.4	601	683
17.5 to 19.4	635	742
19.5 to 21.4	671	770

RANGE INFORMATION—Continued

Manufacturer's rated total refrigerated volume (in cubic feet)	Range of estimated annual energy consumption (kWh/yr)	
	Low	High
21.5 to 23.4	796	796
23.5 to 25.4	855	855
25.5 to 27.4	(*)	(*)
27.5 to 29.4	683	683
29.5 and over	(*)	(*)

(*) No data submitted for units meeting the Department of Energy's Energy Conservation Standards effective July 1, 2001.

[71 FR 4986, Jan. 31, 2006]

APPENDIX B3 TO PART 305—CHEST FREEZERS AND ALL OTHER FREEZERS

RANGE INFORMATION

Manufacturer's rated total refrigerated volume (in cubic feet	Range of estimated annual energy consumption (kWh/yr)	
	Low	High
Less than 5.5	185	357
5.5 to 7.4	215	381
7.5 to 9.4	251	251
9.5 to 11.4	248	312
11.5 to 13.4	276	350
13.5 to 15.4	354	394
15.5 to 17.4	282	360
17.5 to 19.4	(*)	(*)
19.5 to 21.4	350	415

RANGE INFORMATION—Continued

Manufacturer's rated total refrigerated volume (in cubic feet	Range of estimated annual energy consumption (kWh/yr)	
	Low	High
21.5 to 23.4	460	512
23.5 to 25.4	570	570
25.5 to 27.4	354	394
27.5 to 29.4	(*)	(*)
29.5 and over	512	512

(*) No data submitted for units meeting the Department of Energy's Energy Conservation Standards effective July 1, 2001.

COST INFORMATION FOR APPENDICES B1 THROUGH B3

When the ranges of comparability in Appendices B1 through B3 are used on EnergyGuide labels for freezers, the estimated annual operating cost disclosure appearing in the box at the bottom of the labels must be derived using the 2005 Representative Average Unit Cost for electricity (9.06¢ per kilowatt-hour), and the text below the box must identify the cost as such.

[71 FR 4986, Jan. 31, 2006]

APPENDIX C1 TO PART 305—COMPACT DISHWASHERS

RANGE INFORMATION

''Compact'' includes countertop dishwasher models with a capacity of fewer than eight (8) place settings. Place settings shall be in accordance with appendix C to 10 CFR part 430, subpart B. Load patterns shall conform to the operation normal for the model being tested.

Capacity	Range of estimated annual energy consumption (kWh/yr.)	
	Low	High
Compact	143	320

COST INFORMATION

When the above ranges of comparability are used on EnergyGuide labels for compact-sized dishwashers, the estimated annual operating cost disclosure appearing in the box at the bottom of the labels must be derived using the 2005 Representative Average Unit Costs for electricity (9.06¢ per kiloWatt-hour) and natural gas ($1.09 per therm), and the text below the box must identify the costs as such.

[70 FR 60717, Oct. 19, 2005]

APPENDIX C2 TO PART 305—STANDARD DISHWASHERS

RANGE INFORMATION

''Standard'' includes portable or built-in dishwasher models with a capacity of eight (8) or more place settings. Place settings shall be in accordance with appendix C to 10 CFR part 430, subpart B. Load patterns shall conform to the operating normal for the model being tested.

Capacity	Range of estimated annual energy consumption (kWh/yr.)	
	Low	High
Standard	194	531

COST INFORMATION

When the above ranges of comparability are used on EnergyGuide labels for standard-sized dishwashers, the estimated annual operating cost disclosure appearing in the box at the bottom of the labels must be derived using the 2004 Representative Average Unit Costs for electricity (8.60¢ per kiloWatt-hour) and natural gas (91.0¢ per therm), and the text below the box must identify the costs as such.

[69 FR 54560, Sept. 9, 2004]

APPENDIX D1 TO PART 305—WATER HEATERS—GAS

[Range information]

Capacity	Range of estimated annual energy consumption (therms/yr. and gallons/yr.)			
First hour rating	Natural gas therms/yr.		Propane gallons/yr.	
	Low	High	Low	High
Less than 21	(*)	(*)	(*)	(*)
21 to 24	(*)	(*)	(*)	(*)
25 to 29	(*)	(*)	(*)	(*)
30 to 34	(*)	(*)	(*)	(*)
35 to 40	(*)	(*)	(*)	(*)
41 to 47	(*)	(*)	(*)	(*)
48 to 55	234	254	256	278
56 to 64	246	254	269	278
65 to 74	234	258	256	283
75 to 86	230	272	256	288
87 to 99	242	272	265	288
100 to 114	230	283	252	298
115 to 131	242	312	265	309
Over 131	254	312	278	342

*No data submitted.

[69 FR 42108, Oct. 12, 2004]

APPENDIX D2 TO PART 305—WATER HEATERS—ELECTRIC

[Range information]

Capacity	Range of estimated annual energy consumption (KWh/yr.)	
First hour rating	Low	High
Less than 21	(*)	(*)
21 to 24	(*)	(*)

[Range information]

Capacity	Range of estimated annual energy consumption (KWh/yr.)	
First hour rating	Low	High
25 to 29	4721	4721
30 to 34	4721	4773
35 to 40	4671	4934
41 to 47	4671	4990
48 to 55	4622	4879
56 to 64	4622	4879
65 to 74	4671	4934
75 to 86	4622	5106
87 to 99	4773	5166
100 to 114	4825	5421
115 to 131	5106	5355
Over 131	(*)	(*)

*No data submitted.

[69 FR 42108, Oct. 12, 2004]

Appendix D3 to Part 305—Water Heaters—Oil

[Range information]

Capacity	Range of estimated annual energy consumption (gallons/yr.)	
First hour rating	Low	High
Less than 65	(*)	(*)
65 to 74	(*)	(*)
75 to 86	(*)	(*)
87 to 99	(*)	(*)
100 to 114	174	200
115 to 131	159	200
Over 131	164	212

*No data submitted.

[69 FR 42108, Oct. 12, 2004]

Appendix D4 to Part 305—Water Heaters-Instantaneous-Gas

Range Information

Capacity (maximum flow rate); gallons per minute (gpm)	Range of estimated annual energy consumption (therms/yr. and gallons/ yr.)			
	Natural gas therms/yr.		Propane gallons/yr.	
	Low	High	Low	High
Under 1.00	235	235	256	256
1.00 to 2.00	230	230	252	252
2.01 to 3.00	185	220	196	239
Over 3.00	177	238	187	260

[69 FR 54560, Sept. 9, 2004]

Appendix D5 to Part 305—Water Heaters—Heat Pump

[Range information]

Capacity	Range of estimated annual energy consumption (KWh/Yr.)	
First hour rating	Low	High
Less than 21	(*)	(*)
21 to 24	(*)	(*)

[Range information]

Capacity	Range of estimated annual energy consumption (KWh/Yr.)	
First hour rating	Low	High
25 to 29	(*)	(*)
30 to 34	(*)	(*)
35 to 40	(*)	(*)
41 to 47	(*)	(*)
48 to 55	(*)	(*)
56 to 64	1830	1830
65 to 74	(*)	(*)
75 to 86	(*)	(*)
87 to 99	(*)	(*)
100 to 114	(*)	(*)
115 to 131	(*)	(*)
Over 131	(*)	(*)

*No data submitted.

Cost Information

When the above ranges of comparability in Appendices D1 through D5 are used on EnergyGuide labels for water heaters, the estimated annual operating cost disclosure appearing in the box at the bottom of the labels must be derived using the 2004 Representative Average Unit Costs for electricity (8.60¢ per kiloWatt-hour), natural gas (91.0¢ per therm), propane ($1.23 per gallon, and heating oil ($1.28 per gallon) and the text below the box must identify the costs as such.

[69 FR 42108, Oct. 12, 2004]

Appendix E to Part 305—Room Air Conditioners

[Range Information]

Manufacturer's rated cooling capacity in Btu's/yr	Range of energy efficiency ratios (EERs)	
	Low	High
Without Reverse Cycle and with Louvered Sides:		
Less than 6,000 Btu	9.7	11.2
6,000 to 7,999 Btu	8.7	11.5
8,000 to 13,999 Btu	8.5	12.0
14,000 to 19,999 Btu	8.5	11.5
20,000 and more Btu	8.5	9.9
Without Reverse Cycle and without Louvered Sides:		
Less than 6,000 Btu	(*)	(*)
6,000 to 7,999	9.0	10.0
8,000 to 13,999 Btu	8.5	10.5
14,000 to 19,999 Btu	9.0	9.0
20,000 and more Btu	(*)	(*)
With Reverse Cycle and with Louvered Sides	9.0	12.0
With Reverse Cycle, without Louvered Sides	8.5	10.0

*No data submitted for units meeting Federal Minimum Efficiency Standards effective October 1, 2000.

Cost Information for Appendix E

When the ranges of comparability in Appendix E are used on EnergyGuide labels for room air conditioners, the estimated annual operating cost disclosure appearing in the box at the bottom of the labels must be derived using the 2006 Representative Average Unit Costs for electricity (9.81¢ per kiloWatt-hour) and the text below the box must identify the costs as such

[71 FR 45373, Aug. 9, 2006]

APPENDIX F1 TO PART 305—STANDARD CLOTHES WASHERS

RANGE INFORMATION

''Standard'' includes all household clothes washers with a tub capacity of 1.6 cu. ft. or more.

Capacity	Range of estimated annual energy consumption (kWh/yr.)	
	Low	High
Standard	113	680

COST INFORMATION

When the above range of comparability is used on EnergyGuide labels for standard clothes washers, the estimated annual operating cost disclosure appearing in the box at the bottom of the labels must be derived using the 2004 Representative Average Unit Costs for electricity (8.60¢ per kiloWatt-hour) and natural gas (91.0¢ per therm), and the text below the box must identify the costs as such.

[70 FR 3875, Jan. 27, 2005]

APPENDIX F2 TO PART 305—COMPACT CLOTHES WASHERS

RANGE INFORMATION

''Compact'' includes all household clothes washers with a tub capacity of less than 1.6 cu. ft.

RANGE INFORMATION

Capacity	Range of estimated annual energy consumption (kWh/yr)	
	Low	High
Compact	125	462

COST INFORMATION

When the above range of comparability is used on EnergyGuide labels for compact clothes washers, the estimated annual operating cost disclosure appearing in the box at the bottom of the labels must be derived using the 2004 Representative Average Unit Costs for electricity (8.60¢ per kiloWatt-hour) and natural gas (91.0¢ per therm), and the text below the box must identify the costs as such.

[71 FR 4986, Jan. 31, 2006]

APPENDIX G1 TO PART 305—FURNACES—GAS

[1. Range Information]

Manufacturer's rated heating capacities (Btu's/hr.)	Range of annual fuel utilization efficiencies (AFUE's)	
	Low	High
All Capacities	78	96.6

[2. Yearly Cost Information: Cost Grid]

Cost per kilowatt hour [1]	Btu heat loss of home (see chart below)
4¢.	
6¢.	
8¢.	
10¢.	
12¢.	
14¢.	

[1] For charts on natural gas, oil and propane gas, substitute the following cost figures:
a. Cost per therm—10¢, 20¢, 30¢, 40¢, 50¢, 60¢.
b. Cost per gallon (oil)—76¢, 79¢, 82¢, 85¢, 88¢, 91¢, 94¢, 97¢, $1.00.
c. Cost per gallon (propane)—35¢, 40¢, 45¢, 50¢, 55¢, 60¢.

The following table shows the heat loss values (in thousand Btu's/hr.) to be used in the cost grid:

[Heat Loss Table]

Manufacturers rated heat output of model to be labeled (Btu's per hour)	Design heat loss of model to be labeled (1,000 Btu's per hour)	Heat loss values to be used on the grid (1,000 Btu's per hour)
5,000 to 10,000	5	5
11,000 to 16,000	10	5, 10

[Heat Loss Table]

Manufacturers rated heat output of model to be labeled (Btu's per hour)	Design heat loss of model to be labeled (1,000 Btu's per hour)	Heat loss values to be used on the grid (1,000 Btu's per hour)
17,000 to 25,000	15	10, 15
26,000 to 42,000	20	15, 20, 25
43,000 to 59,000	30	25, 30, 35, 40
60,000 to 76,000	40	35, 40, 45, 50
77,000 to 93,000	50	40, 45, 50, 60
94,000 to 110,000	60	50, 60, 70, 80
111,000 to 127,000	70	60, 70, 80, 90
128,000 to 144,000	80	70, 80, 90, 100
145,000 to 161,000	90	80, 90, 100, 110, 120
162,000 to 178,000	100	90, 100, 110, 120, 130
179,000 to 195,000	110	100, 110, 120, 130, 140
196,000 and over	130	120, 130, 140, 150, 160

Beside each cost in the cost grid, and below the appropriate heat loss value taken from the heat loss table, place the cost estimate for the model being labeled using the table costs in place of the national average cost and using the heat loss values in place of the design heat loss used in the table with the national average cost.

[59 FR 34042, July 1, 1994, as amended at 59 FR 48798, Sept. 23, 1994]

APPENDIX G2 TO PART 305—FURNACES—ELECTRIC

[1. Range Information]

Manufacturer's rated heating capacities (Btu's/hr.)	Ranges of annual fuel utilization efficiencies (AFUE's)	
	Low	High
All Capacities	100	100

[2. Yearly Cost Information: Cost Grid]

Cost per kilowatt hour [1]	Btu heat loss of home (see chart below)
4¢.	
6¢.	
8¢.	
10¢.	
12¢.	
14¢.	

[1] For charts on natural gas, oil and propane gas, substitute the following cost figures:
a. Cost per therm—10¢, 20¢, 30¢, 40¢, 50¢, 60¢.
b. Cost per gallon (oil)—76¢, 79¢, 82¢, 85¢, 88¢, 91¢, 94¢, 97¢, $1.00.
c. Cost per gallon (propane)—35¢, 40¢, 45¢, 50¢, 55¢, 60¢.

The following table shows the heat loss values (in thousand Btu's/hr.) to be used in the cost grid:

[Heat Loss Table]

Manufacturers' rated heat output of model to be labeled (Btu's per hour)	Design heat loss of model to be labeled (1,000 Btu's per hour)	Heat loss values to be used on the grid (1,000 Btu's per hour)
5,000 to 10,000	5	5
11,000 to 16,000	10	5, 10
17,000 to 25,000	15	10, 15
26,000 to 42,000	20	15, 20, 25
43,000 to 59,000	30	25, 30, 35, 40
60,000 to 76,000	40	35, 40, 45, 50
77,000 to 93,000	50	40, 45, 50, 60
94,000 to 110,000	60	50, 60, 70, 80
111,000 to 127,000	70	60, 70, 80, 90
128,000 to 144,000	80	70, 80, 90, 100
145,000 to 161,000	90	80, 90, 100, 110, 120
162,000 to 178,000	100	90, 100, 110, 120, 130
179,000 to 195,000	110	100, 110, 120, 130, 140
196,000 and over	130	120, 130, 140, 150, 160

Beside each cost in the cost grid, and below the appropriate heat loss value taken from the heat loss table, place the cost estimate for the model being labeled using the table costs in place of the national average cost and using the heat loss values in place of the design heat loss used in the table with the national average cost.

[59 FR 34042, July 1, 1994, as amended at 59 FR 48798, Sept. 23, 1994]

APPENDIX G3 TO PART 305—FURNACES—OIL

[1. Range Information]

Manufacturer's rated heating capacities (Btu's/hr.)	Range of annual fuel utilization efficiencies (AFUE's)	
	Low	High
All Capacities	78	86.7

[2. Yearly Cost Information: Cost Grid]

Cost per kilowatt hour[1]	Btu heat loss of home (see chart below)
4¢.	
6¢.	
8¢.	
10¢.	
12¢.	
14¢.	

[1] For charts on natural gas, oil and propane gas, substitute the following cost figures:
a. Cost per therm—10¢, 20¢, 30¢, 40¢, 50¢, 60¢.
b. Cost per gallon (oil)—76¢, 79¢, 82¢, 85¢, 88¢, 91¢, 94¢, 97¢, $1.00.
c. Cost per gallon (propane)—35¢, 40¢, 45¢, 50¢, 55¢, 60¢.

The following table shows the heat loss values (in thousand Btu's/hr.) to be used in the cost grid:

[Heat Loss Table]

Manufacturers' rated heat output of model to be labeled (Btu's per hour)	Design heat loss of model to be labeled (1,000 Btu's per hour)	Heat loss values to be used on the grid (1,000 Btu's per hour)
5,000 to 10,000	5	5
11,000 to 16,000	10	5, 10
17,000 to 25,000	15	10, 15
26,000 to 42,000	20	15, 20, 25
43,000 to 59,000	30	25, 30, 35, 40
60,000 to 76,000	40	35, 40, 45, 50
77,000 to 93,000	50	40, 45, 50, 60
94,000 to 110,000	60	50, 60, 70, 80
111,000 to 127,000	70	60, 70, 80, 90
128,000 to 144,000	80	70, 80, 90, 100
145,000 to 161,000	90	80, 90, 100, 110, 120
162,000 to 178,000	100	90, 100, 110, 120, 130
179,000 to 195,000	110	100, 110, 120, 130, 140
196,000 and over	130	120, 130, 140, 150, 160

Beside each cost in the cost grid, and below the appropriate heat loss value taken from the heat loss table, place the cost estimate for the model being labeled using the table costs in place of the national average cost and using the heat loss values in place of the design heat loss used in the table with the national average cost.

[59 FR 34042, July 1, 1994, as amended at 59 FR 48798, Sept. 23, 1994]

APPENDIX G4 TO PART 305—MOBILE HOME FURNACES

[1. Range Information]

Manufacturer's rated heating capacities (Btu's/hr.)	Range of annual fuel utilization efficiencies (AFUE's)	
	Low	High
All Capacities	75	83.2

[2. Yearly Cost Information: Cost Grid]

Cost per kilowatt hour [1]	Btu heat loss of home (see chart below)
4¢.	
6¢.	
8¢.	
10¢.	
12¢.	
14¢.	

[1] For charts on natural gas, oil and propane gas, substitute the following cost figures:
a. Cost per therm—10¢, 20¢, 30¢, 40¢, 50¢, 60¢.
b. Cost per gallon (oil)—76¢, 79¢, 82¢, 85¢, 88¢, 91¢, 94¢, 97¢, $1.00.
c. Cost per gallon (propane)—35¢, 40¢, 45¢, 50¢, 55¢, 60¢.

The following table shows the heat loss values (in thousand Btu's/hr.) to be used in the cost grid:

[Heat Loss Table]

Manufacturers' rated heat output of model to be labeled (Btu's per hour)	Design heat loss of model to be labeled (1,000 Btu's per hour)	Heat loss values to be used on the grid (1,000 Btu's per hour)
5,000 to 10,000	5	5
5,000 to 10,000	5	5
11,000 to 16,000	10	5, 10
17,000 to 25,000	15	10, 15
26,000 to 42,000	20	15, 20, 25
43,000 to 59,000	30	25, 30, 35, 40
60,000 to 76,000	40	35, 40, 45, 50
77,000 to 93,000	50	40, 45, 50, 60
94,000 to 110,000	60	50, 60, 70, 80
111,000 to 127,000	70	60, 70, 80, 90
128,000 to 144,000	80	70, 80, 90, 100
145,000 to 161,000	90	80, 90, 100, 110, 120
162,000 to 178,000	100	90, 100, 110, 120, 130
179,000 to 195,000	110	100, 110, 120, 130, 140
196,000 and over	130	120, 130, 140, 150, 160

Beside each cost in the cost grid, and below the appropriate heat loss value taken from the heat loss table, place the cost estimate for the model being labeled using the table costs in place of the national average cost and using the heat loss values in place of the design heat loss used in the table with the national average cost.

[59 FR 34042, July 1, 1994, as amended at 59 FR 48798, Sept. 23, 1994]

APPENDIX G5 TO PART 305—BOILERS—GAS (EXCEPT STEAM)

[1. Range Information]

Manufacturer's rated heating capacities (Btu's/hr.)	Range of annual fuel utilization efficiencies (AFUE's)	
	Low	High
All Capacities	80	90.6

[2. Yearly Cost Information: Cost Grid]

Cost per kilowatt hour [1]	Btu heat loss of home (see chart below)
4¢.	
6¢.	
8¢.	
10¢.	
12¢.	
14¢.	

[1] For charts on natural gas, oil and propane gas, substitute the following cost figures:
a. Cost per therm—10¢, 20¢, 30¢, 40¢, 50¢, 60¢.
b. Cost per gallon (oil)—76¢, 79¢, 82¢, 85¢, 88¢, 91¢, 94¢, 97¢, $1.00.
c. Cost per gallon (propane)—35¢, 40¢, 45¢, 50¢, 55¢, 60¢.

The following table shows the heat loss values (in thousand Btu's/hr.) to be used in the cost grid:

[Heat Loss Table]

Manufacturers' rated heat output of model to be labeled (Btu's per hour)	Design heat loss of model to be labeled (1,000 Btu's per hour)	Heat loss values to be used on the grid (1,000 Btu's per hour)
5,000 to 10,000	5	5
11,000 to 16,000	10	5, 10
17,000 to 25,000	15	10, 15
26,000 to 42,000	20	15, 20, 25
43,000 to 59,000	30	25, 30, 35, 40
60,000 to 76,000	40	35, 40, 45, 50
77,000 to 93,000	50	40, 45, 50, 60
94,000 to 110,000	60	50, 60, 70, 80
111,000 to 127,000	70	60, 70, 80, 90
128,000 to 144,000	80	70, 80, 90, 100
145,000 to 161,000	90	80, 90, 100, 110, 120
162,000 to 178,000	100	90, 100, 110, 120, 130
179,000 to 195,000	110	100, 110, 120, 130, 140
196,000 and over	130	120, 130, 140, 150, 160

Beside each cost in the cost grid, and below the appropriate heat loss value taken from the heat loss table, place the cost estimate for the model being labeled using the table costs in place of the national average cost and using the heat loss values in place of the design heat loss used in the table with the national average cost.

[59 FR 34042, July 1, 1994, as amended at 59 FR 48798, Sept. 23, 1994]

APPENDIX G6 TO PART 305—BOILERS—GAS (STEAM)

[1. Range Information]

Manufacturer's rated heating capacities (Btu's/hr.)	Range of annual fuel utilization efficiencies (AFUE's)	
	Low	High
All Capacities	75	83.5

[2. Yearly Cost Information: Cost Grid]

Cost per kilowatt hour [1]	Btu heat loss of home (see chart below)
4¢.	
6¢.	
8¢.	
10¢.	
12¢.	
14¢.	

[1] For charts on natural gas, oil and propane gas, substitute the following cost figures:
a. Cost per therm—10¢, 20¢, 30¢, 40¢, 50¢, 60¢.
b. Cost per gallon (oil)—76¢, 79¢, 82¢, 85¢, 88¢, 91¢, 94¢,¢, 97¢, $1.00.
c. Cost per gallon (propane)—35¢, 40¢, 45¢, 50¢, 55¢, 60¢.

The following table shows the heat loss values (in thousand Btu's/hr.) to be used in the cost grid:

[Heat Loss Table]

Manufacturers' rated heat output of model to be labeled (Btu's per hour)	Design heat loss of model to be labeled (1,000 Btu's per hour)	Heat loss values to be used on the grid (1,000 Btu's per hour)
5,000 to 10,000	5	5
11,000 to 16,000	10	5, 10
17,000 to 25,000	15	10, 15
26,000 to 42,000	20	15, 20, 25
43,000 to 59,000	30	25, 30, 35, 40
60,000 to 76,000	40	35, 40, 45, 50
77,000 to 93,000	50	40, 45, 50, 60
94,000 to 110,000	60	50, 60, 70, 80
111,000 to 127,000	70	60, 70, 80, 90

[Heat Loss Table]

Manufacturers' rated heat output of model to be labeled (Btu's per hour)	Design heat loss of model to be labeled (1,000 Btu's per hour)	Heat loss values to be used on the grid (1,000 Btu's per hour)
128,000 to 144,000	80	70, 80, 90, 100
145,000 to 161,000	90	80, 90, 100, 110, 120
162,000 to 178,000	100	90, 100, 110, 120, 130
179,000 to 195,000	110	100, 110, 120, 130, 140
196,000 and over	130	120, 130, 140, 150, 160

Beside each cost in the cost grid, and below the appropriate heat loss value taken from the heat loss table, place the cost estimate for the model being labeled using the table costs in place of the national average cost and using the heat loss values in place of the design heat loss used in the table with the national average cost.

[59 FR 34042, July 1, 1994, as amended at 59 FR 48798, Sept. 23, 1994]

APPENDIX G7 TO PART 305—BOILERS—OIL

[1. Range Information]

Manufacturer's rated heating capacities (Btu's/hr.)	Range of annual fuel utilization efficiencies (AFUE's)	
	Low	High
All Capacities	80	88.7

[2. Yearly Cost Information: Cost Grid]

Cost per kilowatt hour [1]	Btu heat loss of home (see chart below)
4¢.	
6¢.	
8¢.	
10¢.	
12¢.	
14¢.	

[1] For charts on natural gas, oil and propane gas, substitute the following cost figures:
a. Cost per therm—10¢, 20¢, 30¢, 40¢, 50¢, 60¢.
b. Cost per gallon (oil)—76¢, 79¢, 82¢, 85¢, 88¢, 91¢, 94¢, 97¢, $1.00.
c. Cost per gallon (propane)—35¢, 40¢, 45¢, 50¢, 55¢, 60¢.

The following table shows the heat loss values (in thousand Btu's/hr.) to be used in the cost grid:

[Heat Loss Table]

Manufacturers' rated heat output of model to be labeled (Btu's per hour)	Design heat loss of model to be labeled (1,000 Btu's per hour)	Heat loss values to be used on the grid (1,000) Btu's per hour)
5,000 to 10,000	5	5
11,000 to 16,000	10	5, 10
17,000 to 25,000	15	10, 15
26,000 to 42,000	20	15, 20, 25
43,000 to 59,000	30	25, 30, 35, 40
60,000 to 76,000	40	35, 40, 45, 50
77,000 to 93,000	50	40, 45, 50, 60
94,000 to 110,000	60	50, 60, 70, 80
111,000 to 127,000	70	60, 70, 80, 90
128,000 to 144,000	80	70, 80, 90, 100
145,000 to 161,000	90	80, 90, 100, 110, 120
162,000 to 178,000	100	90, 100, 110, 120, 130
179,000 to 195,000	110	100, 110, 120, 130, 140
196,000 and over	130	120, 130, 140, 150, 160

Beside each cost in the cost grid, and below the appropriate heat loss value taken from the heat loss table, place the cost estimate for the model being labeled using the table costs in place of the national average cost and using the heat loss values in place of the design heat loss used in the table with the national average cost.

[59 FR 34042, July 1, 1994, as amended at 59 FR 48798, Sept. 23, 1994]

APPENDIX G8 TO PART 305—BOILERS—ELECTRIC

[1. Range Information]

Manufacturer's rated heating capacities (Btu's/hr.)	Range of annual fuel utilization efficiencies (AFUE's)	
	Low	High
All Capacities	100	100

[2. Yearly Cost Information: Cost Grid]

Cost per kilowatt hour [1]	Btu heat loss of home (see chart below)
4¢.	
6¢.	
8¢.	
10¢.	
12¢.	
14¢.	

[1] For charts on natural gas, oil and propane gas, substitute the following cost figures:
a. Cost per therm—10¢, 20¢, 30¢, 40¢, 50¢, 60¢.
b. Cost per gallon (oil)—76¢, 79¢, 82¢, 85¢, 88¢, 91¢, 94¢, 97¢, $1.00.
c. Cost per gallon (propane)—35¢, 40¢, 45¢, 50¢, 55¢, 60¢.

The following table shows the heat loss values (in thousand Btu's/hr.) to be used in the cost grid:

[Heat Loss Table]

Manufacturers' rated heat output of model to be labeled (Btu's per hour)	Design heat loss of model to be labeled (1,000 Btu's per hour)	Heat loss values to be used on the grid (1,000) Btu's per hour)
5,000 to 10,000	5	5
11,000 to 16,000	10	5, 10
17,000 to 25,000	15	10, 15
26,000 to 42,000	20	15, 20, 25
43,000 to 59,000	30	25, 30, 35, 40
60,000 to 76,000	40	35, 40, 45, 50
77,000 to 93,000	50	40, 45, 50, 60
94,000 to 110,000	60	50, 60, 70, 80
111,000 to 127,000	70	60, 70, 80, 90
128,000 to 144,000	80	70, 80, 90, 100
145,000 to 161,000	90	80, 90, 100, 110, 120
162,000 to 178,000	100	90, 100, 110, 120, 130
179,000 to 195,000	110	100, 110, 120, 130, 140
196,000 and over	130	120, 130, 140, 150, 160

Beside each cost in the cost grid, and below the appropriate heat loss value taken from the heat loss table, place the cost estimate for the model being labeled using the table costs in place of the national average cost and using the heat loss values in place of the design heat loss used in the table with the national average cost.

[59 FR 34042, July 1, 1994, as amended at 59 FR 48798, Sept. 23, 1994]

APPENDIX H TO PART 305—COOLING PERFORMANCE AND COST FOR CENTRAL AIR CONDITIONERS

1. Range Information

Manufacturer's rated cooling capacity (Btu's/hr.)	Range of SEER's	
	Low	High
Single Package Units		
Central Air Conditioners (Cooling Only): All capacities	10.60	16.05
Heat Pumps (Cooling Function): All capacities	10.60	15.60
Split System Units		
Central Air Conditioners (Cooling Only): All capacities	10.90	20.50

Manufacturer's rated cooling capacity (Btu's/hr.)	Range of SEER's	
	Low	High
Heat Pumps (Cooling Function): All capacities	10.90	18.60

2. *Yearly Cost Information:*

For each model, display three annual operating costs, based on 9.06¢ per kilowatt hour, rounded to the nearest $10, corresponding to the three building heat gains from the chart below:

Manufacturers rated cooling capacity (BTU/hr)	Building heat gain (in 1000's BTU's/hr)		
Up to 9,000	3	6	9
9,100 to 15,000	9	12	15
15,100 to 21,000	15	18	21
21,100 to 27,000	21	24	27
27,200 to 33,000	27	30	33
33,200 to 39,000	33	36	39
39,500 to 45,000	39	42	45
45,500 to 51,000	45	48	51
51,500 to 57,000	51	54	57
57,500 to 63,000	57	60	63
63,500 and over	63	66	69

The values of building heat gain are to be considered cooling capacities in the calculation of annual operating cost in accordance with 10 CFR 430.22 (m)(1)(i).

Include the following note on every fact sheet page that lists annual operating costs.

NOTE: These figures are based on U.S. Government standard tests and are for national averages of 1000 cooling load hours and 9.06¢/KWH. Your cost will vary depending on your local energy rate and how you use the product. A method for estimating your cost of operation is given [direct user to location].

The methodology referred to in the note is provided below. This information shall be included a least once in all compendiums of fact sheets. If separate fact sheets are prepared for individual distribution to consumers, this methodology must be provided on or with the unbound fact sheets.

HOW TO ESTIMATE YOUR COOLING COST

To estimate your actual cost of operation, find your cooling load hours from the map, your average annual operating cost from the National Average Annual Operating Cost Table, and determine your electrical rate in cents per kilowatt hour (KWH) from your electric bill.

$$\text{Your estimated cost} = \frac{\text{Listed average annual}}{\text{operating cost *}} \times \frac{\text{Your cooling load hours **}}{1{,}000} \times \frac{\text{Your electrical rate in cents per KWH}}{9.06¢}$$

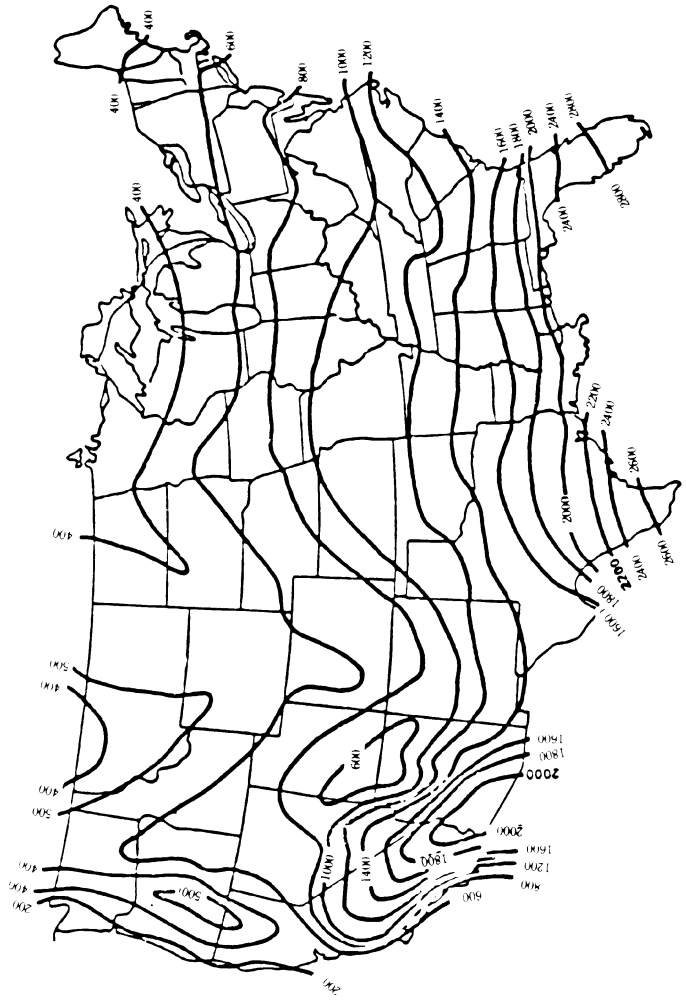
Example: If your cooling load hours = 1500, and your electric rate is 13.60¢/KWH and your listed annual operating cost is $100, then:,

Your estimated cost = $100 × 1,500 / 1,000 × 13.60¢ / 9.06¢

Your estimated cost = $100 × 1.5 × 1.5 = $225

Your estimated cost = $225

Cooling Load Hour Map



		Cooling Load Hours
Alaska	– 0	
Canal Zone	– 6,000	
Guam	– 6,600	
Hawaii	– 2,300	
Puerto Rico	– 6,000	
Samoa	– 6,600	
Virgin Island	– 6,000	

This map must be included at least once in all compendiums of fact sheets. If separate fact sheets are prepared for individual distribution to consumers, this map must be provided on or with the separate fact sheets.

[An example of a fact sheet for central air conditioners or for only the cooling function of heat pumps]

ENERGYGUIDE

Split System Central Air Conditioner (Cooling Only)

Cooling Capacity:

Models	XXX/C1	31,000 BTU/hr
	XXX/C2	31,400 BTU/hr
	YYY/C3	29,000 BTU/hr
	YYY/C6	29,400 BTU/hr

Cooling Performance:

Model XXX/C1
12.7 SEER

Energy efficiency range of all similar models

Least Efficient Model 10.0 — **Most Efficient Model** 16.9

Model XXX/C2
12.6 SEER

Energy efficiency range of all similar models

Least Efficient Model 10.0 — **Most Efficient Model** 16.9

Model YYY/C3
13.0 SEER

Energy efficiency range of all similar models

Least Efficient Model 10.0 — **Most Efficient Model** 16.9

Model YYY/C6
12.9 SEER

Energy efficiency range of all similar models

Least Efficient Model 10.0 — **Most Efficient Model** 16.9

This (or these) energy rating(s) is (or are) based on U.S. Government standard tests of this (or these) condenser model(s) combined with the most common coil(s). The ratings may vary slightly with different coils.

[This is Page 1 of Sample Fact Sheet]

* * * * *

NATIONAL AVERAGE ANNUAL OPERATING COST TABLE ($ PER YEAR)

Model	Building Heat Gain (BTU/hour)		
	27,000	30,000	33,000
XXX/C1	$200	$220	$240
XXX/C2	$200	$220	$240
XXX/C3	$190	$210	$230
XXX/C6	$190	$210	$230

NOTE: These figures are based on U.S. Goverment standard tests and are for national averages of 1000 cooling load hours and 9.06¢/KWH. Your cost will vary depending on your local energy rate and how you use the product. A method for estimating your cost of operation is provided on page 2 of this fact sheet.

HOW TO ESTIMATE YOUR COOLING COST

To estimate your actual cost of operation, find your actual cooling load hours from the map, your average annual operating cost from the National Average Annual Operating Cost Table, and determine your electrical rate in cents per kilowatt hour (KWH) from your electrical bill.

$$\text{Your estimated cost} = \begin{matrix}\text{Listed average annual}\\ \text{operating cost *}\end{matrix} \times \frac{\begin{matrix}\text{Your cooling}\\ \text{load hours **}\end{matrix}}{1{,}000} \times \frac{\begin{matrix}\text{Your electrical rate}\\ \text{in cents per KWH}\end{matrix}}{9.06¢}$$

Example: If your cooling load hours are 1500, and your electric rate is 13.60¢/KWH, and your listed annual operating cost is $100, then:
Your estimated cost = $100 × 1,500 / 1,000 × 13.6¢/ 9.06¢
Your estimated cost = $100 × 1.5 × 1.5 = $225
Your estimated cost = $225

(THIS IS PAGE 2 OF SAMPLE FACT SHEET)

[53 FR 19729, May 27, 1988, as amended at 54 FR 53318, Dec. 28, 1989; 55 FR 43093, Oct. 26, 1990; 56 FR 46728, Sept. 16, 1991; 57 FR 44332, Sept. 25, 1992; 59 FR 34049, July 1, 1994; 59 FR 39951 and 39952, Aug. 5, 1994; 60 FR 56949, Nov. 13, 1995; 61 FR 48622, Sept. 16, 1996; 62 FR 44891, Aug. 25, 1997; 63 FR 66431, Dec. 2, 1998; 64 FR 926, Jan. 6, 1999; 64 FR 71021, Dec. 20, 1999; 65 FR 53166, Sept. 1, 2000; 66 FR 49531, Sept. 28, 2001; 66 FR 57872, Nov. 19, 2001; 67 FR 58328, Sept. 16, 2002; 68 FR 47451, Aug. 11, 2003; 69 FR 54560, Sept. 9, 2004; 70 FR 32487, June 3, 2005; 70 FR 60717, Oct. 19, 2005]

APPENDIX I TO PART 305—HEATING PERFORMANCE AND COST FOR CENTRAL AIR CONDITIONERS

1. Range Information

Manufacturer's rated heating capacity (Btu's/hr.)	Range of HSPF's	
	Low	High
Single Package Units		
Heat Pumps (Heating Function): All capacities	7.00	8.20
Split System Units		
Heat Pumps (Heating Function): All capacities	7.10	10.55

The HSPF shall be the Region IV value based on the appropriate average design heat loss from the table below.

2. *Yearly Heating Cost Information:*

For each model, display a regional annual operating cost, based on 9.06¢ per kilowatt hour, rounded to the nearest $10, calculated according to 10 CFR 430.22(m)(3)(ii) for each region. The heat loss of home values given in the chart below are to be considered standardized design

heating requirements in the calculation of annual operating cost in accordance with 10 CFR 430.22(m)(3)(ii).

Capacity	Region	Average design heat loss (in 1000's Btu's/hr.)	Heat loss of home values used on the grid (in 1000's Btu's/hr.)
Up to 9,000	1	10	5, 10
	2		5, 10, 15
	3		5, 10, 15
	4		10, 15, 20
	5		10, 15, 20
	6		5, 10, 15
9,100 to 15,000	1	20	5, 10, 15
	2		5, 10, 15, 20
	3		10, 15, 20, 25
	4		10, 15, 20, 25, 30
	5		10, 15, 20, 25, 30
	6		5, 10, 15, 20
15,100 to 21,000	1	25	10, 15, 20
	2		10, 15, 20, 25
	3		15, 20, 25, 30
	4		15, 20, 25, 30, 35, 40
	5		15, 20, 25, 30, 35, 40
	6		10, 15, 20, 25, 30, 35
21,100 to 27,000	1	30	10, 15, 20, 25
	2		15, 20, 25, 30
	3		15, 20, 25, 30, 35, 40
	4		20, 25, 30, 35, 40, 50
	5		20, 25, 30, 35, 40, 50, 60
	6		10, 15, 20, 25, 30, 35
21,100 to 27,000	1	30	10, 15, 20, 25
	2		15, 20, 25, 30
	3		15, 20, 25, 30, 35, 40
	4		20, 25, 30, 35, 40, 50
	5		20, 25, 30, 35, 40, 50, 60
	6		15, 20, 25, 30, 35, 40
27,100 to 33,000	1	35	15, 20, 25, 30
	2		20, 25, 30, 35, 40
	3		20, 25, 30, 35, 40, 50
	4		25, 30, 35, 40, 50, 60
	5		25, 30, 35, 40, 50, 60, 70, 80
	6		20, 25, 30, 35, 40, 50, 60
33,200 to 39,000	1	50	15, 20, 25, 30, 35
	2		25, 30, 35, 40, 50
	3		30, 35, 40, 50, 60
	4		35, 40, 50, 60, 70, 80, 90
	5		35, 40, 50, 60, 70, 80, 90
	6		25, 30, 35, 40, 50
39,500 to 45,000	1	60	20, 25, 30, 35, 40
	2		25, 30, 35, 40, 50, 60
	3		30, 35, 40, 50, 60
	4		40, 50, 60, 70, 80, 90, 100
	5		40, 50, 60, 70, 80, 90, 100, 110
	6		25, 30, 35, 40, 50, 60, 70, 80
45,500 to 51,000	1	70	20, 25, 30, 35, 40
	2		30, 35, 40, 50, 60
	3		35, 40, 50, 60, 70, 80
	4		50, 60, 70, 80, 90, 100, 110
	5		50, 60, 70, 80, 90, 100, 110, 130
	6		30, 35, 40, 50, 60, 70, 80, 90, 100, 110, 130
51,500 to 57,000	1	70	25, 30, 35, 40, 50
	2		35, 40, 50, 60, 70
	3		40, 50, 60, 70, 80, 90
	4		50, 60, 70, 80, 90, 100, 110
	5		50, 60, 70, 80, 90, 100 ,110, 130
	6		35, 40, 50, 60, 70, 80, 90, 100
57,500 to 63,000	1	80	25, 30, 35, 40, 50
	2		35, 40, 50, 60, 70
	3		50, 60, 70, 80, 90
	4		60, 70, 80, 90, 100, 110
	5		60, 70, 80, 90, 100, 110, 130
	6		35, 40, 50, 60, 70, 80, 90, 100
63,500 and over	1	90	30, 35, 40, 50, 60

Capacity	Region	Average design heat loss (in 1000's Btu's/hr.)	Heat loss of home values used on the grid (in 1000's Btu's/hr.)
	2		40, 50, 60, 70, 80
	3		50, 60, 70, 80, 90, 100
	4		70, 80, 90, 100, 110, 130
	5		70, 80, 90, 100, 110, 130
	6		40, 50, 60, 70, 80

Include the following note on every fact sheet page that lists annual operating costs.

NOTE: These annual heating costs are based on U.S. Government standard tests and on a national average cost of electricity of 9.06¢/KWH. Your cost will vary depending on your local energy rate and how you use the product. A method for estimating your cost of operation is given [direct user to location].

The methodology referred to in the note is provided below. This information shall be included at least once in all compendiums of fact sheets. If separate fact sheets are prepared for individual distribution to consumers, this methodology must be provided on or with the unbound fact sheets.

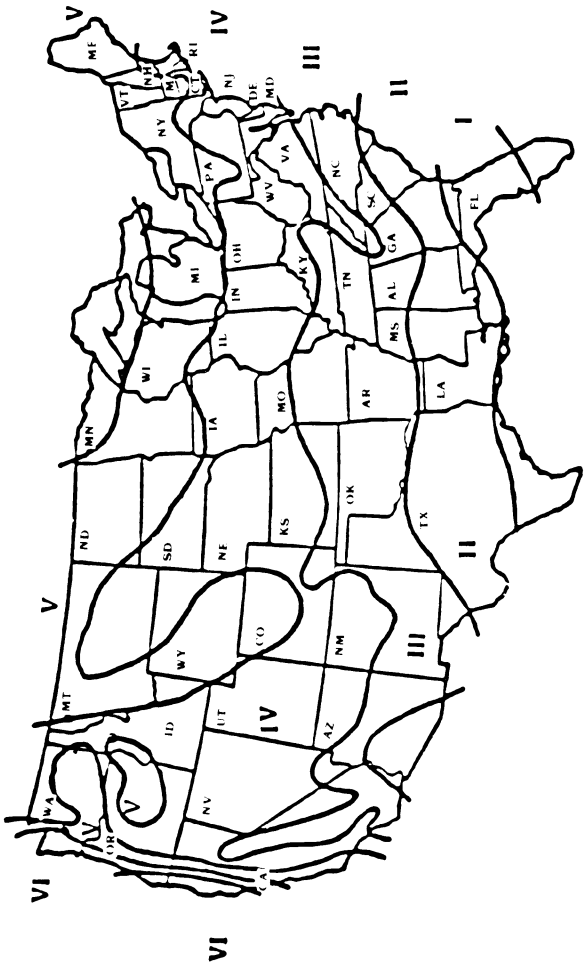
HOW TO ESTIMATE YOUR HEATING COSTS

To estimate your heating cost, determine your cost of electricity in cents per kilowatt hour (KWH) from your electric bill, your listed average annual heating cost from the National Average Annual Heating Cost Table, and use that number in the following equation:

$$\text{Your estimated cost} = \text{Listed annual heating cost} * \times \frac{\text{Your electrical cost in cents per KWH}}{9.06¢}$$

Example: If your electric rate is 12.62¢/KWH and the annual heating cost listed in the chart is $200:
Your estimated cost = $200 × 13.6¢/9.06¢
Your estimated cost = $200 × 1.5 = $300
Your estimated cost = $300

Heating Region Map



This map must be included at least once in all compendiums of fact sheets. If separate fact sheets are prepared for individual distribution to consumers, this map must be provided on or with the separate fact sheets.

[An example of a fact sheet showing only the heating function for heat pumps]

ENERGYGUIDE

Heating Capacity:

Models	XXX/C1	33,000 BTU/hr
	XXX/C2	35,000 BTU/hr

Heating Performance for Region IV

Model XXX/C1
7.9 HSPF

Energy efficiency range of all similar models

Least Efficient Model 6.8 — **Most Efficient Model** 10.2

Model XXX/C2
8.9 HSPF

Energy efficiency range of all similar models

Least Efficient Model 6.8 — **Most Efficient Model** 10.2

This (or these) energy rating(s) is (or are) based on U.S. Government standard tests of this (or these) condenser model(s) combined with the most common coil(s). The ratings will vary slightly with different coils and in different geographic regions.

NATIONAL AVERAGE ANNUAL HEATING COST TABLE ($ per year)

MODEL XXX/C1	Heat Loss of Home (in 1000's Btu's/hr.)									
	15	20	25	30	35	40	50	60	70	80
* Region 1	$60	$80	$100	$120						
" 2		$140	$170	$200	$240	$280				
" 3			$250	$300	$350	$400	$520			
" 4			$350	$410	$480	$550	$710	$910	$1110	$1330
" 5				$560	$660	$750	$970	$1200	$1460	$1720
" 6		$300	$370	$430	$500	$590				

MODEL XXX/C2	Heat Loss of Home (in 1000's Btu's/hr.)									
	15	20	25	30	35	40	50	60	70	80
* Region 1	$50	$70	$90	$110						
" 2		$130	$160	$190	$220	$260				
" 3			$240	$280	$330	$400	$500			
" 4			$330	$400	$450	$520	$580	$880	$1020	$1230
" 5				$540	$640	$730	$940	$1100	$1300	$1620
" 6		$300	$350	$400	$470	$560				

*From Heating Region Map

(This is Page 1 of Sample Fact Sheet)

NOTE: These annual heating costs are based on U.S. Government standard tests and on a national average cost of electricity of 9.06¢/KWH. Your cost will vary depending on your local energy rate and how you use the product. A method for estimating your cost of operation is given below.

HOW TO ESTIMATE YOUR HEATING COST

To estimate your heating cost, determine your cost of electricity in cents per kilowatt hour (KWH) from your electric bill, your listed average annual heating cost from the National Average Annual Heating Cost Table, and substitute that number in the following equation:

$$\text{Your estimated cost} = \text{Listed annual heating cost} * \times \frac{\text{Your electrical cost in cents per KWH}}{9.06¢}$$

Example: If your electric cost is 13.6¢/KWH and the annual heating cost listed in the table is $200:
Your estimated cost = $200 × 13.6¢/9.06¢
Your estimated cost = $200 × 1.5 = $300
Your estimated cost = $300

(THIS IS PAGE 2 OF SAMPLE FACT SHEET)

[53 FR 19729, May 27, 1988, as amended at 54 FR 53318, Dec. 28, 1989; 55 FR 43093, Oct. 26, 1990; 56 FR 46728, Sept. 16, 1991; 57 FR 44332, Sept. 25, 1992; 59 FR 34051, July 1, 1994; 59 FR 39952, Aug. 5, 1994; 60 FR 56949, Nov. 13, 1995; 61 FR 48623, Sept. 16, 1996; 62 FR 44891, Aug. 25, 1997; 64 FR 926, Jan. 6, 1999; 64 FR 71021, Dec. 20, 1999; 65 FR 53166, Sept. 1, 2000; 66 FR 49531, Sept. 28, 2001; 66 FR 57872, Nov. 19, 2001; 67 FR 58328, Sept. 16, 2002; 68 FR 47451, Aug. 11, 2003; 69 FR 54560, Sept. 9, 2004; 70 FR 32487, June 3, 2005; 70 FR 60718, Oct. 19, 2005]

APPENDIX J1 TO PART 305—POOL HEATERS—GAS

RANGE INFORMATION

Manufacturer's rated heating capacities	Range of thermal efficiencies (percent)			
	Natural gas		Propane	
	Low	High	Low	High
All capacities	78.4	97.0	78.4	97.0

[60 FR 43369, Aug. 21, 1995]

APPENDIX J2 TO PART 305—POOL HEATERS—OIL

RANGE INFORMATION

Manufacturer's rated heating capacities	Range of thermal efficiencies (percent)	
	Low	High
All capacities	78.0	78.0

[60 FR 43370, Aug. 21, 1995]

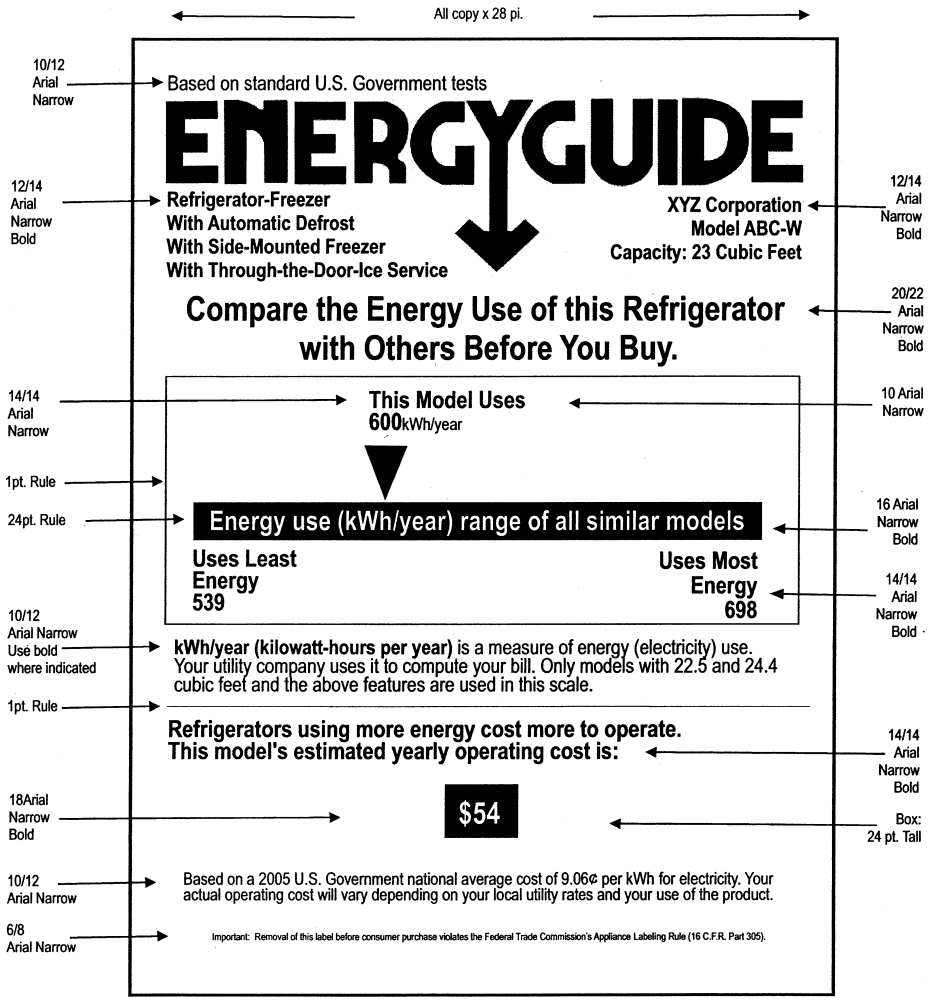
APPENDIX K TO PART 305—SUGGESTED DATA REPORTING FORMAT

1. Date of Report _____
2. Company Name _____
3. City _____
4. State _____
5. Product _____
6. Energy Type (gas, oil, etc.) _____
7. Model Number _____
8. Estimated Annual Energy Consumption or Energy Efficiency Rating _____
9. Capacity _____
10. Number of Tests Performed _____
11. Total Energy Consumption (based on all tests performed) _____

[52 FR 49647, Dec. 31, 1987; as amended at 59 FR 34053, July 1, 1994. Redesignated at 59 FR 49565, Sept. 28, 1994]

APPENDIX L TO PART 305—SAMPLE LABELS

All copy Arial Narrow Regular or Bold as below.
Helvetica Condensed series typeface or other equivalent also acceptable.



Prototype Label 1

All copy Arial Narrow Regular or Bold as below.
Helvetica Condensed series typeface or other equivalent also acceptable.

All copy x 28 pi.

This model has been tested using the 2004 test procedure.
Compare only with models displaying this statement.

13.5/14 Arial Narrow Bold Yellow

10/12 Arial Narrow

Based on standard U.S. Government tests

ENERGYGUIDE

12/14 Arial Narrow Bold

Clothes Washer
Capacity: Standard

XYZ Corporation
Model(s) Mr328, XL12, NAA83

12/14 Arial Narrow Bold

Compare the energy use of this clothes washer only with other models tested using the 2004 test procedure.

16.5/19 Arial Narrow Bold

14/14 Arial Narrow

This Model Uses
453kWh/year

10 Arial Narrow

1pt. Rule

24pt. Rule

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

16 Arial Narrow Bold

Uses Least Energy 113

Uses Most Energy 680

14/14 Arial Narrow Bold

10/12 Arial Narrow Use bold where indicated

kWh/year (kilowatt-hours per year) is a measure of energy (electricity) use. Your utility company uses it to compute your bill. Only standard size clothes washers are used in this scale.

1pt. Rule

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

14/14 Arial Narrow Bold

18Arial Narrow Bold

$39 when used with an electric water heater

$18 when used with a natural gas water heater

Box: 24 pt. Tall

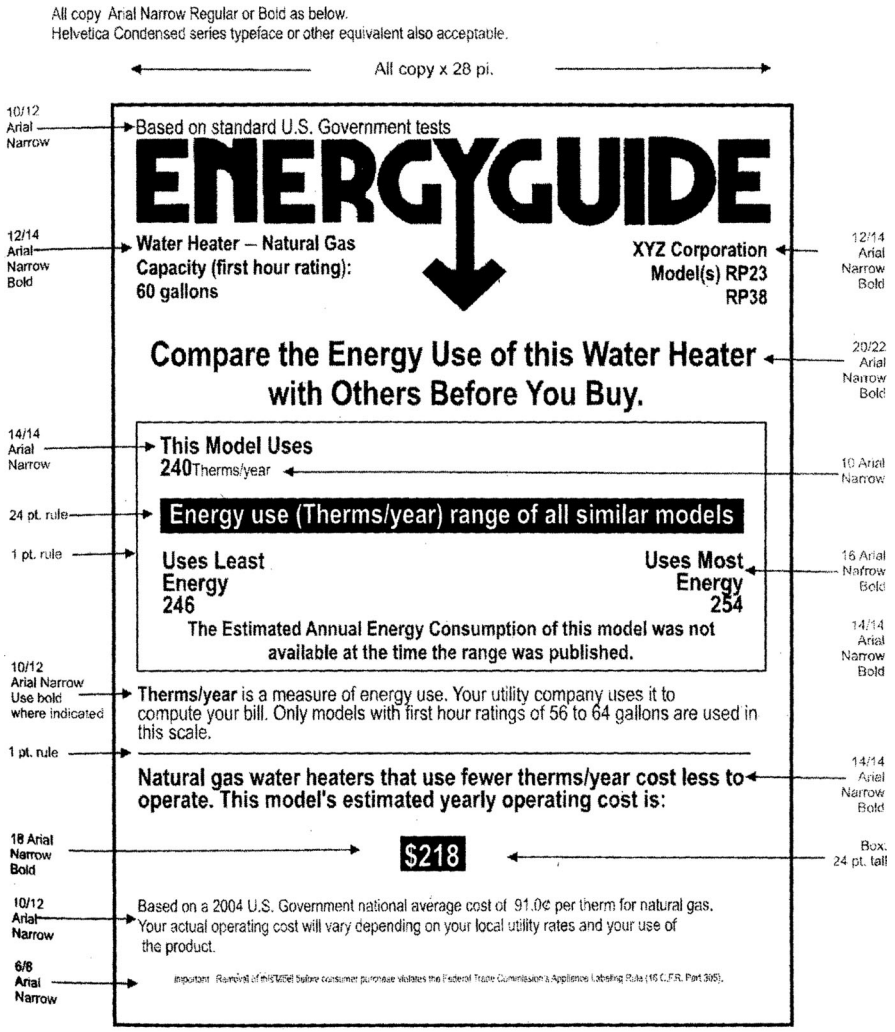
10/12 Arial Narrow

Based on eight loads of clothes a week and a 2004 U.S. Government national average cost of 8.60¢ per kWh for electricity and 91.0¢ per therm for natural gas. Your actual operating cost will vary depending on your local utility rates and your use of the product.

6/8 Arial Narrow

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

Prototype Label 2



Prototype Label 3

All copy Arial Narrow Regular or Bold as below.
Helvetica Condensed series typeface or other equivalent also acceptable.

All copy x 28 pi.

10/12 Arial Narrow

Based on standard U.S. Government tests

ENERGYGUIDE

12/14 Arial Narrow Bold

Central Air Conditioner
Cooling Only
Split System

12/14 Arial Narrow Bold

XYZ Corporation
Model 12345

20/22 Arial Narrow Bold

Compare the Energy Efficiency of this Air Conditioner with Others Before You Buy.

14/14 Arial Narrow

This Model's Efficiency

10 Arial Narrow

13.2SEER

1pt. Rule

24pt. Rule

16 Arial Narrow Bold

Energy efficiency range of all similar models

10/12 Arial Narrow Use bold where indicated

Least Efficient 10.9

Most Efficient 20.50

14/14 Arial Narrow Bold

SEER, the Seasonal Energy Efficiency Ratio, is a measure of energy efficiency for central air conditioners.

1pt. Rule

14/14 Arial Narrow Bold

Central air conditioners with higher SEERs are more energy efficient.

Bullets 10 pt.

- This energy rating is based on U.S. Government standard tests of this condenser model combined with the most common coil. The rating may vary slightly with different coils.
- Federal law requires the seller or installer of this appliance to make available a fact sheet or directory giving further information about the efficiency and operating cost of this equipment. Ask for this information.

6/8 Arial Narrow

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

Prototype Label 4

All copy Arial Narrow Regular or Bold as below.
Helvetica Condensed series typeface or other equivalent also acceptable.

All copy x 28 pi.

10/12 Arial Narrow

Based on standard U.S. Government tests

ENERGYGUIDE

12/14 Arial Narrow Bold

Heat Pump
Cooling and Heating
Split System

XYZ Corporation
Model 12345

12/14 Arial Narrow Bold

Compare the Energy Efficiency of this Heat Pump with Others Before You Buy.

20/22 Arial Narrow Bold

14/14 Arial Narrow

This Model (Cooling)
13.4SEER

10 Arial Narrow

24 pt. Rule

Energy efficiency range of all similar models

16 Arial Narrow Bold

1pt. Rule

Least Efficient 10.9

Most Efficient 18.60

14/14 Arial Narrow Bold

SEER, the Seasonal Energy Efficiency Ratio, is a measure of energy efficiency for heat pumps when cooling.

1pt. Rule

This Model (Heating)
8.4HSPF

Energy efficiency range of all similar models

Least Efficient 7.10

Most Efficient 10.55

10/12 Arial Narrow Use bold where indicated

HSPF, the Heating Seasonal Performance Factor, is a measure of energy efficiency for heat pumps when heating.

Bullets 10 pt.

- These energy ratings are based on U.S. Government standard tests of this condenser model combined with the most common coil. The ratings will vary slightly with different coils
- Federal law requires the seller or installer of this appliance to make available a fact sheet or directory giving further information about the efficiency and operating cost of this equipment. Ask for this information.

6/8 Arial Narrow

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

Prototype Label 5

Based on standard U.S. Government tests

ENERGYGUIDE

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

XYZ Corporation
Model ABC-W
Capacity: 23 Cubic Feet

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

This Model Uses
600kWh/year

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

Uses Least Energy
539

Uses Most Energy
698

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

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

$54

Based on a 2005 U.S. Government national average cost of 9.06¢ per kWh for electricity. Your actual operating cost will vary depending on your local utility rates and your use of the product.

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

Sample Label 1

Based on standard U.S. Government tests

ENERGYGUIDE

Freezer
Upright Type
With Manual Defrost

XYZ Corporation
Model(s) MR328, XI12, NA 83
Capacity: 21.2 Cubic Feet

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

This Model Uses
700kWh/year

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

Uses Least Energy
671

Uses Most Energy
770

kWh/year (kilowatt-hours per year) is a measure of energy (electricity) use. Your utility company uses it to compute your bill. Only models with 19.5 to 21.4 cubic feet with the above features are used in this scale.

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

$63

Based on a 2005 U.S. Government national average cost of 9.06¢ per kWh for electricity. Your actual operating cost will vary depending on your local utility rates and your use of the product.

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

Sample Label 2

This model has been tested using the 2004 test procedure.
Compare only with models displaying this statement.

Based on standard U.S. Government tests

ENERGYGUIDE

Clothes Washer
Capacity: Standard

XYZ Corporation
Model(s) Mr328, XL12, NAA83

Compare the energy use of this clothes washer only with other models tested using the 2004 test procedure.

This Model Uses
453kWh/year

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

Uses Least Energy
113

Uses Most Energy
680

kWh/year (kilowatt-hours per year) is a measure of energy (electricity) use. Your utility company uses it to compute your bill. Only standard size clothes washers are used in this scale.

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

$39
when used with an electric water heater

$18
when used with a natural gas water heater

Based on eight loads of clothes a week and a 2004 U.S. Government national average cost of 8.60¢ per kWh for electricity and 91.0¢ per therm for natural gas. Your actual operating cost will vary depending on your local utility rates and your use of the product.

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

Sample Label 3

Based on standard U.S. Government tests

ENERGYGUIDE

Dishwasher
Capacity: Standard

XYZ Corporation
Model(s) MR328, XI12, NAA83

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

This Model Uses
500kWh/year

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

Uses Least Energy
194

Uses Most Energy
531

kWh/year (kilowatt-hours per year) is a measure of energy (electricity) use. Your utility company uses it to compute your bill. Only standard size dishwashers are used in this scale.

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

$43
When used with an electric water heater

$31
When used with a natural gas water heater

Based on four wash loads a week and a 2004 U.S. Government national average cost of 8.60¢ per kWh for electricity and 91.0¢ per therm for natural gas. Your actual operating cost will vary depending on your local utility rates and your use of the product.

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

Sample Label 4

Based on standard U.S. Government tests

ENERGYGUIDE

Water Heater – Natural Gas
Capacity (first hour rating):
60 gallons

XYZ Corporation
Model(s) RP23
RP38

Compare the Energy Use of this Water Heater with Others Before You Buy.

This Model Uses
240 Therms/year

Energy use (Therms/year) range of all similar models

Uses Least Energy	Uses Most Energy
246	254

The Estimated Annual Energy Consumption of this model was not available at the time the range was published.

Therms/year is a measure of energy use. Your utility company uses it to compute your bill. Only models with first hour ratings of 56 to 64 gallons are used in this scale.

Natural gas water heaters that use fewer therms/year cost less to operate. This model's estimated yearly operating cost is:

$218

Based on a 2004 U.S. Government national average cost of 91.0¢ per therm for natural gas. Your actual operating cost will vary depending on your local utility rates and your use of the product.

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

Sample Label 5

Based on standard U.S. Government tests

ENERGYGUIDE

Room Air Conditioner
Without Reverse Cycle
With Louvered Sides

XYZ Corporation
Model 122345
Capacity: 13,000 BTUs

Compare the Energy Use of this Air Conditioner with Others Before You Buy.

This Model Efficiency
10.0 EER

Energy efficiency range of all similar models

Least Efficient	Most Efficient
8.5	12.0

EER, the Energy Efficiency Ratio, is a measure of energy efficiency for room air conditioners. Only models between 8,000 and 13,000 BTUs with the above features are used in this scale.

More efficient air conditioners cost less to operate. This model's estimated yearly operating cost is:

$96

Based on a 2006 U.S. Government national average cost of 9.81¢ per kWh for electricity. Your actual operating cost will vary depending on your local utility rates and your use of the product.

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

Sample Label 6

Based on standard U.S. Government tests

ENERGYGUIDE

Furnace – Natural Gas

XYZ Corporation
Model 2345X

Compare the Energy Efficiency of this Furnace with Others Before You Buy.

This Model's Efficiency
80.7 AFUE

Energy efficiency range of all similar models

Least Efficient	Most Efficient
78.0	97.0

The **AFUE, Annual Fuel Utilization Efficiency,** is a measure of energy efficiency for furnaces and boilers. Only furnaces fueled by natural gas are used in this scale.

Natural gas furnaces that have higher AFUEs are more energy efficient.

Federal law requires the seller or installer of this appliance to make available a fact sheet or directory giving further information about the efficiency and operating cost of this equipment.

Ask for this information.

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

Sample Label 7

Based on standard U.S. Government tests

ENERGYGUIDE

Central Air Conditioner
Cooling Only
Split System

XYZ Corporation
Model 12345

Compare the Energy Efficiency of this Air Conditioner with Others Before You Buy.

This Model's Efficiency
13.2SEER

Energy efficiency range of all similar models

Least Efficient	Most Efficient
10.9	20.50

SEER, the Seasonal Energy Efficiency Ratio, is a measure of energy efficiency for central air conditioners.

Central air conditioners with higher SEERs are more energy efficient.

- This energy rating is based on U.S. Government standard tests of this condenser model combined with the most common coil. The rating may vary slightly with different coils.
- Federal law requires the seller or installer of this appliance to make available a fact sheet or directory giving further information about the efficiency and operating cost of this equipment. Ask for this information.

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

Sample Label 8

Based on standard U.S. Government tests

ENERGYGUIDE

Heat Pump
Cooling and Heating
Split System

XYZ Corporation
Model 12345

Compare the Energy Efficiency of this Heat Pump with Others Before You Buy.

This Model (Cooling)
13.4SEER

Energy efficiency range of all similar models

Least Efficient	Most Efficient
10.9	18.60

SEER, the Seasonal Energy Efficiency Ratio, is a measure of energy efficiency for heat pumps when cooling.

This Model (Heating)
8.4HSPF

Energy efficiency range of all similar models

Least Efficient	Most Efficient
7.10	10.55

HSPF, the Heating Seasonal Performance Factor, is a measure of energy efficiency for heat pumps when heating.

- These energy ratings are based on U.S. Government standard tests of this condenser model combined with the most common coil. The ratings will vary slightly with different coils
- Federal law requires the seller or installer of this appliance to make available a fact sheet or directory giving further information about the efficiency and operating cost of this equipment. Ask for this information.

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

Sample Label 9

Based on standard U.S. Government tests

ENERGYGUIDE

Pool Heater
Natural Gas

ABC Corporation
Model 1428

Compare the Energy Efficiency of this Pool Heater with Others Before You Buy.

This Model's Efficiency
80 Thermal Efficiency

Energy efficiency range of all similar models

Least Efficient	Most Efficient
78	97

The **Thermal Efficiency** (expressed as a percent) is the measure of energy efficiency for pool heaters. Only pool heaters fueled by natural gas are used in this scale.

Natural gas pool heaters that have higher Thermal Efficiencies are more energy efficient.

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

Sample Label 10

Based on standard U.S. Government tests

ENERGYGUIDE

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

XYZ Corporation
Model ABC-W
Capacity: 23 Cubic Feet

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

This Model Uses
800kWh/year

ENERGY STAR
A symbol of
energy efficiency

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

Uses Least Energy 685

Uses Most Energy 1000

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

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

$65

Based on a 2000 U.S. Government national average cost of 8.03¢ per kWh for electricity. Your actual operating cost will vary depending on your local utility rates and your use of the product.

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

Sample Label 11

* * * * *

Lamp Packaging Disclosures

Specifications

- All required disclosures must be clear and conspicuous.
- The words "light output" must appear first in order, followed by the lumens number. The word "lumens" must be close to either "light output" or the lumens number.
- The words "energy used" must appear second in order, followed by the wattage number. The word "watts" must be close to either "energy used" or the wattage number.
- The word "life" must appear third in order, followed by the life in hours number. The word "hours" must be close to either "life" or the life in hours number.
- The numbers for light output, energy used, and life must be of equal size and in the same typestyle.
- The words "light output," "energy used," and "life" must be of equal size and in the same typestyle.
- The words "lumens," "watts," and "hours" must be of equal size and in the same typestyle, but only approximately 50 percent of the size of the words "light output," "energy used," and "life."

Illustration

Note: This illustrates the elements and relative sizes of the required disclosures.

Principal Display Panel

Light Output	1710 Lumens	To save energy costs, find the bulbs with the light output you need, then choose the one with the lowest watts.
Energy Used	100 Watts	
Life	750 Hours	

Incandescent (non-reflector) Lamp Illustration

Lamp Packaging Disclosures

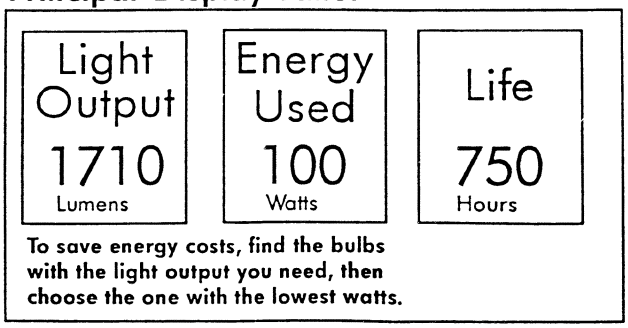
Specifications

- All required disclosures must be clear and conspicuous.
- The words "light output" must appear first in order, followed by the lumens number. The word "lumens" must be close to either "light output" or the lumens number.
- The words "energy used" must appear second in order, followed by the wattage number. The word "watts" must be close to either "energy used" or the wattage number.
- The word "life" must appear third in order, followed by the life in hours number. The word "hours" must be close to either "life" or the life in hours number.
- The numbers for light output, energy used, and life must be of equal size and in the same typestyle.
- The words "light output," "energy used," and "life" must be of equal size and in the same typestyle.
- The words "lumens," "watts," and "hours" must be of equal size and in the same typestyle, but only approximately 50 percent of the size of the words "light output," "energy used," and "life."

Illustration

Note: This illustrates the elements and relative sizes of the required disclosures.

Principal Display Panel



Incandescent (non-reflector) Lamp Illustration

Lamp Packaging Disclosures

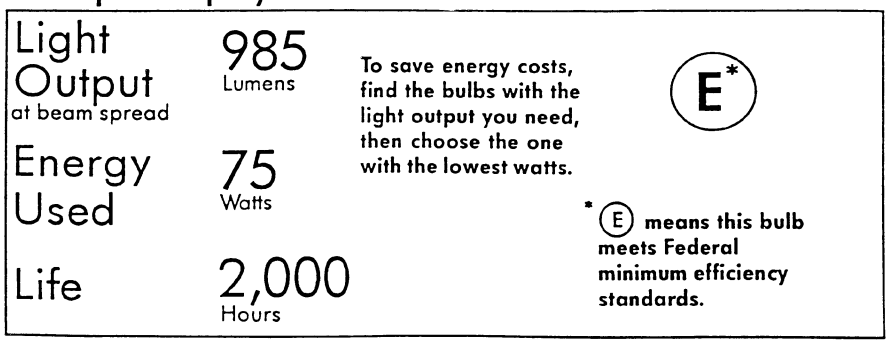
Specifications

- All required disclosures must be clear and conspicuous.
- The words "light output" must appear first in order, followed by the lumens number. The word "lumens" must be close to either "light output" or the lumens number.
- The words "energy used" must appear second in order, followed by the wattage number. The word "watts" must be close to either "energy used" or the wattage number.
- The word "life" must appear third in order, followed by the life in hours number. The word "hours" must be close to either "life" or the life in hours number.
- The numbers for light output, energy used, and life must be of equal size and in the same typestyle.
- The words "light output," "energy used," and "life" must be of equal size and in the same typestyle.
- The words "lumens," "watts," "hours," and "at beam spread" must be of equal size and in the same typestyle, but only approximately 50 percent of the size of the words "light output," "energy used," and "life."

Illustration

Note: *This illustrates the elements and relative sizes of the required disclosures.*

Principal Display Panel



The explanatory statement next to the encircled "E" on the principal display panel above could be disclosed (clearly and conspicuously) on another panel, provided asterisks and the words "See [Back, Top, Side] panel for details" are used.

Incandescent Reflector Lamp Illustration

Lamp Packaging Disclosures

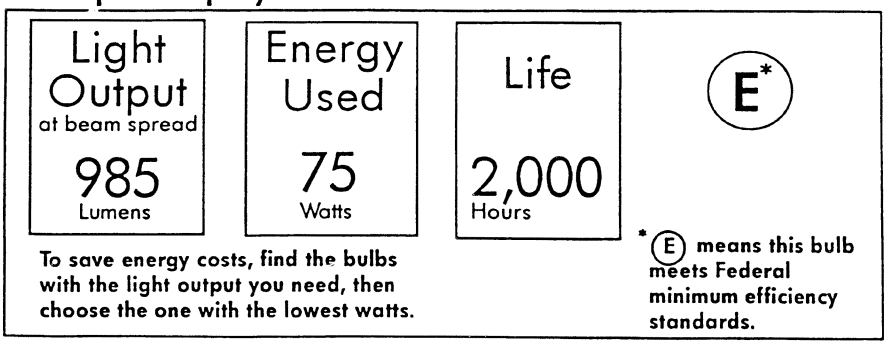
Specifications

- All required disclosures must be clear and conspicuous.
- The words "light output" must appear first in order, followed by the lumens number. The word "lumens" must be close to either "light output" or the lumens number.
- The words "energy used" must appear second in order, followed by the wattage number. The word "watts" must be close to either "energy used" or the wattage number.
- The word "life" must appear third in order, followed by the life in hours number. The word "hours" must be close to either "life" or the life in hours number.
- The numbers for light output, energy used, and life must be of equal size and in the same typestyle.
- The words "light output," "energy used," and "life" must be of equal size and in the same typestyle.
- The words "lumens," "watts," "hours," and "at beam spread" must be of equal size and in the same typestyle, but only approximately 50 percent of the size of the words "light output," "energy used," and "life."

Illustration

Note: *This illustrates the elements and relative sizes of the required disclosures.*

Principal Display Panel



The explanatory statement next to the encircled "E" on the principal display panel above could be disclosed (clearly and conspicuously) on another panel, provided asterisks and the words "See [Back, Top, Side] panel for details" are used.

Incandescent Reflector Lamp Illustration

Lamp Packaging Disclosures

Specifications

- All required disclosures must be clear and conspicuous.
- The words "light output" must appear first in order, followed by the lumens number. The word "lumens" must be close to either "light output" or the lumens number.
- The words "energy used" must appear second in order, followed by the wattage number. The word "watts" must be close to either "energy used" or the wattage number.
- The word "life" must appear third in order, followed by the life in hours number. The word "hours" must be close to either "life" or the life in hours number.
- The numbers for light output, energy used, and life must be of equal size and in the same typestyle.
- The words "light output," "energy used," and "life" must be of equal size and in the same typestyle.
- The words "lumens," "watts," and "hours" must be of equal size and in the same typestyle, but only approximately 50 percent of the size of the words "light output," "energy used," and "life."

Illustration

Note: *This illustrates the elements and relative sizes of the required disclosures.*

Principal Display Panel

Light Output	1200 Lumens	To save energy costs, find the bulbs with the light output you need, then choose the one with the lowest watts.
Energy Used	20 Watts	
Life	10,000 Hours	

Compact Fluorescent Lamp Illustration

Lamp Packaging Disclosures

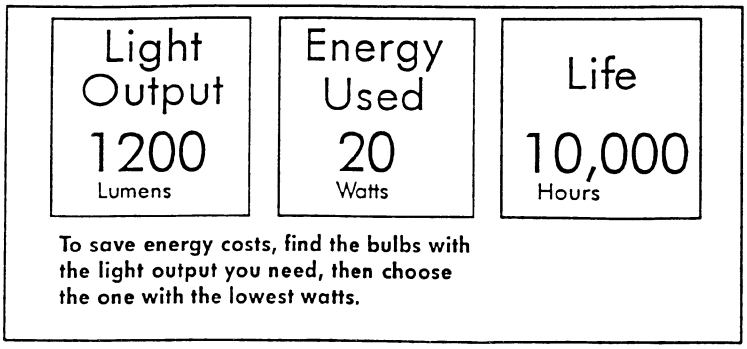
Specifications

- All required disclosures must be clear and conspicuous.
- The words "light output" must appear first in order, followed by the lumens number. The word "lumens" must be close to either "light output" or the lumens number.
- The words "energy used" must appear second in order, followed by the wattage number. The word "watts" must be close to either "energy used" or the wattage number.
- The word "life" must appear third in order, followed by the life in hours number. The word "hours" must be close to either "life" or the life in hours number.
- The numbers for light output, energy used, and life must be of equal size and in the same typestyle.
- The words "light output," "energy used," and "life" must be of equal size and in the same typestyle.
- The words "lumens," "watts," and "hours" must be of equal size and in the same typestyle, but only approximately 50 percent of the size of the words "light output," "energy used," and "life."

Illustration

Note: This illustrates the elements and relative sizes of the required disclosures.

Principal Display Panel



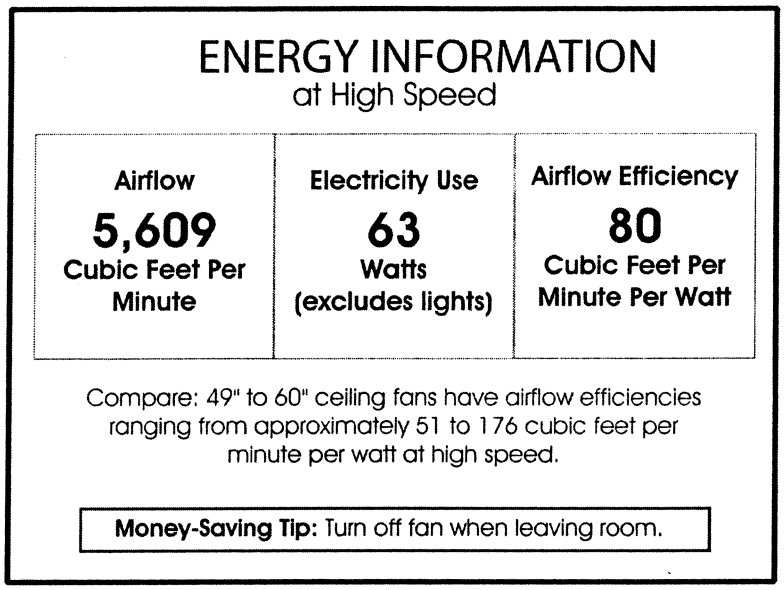
Compact Fluorescent Lamp Illustration

[59 FR 25212, May 13, 1994; 59 FR 34053, July 1, 1994. Redesignated and amended at 59 FR 49565, 49567, Sept. 28, 1994; 65 FR 16142, Mar. 27, 2000; 65 FR 17564, Apr. 3, 2000; 67 FR 47445, July 19, 2002; 68 FR 36463, June 18, 2003; 68 FR 47451, Aug. 11, 2003; 68 FR 55821, Sept. 29, 2003; 69 FR 42110, July 14, 2004; 69 FR 54561, Sept. 9, 2004; 70 FR 3875, Jan. 27, 2005; 70 FR 60718, Oct. 19, 2005; 71 FR 4987, Jan. 31, 2006; 71 FR 45373, Aug. 9, 2006]

EFFECTIVE DATE NOTE: At 71 FR 78065, Dec. 28, 2006, appendix L was amended by adding Ceiling Fan Label Illustration at the end, effective Jan. 1, 2009. For the convenience of the user, the added text is set forth as follows:

APPENDIX L TO PART 305—SAMPLE LABELS

* * * * *



Ceiling Fan Label Illustration

PART 306—AUTOMOTIVE FUEL RATINGS, CERTIFICATION AND POSTING

GENERAL

Sec.
306.0 Definitions.
306.1 What this rule does.
306.2 Who is covered.
306.3 Stayed or invalid parts.
306.4 Preemption.

DUTIES OF REFINERS, IMPORTERS, AND PRODUCERS

306.5 Automotive fuel rating.
306.6 Certification.
306.7 Recordkeeping.

DUTIES OF DISTRIBUTORS

306.8 Certification.
306.9 Recordkeeping.

DUTIES OF RETAILERS

306.10 Automotive fuel rating posting.
306.11 Recordkeeping.

LABEL SPECIFICATIONS

306.12 Labels.

AUTHORITY: 15 U.S.C. 2801 *et seq.*

SOURCE: 44 FR 19169, Mar. 30, 1979, unless otherwise noted.

GENERAL

§ 306.0 Definitions.

As used in this part:

(a) *Octane rating* means the rating of the anti-knock characteristics of a grade or type of gasoline as determined by dividing by 2 the sum of the research octane number plus the motor octane number.

(b) *Research octane number* and *motor octane number* have the meanings given

such terms in the specifications of the American Society for Testing and Materials (''ASTM'') entitled ''Standard Specification for Automotive Spark-Ignition Engine Fuel'' designated D4814–92c and, with respect to any grade or type of gasoline, are determined in accordance with test methods set forth in ASTM D2699–92, ''Standard Test Method for Knock Characteristics of Motor Fuels by the Research Method'' and ASTM D2700–92, ''Standard Test Method for Knock Characteristics of Motor and Aviation Fuels by the Motor Method.'' These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of ASTM D4814–92c, ASTM D2699–92, and ASTM D2700–92 may be obtained from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA, 19103, or may be inspected at the Federal Trade Commission, Public Reference Room, room 130, 600 Pennsylvania Avenue, NW., Washington, DC., or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(c) *Refiner* means any person engaged in the production or importation of automotive fuel.

(d) *Producer* means any person who purchases component elements and combines them to produce and market automotive fuel.

(e) *Distributor* means any person who receives automotive fuel and distributes such automotive fuel to another person other than the ultimate purchaser.

(f) *Retailer* means any person who markets automotive fuel to the general public for ultimate consumption.

(g) *Ultimate purchaser* means, with respect to any item, the first person who purchases such item for purposes other than resale.

(h) *Person*, for purposes of applying any provision of the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.*, with respect to any provision of this part, includes a partnership and a corporation.

(i) *Automotive fuel* means liquid fuel of a type distributed for use as a fuel in any motor vehicle, and the term includes, but is not limited to:

(1) Gasoline, an automotive spark-ignition engine fuel, which includes, but is not limited to, gasohol (generally a mixture of approximately 90% unleaded gasoline and 10% denatured ethanol) and fuels developed to comply with the Clean Air Act, 42 U.S.C. 7401 *et seq.*, such as reformulated gasoline and oxygenated gasoline; and

(2) alternative liquid automotive fuels, including, but not limited to:

(i) Methanol, denatured ethanol, and other alcohols;

(ii) Mixtures containing 85 percent or more by volume of methanol, denatured ethanol, and/or other alcohols (or such other percentage, but not less than 70 percent, as determined by the Secretary of the United States Department of Energy, by rule, to provide for requirements relating to cold start, safety, or vehicle functions), with gasoline or other fuels;

(iii) Liquefied natural gas;

(iv) Liquefied petroleum gas;

(v) Coal-derived liquid fuels.

(j) *Automotive fuel rating* means—

(1) For gasoline, the octane rating; or

(2) For an alternative liquid automotive fuel, the commonly used name of the fuel with a disclosure of the amount, expressed as a minimum percentage by volume, of the principal component of the fuel. A disclosure of other components, expressed as a minimum percentage by volume, may be included, if desired.

[58 FR 41372, Aug. 3, 1993, as amended at 69 FR 18803, Apr. 9, 2004]

§ 306.1 What this rule does.

This rule deals with the certification and posting of automotive fuel ratings in or affecting commerce as ''commerce'' is defined in the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.* It applies to persons, partnerships, and corporations. If you are covered by this regulation, breaking any of its rules is an unfair or deceptive act or practice under section 5 of that Act. You can be fined up to $10,000 (plus an adjustment

for inflation, under § 1.98 of this chapter) each time you break a rule.

[58 FR 41373, Aug. 3, 1993, as amended at 61 FR 54549, Oct. 21, 1996; 61 FR 55840, Oct. 29, 1996]

§ 306.2 Who is covered.

You are covered by this rule if you are a refiner, importer, producer, distributor, or retailer of automotive fuel.

[58 FR 41373, Aug. 3, 1993]

§ 306.3 Stayed or invalid parts.

If any part of this rule is stayed or held invalid, the rest of it will stay in force.

[44 FR 19169, Mar. 30, 1979. Redesignated at 58 FR 41372, Aug. 3, 1993]

§ 306.4 Preemption.

The Petroleum Marketing Practices Act (''PMPA''), 15 U.S.C. 2801 *et seq.*, as amended, is the law that directs the FTC to enact this rule. Section 204 of PMPA, 15 U.S.C. 2824, provides:

(a) To the extent that any provision of this title applies to any act or omission, no State or any political subdivision thereof may adopt or continue in effect, except as provided in subsection (b), any provision of law or regulation with respect to such act or omission, unless such provision of such law or regulation is the same as the applicable provision of this title.

(b) A State or political subdivision thereof may provide for any investigative or enforcement action, remedy, or penalty (including procedural actions necessary to carry out such investigative or enforcement actions, remedies, or penalties) with respect to any provision of law or regulation permitted by subsection (a).

[58 FR 41373, Aug. 3, 1993]

DUTIES OF REFINERS, IMPORTERS AND PRODUCERS

§ 306.5 Automotive fuel rating.

If you are a refiner, importer, or producer, you must determine the automotive fuel rating of all automotive fuel before you transfer it. You can do that yourself or through a testing lab.

(a) To determine the automotive fuel rating of gasoline, add the research octane number and the motor octane number and divide by two, as explained by the American Society for Testing and Materials (''ASTM'') in ASTM D4814–92c, entitled ''Standard Specifications for Automotive Spark-Ignition Engine Fuel.'' To determine the research octane number, use ASTM standard test method D2699–92, and to determine the motor octane number, use ASTM standard test method D2700–92.

(b) To determine automotive fuel ratings for alternative liquid automotive fuels, you must possess a reasonable basis, consisting of competent and reliable evidence, for the percentage by volume of the principal component of the alternative liquid automotive fuel that you must disclose. You also must have a reasonable basis, consisting of competent and reliable evidence, for the minimum percentages by volume of other components that you choose to disclose.

[58 FR 41373, Aug. 3, 1993]

§ 306.6 Certification

In each transfer you make to anyone who is not a consumer, you must certify the automotive fuel rating of the automotive fuel consistent with your determination. You can do this in either of two ways:

(a) Include a delivery ticket or other paper with each transfer of automotive fuel. It may be an invoice, bill of lading, bill of sale, terminal ticket, delivery ticket, or any other written proof of transfer. It must contain at least these four items:

(1) Your name;

(2) The name of the person to whom the automotive fuel is transferred;

(3) The date of the transfer;

(4) The automotive fuel rating. Octane rating numbers may be rounded off to a whole or half number equal to or less than the number determined by you.

(b) Give the person a letter or other written statement. This letter must include the date, your name, the other person's name, and the automotive fuel rating of any automotive fuel you will transfer to that person from the date of the letter onwards. Octane rating numbers may be rounded to a whole or half number equal to or less than the number determined by you. This letter of certification will be good until you transfer automotive fuel with a lower

automotive fuel rating. When this happens, you must certify the automotive fuel rating of the new automotive fuel either with a delivery ticket or by sending a new letter of certification.

(c) When you transfer automotive fuel to a common carrier, you must certify the automotive fuel rating of the automotive fuel to the common carrier, either by letter or on the delivery ticket or other paper.

[58 FR 41373, Aug. 3, 1993, as amended at 59 FR 48798, Sept. 23, 1994]

§ 306.7 Recordkeeping.

You must keep records of how you determined automotive fuel ratings for one year. They must be available for inspection by Federal Trade Commission and Environmental Protection Agency staff members, or by people authorized by FTC or EPA.

[58 FR 41374, Aug. 3, 1993]

DUTIES OF DISTRIBUTORS

§ 306.8 Certification.

If you are a distributor, you must certify the automotive fuel rating of the automotive fuel in each transfer you make to anyone who is not a consumer.

(a) In the case of gasoline, if you do not blend the gasoline with other gasoline, you must certify the gasoline's octane rating consistent with the octane rating certified to you. If you blend the gasoline with other gasoline, you must certify consistent with your determination of the average, weighted by volume, of the octane ratings certified to you for each gasoline in the blend, or consistent with the lowest octane rating certified to you for any gasoline in the blend. Whether you blend gasoline or not, you may choose to certify the octane rating of the gasoline consistent with your determination of the octane rating according to the method in § 306.5. In cases involving gasoline, the octane rating may be rounded to a whole or half number equal to or less than the number certified to you or determined by you.

(b) If you do not blend alternative liquid automotive fuels, you must certify consistent with the automotive fuel rating certified to you. If you blend alternative liquid automotive fuels, you must possess a reasonable basis, consisting of competent and reliable evidence, for the automotive fuel rating that you certify for the blend.

(c) You may certify either by using a delivery ticket with each transfer of automotive fuel, as outlined in § 306.6(a), or by using a letter of certification, as outlined in § 306.6(b).

(d) When you transfer automotive fuel to a common carrier, you must certify the automotive fuel rating of the automotive fuel to the common carrier, either by letter or on the delivery ticket or other paper. When you receive automotive fuel from a common carrier, you also must receive from the common carrier a certification of the automotive fuel rating of the automotive fuel, either by letter or on the delivery ticket or other paper.

[58 FR 41374, Aug, 3, 1993, as amended at 59 FR 48798, Sept. 23, 1994]

§ 306.9 Recordkeeping

You must keep for one year any delivery tickets or letters of certification on which you based your automotive fuel rating certifications. You must also keep for one year records of any automotive fuel rating determinations you made according to § 306.5. They must be available for inspection by Federal Trade Commission and Environmental Protection Agency staff members, or by persons authorized by FTC or EPA.

[58 FR 41374, Aug. 3, 1993]

DUTIES OF RETAILERS

§ 306.10 Automotive fuel rating posting.

(a) If you are a retailer, you must post the automotive fuel rating of all automotive fuel you sell to consumers. You must do this by putting at least one label on each face of each dispenser through which you sell automotive fuel. If you are selling two or more kinds of automotive fuel with different automotive fuel ratings from a single dispenser, you must put separate labels for each kind of automotive fuel on each face of the dispenser.

(b)(1) The label, or labels, must be placed conspicuously on the dispenser so as to be in full view of consumers

and as near as reasonably practical to the price per unit of the automotive fuel.

(2) You may petition for an exemption from the placement requirements by writing the Secretary of the Federal Trade Commission, Washington, DC 20580. You must state the reasons that you want the exemption.

(c) In the case of gasoline, if you do not blend the gasoline with other gasoline, you must post the octane rating of the gasoline consistent with the octane rating certified to you. If you blend the gasoline with other gasoline, you must post consistent with your determination of the average, weighted by volume, of the octane ratings certified to you for each gasoline in the blend, or consistent with the lowest octane rating certified to you for any gasoline in the blend. Whether you blend gasoline or not, you may choose to post the octane rating of the gasoline consistent with your determination of the octane rating according to the method in § 306.5. In cases involving gasoline, the octane rating must be shown as a whole or half number equal to or less than the number certified to you or determined by you.

(d) If you do not blend alternative liquid automotive fuels, you must post consistent with the automotive fuel rating certified to you. If you blend alternative liquid automotive fuels, you must possess a reasonable basis, consisting of competent and reliable evidence, for the automotive fuel rating that you post for the blend.

(e)(1) You must maintain and replace labels as needed to make sure consumers can easily see and read them.

(2) If the labels you have are destroyed or are unusable or unreadable for some unexpected reason, you can satisfy the law by posting a temporary label as much like the required label as possible. You must still get and post the required label without delay.

(f) The following examples of automotive fuel rating disclosures for some presently available alternative liquid automotive fuels are meant to serve as illustrations of compliance with this part, but do not limit the Rule's coverage to only the mentioned fuels:

(1) ''Methanol/Minimum _____% Methanol''

(2) ''Ethanol/Minimum _____% Ethanol''

(3) ''M–85/Minimum _____% Methanol''

(4) ''E–85/Minimum _____% Ethanol''

(5) ''LPG/Minimum _____% Propane'' or

''LPG/Minimum _____% Propane and _____% Butane''

(6) ''LNG/Minimum _____% Methane''

(g) When you receive automotive fuel from a common carrier, you also must receive from the common carrier a certification of the automotive fuel rating of the automotive fuel, either by letter or on the delivery ticket or other paper.

[58 FR 41374, Aug. 3, 1993, as amended at 59 FR 48798, Sept. 23, 1994]

§ 306.11 Recordkeeping.

You must keep for one year any delivery tickets or letters of certification on which you based your posting of automotive fuel ratings. You also must keep for one year records of any automotive fuel rating determinations you made according to § 306.5. These records may be kept at the retail outlet or at another, reasonably close location. They must be available for inspection by Federal Trade Commission and Environmental Protection Agency staff members or by persons authorized by FTC or EPA.

[58 FR 41374, Aug. 3, 1993]

LABEL SPECIFICATIONS

§ 306.12 Labels.

All labels must meet the following specifications:

(a) *Layout*—(1) *For gasoline labels*. The label is 3″ (7.62 cm) wide × 2½″ (6.35 cm) long. The illustrations appearing at the end of this rule are prototype labels that demonstrate the proper layout. ''Helvetica Black'' type is used throughout except for the octane rating number on octane labels, which is in Franklin gothic type. All type is centered. Spacing of the label is ¼″ (.64 cm) between the top border and the first line of text, ⅛″ (.32 cm) between the first and second line of text, ¼″ (.64 cm) between the octane rating and the

line of text above it. All text and numerals are centered within the interior borders.

(2) *For alternative liquid automotive fuel labels (one principal component).* The label is 3″ (7.62 cm) wide × 2½″ (6.35 cm) long. ''Helvetica black'' type is used throughout. All type is centered. The band at the top of the label contains the name of the fuel. This band should measure 1″ (2.54 cm) deep. Spacing of the fuel name is ¼″ (.64 cm) from the top of the label and 3⁄16″ (.48 cm) from the bottom of the black band, centered horizontally within the black band. The first line of type beneath the black band is ⅛″ (.32 cm) from the bottom of the black band. All type below the black band is centered horizontally, with ⅛″ (.32 cm) between each line. The bottom line of type is 3⁄16″ (.48 cm) from the bottom of the label. All type should fall no closer than 3⁄16″ (.48 cm) from the side edges of the label. If you wish to change the dimensions of this single component label to accommodate a fuel descriptor that is longer than shown in the sample labels, you must petition the Federal Trade Commission. You can do this by writing to the Secretary of the Federal Trade Commission, Washington, DC 20580. You must state the size and contents of the label that you wish to use, and the reasons that you want to use it.

(3) *For alternative liquid automotive fuel labels (two components).* The label is 3″ (7.62 cm) wide × 2½″ (6.35 cm) long. ''Helvetica black'' type is used throughout. All type is centered. The band at the top of the label contains the name of the fuel. This band should measure 1″ (2.54 cm) deep. Spacing of the fuel name is ¼″ (.64 cm) from the top of the label and 3⁄16″ (.48 cm) from the bottom of the black band, centered horizontally within the black band. The first line of type beneath the black band is 3⁄16″ (.48 cm) from the bottom of the black band. All type below the black band is centered horizontally, with ⅛″ (.32 cm) between each line. The bottom line of type is ¼″ (.64 cm) from the bottom of the label. All type should fall no closer than 3⁄16″ (.48 cm) from the side edges of the label. If you wish to change the dimensions of this two component label to accommodate additional fuel components, you must petition the Federal Trade Commission. You can do this by writing to the Secretary of the Federal Trade Commission, Washington, DC 20580. You must state the size and contents of the label that you wish to use, and the reasons that you want to use it.

(b) *Type size and setting*—(1) *For gasoline labels.* The Helvetica series is used for all numbers and letters with the exception of the octane rating number. Helvetica is available in a variety of phototype setting systems, by linotype, and in a variety of computer desk-top and phototype setting systems. Its name may vary, but the type must conform in style and thickness to the sample provided here. The line ''Minimum Octane Rating'' is set in 12 point Helvetica Bold, all capitals, with letterspace set at 12½ points. The line ''(R+M)/2 METHOD'' is set in 10 point Helvetica Bold, all capitals, with letterspace set at 10½ points. The octane number is set in 96 point Franklin gothic condensed with ⅛″ (.32 cm) space between the numbers.

(2) *For alternative liquid automotive fuel lables (one principal component).* All type should be set in upper case (all caps) ''Helvetica Black'' throughout. Helvetica Black is available in a variety of computer desk-top and phototype setting systems. Its name may vary, but the type must conform in style and thickness to the sample provided here. The spacing between letters and words should be set as ''normal.'' The type for the fuel name is 50 point (½″ (1.27 cm) cap height) ''Helvetica Black,'' knocked out of a 1″ (2.54 cm) deep band. The type for the words ''MINIMUM'' and the principal component is 24 pt. (¼″ (.64 cm) cap height.) The type for percentage is 36 pt. (⅜″ (.96 cm) cap height).

(3) *For alternative liquid automotive fuel labels (two components).* All type should be set in upper case (all caps) ''Helvetica Black'' throughout. Helvetica Black is available in a variety of computer desk-top and phototype setting systems. Its name may vary, but the type must conform in style and thickness to the sample provided here. The spacing between letters and words should be set as ''normal.'' The type for the fuel name is 50 point (½″ 1.27 cm) cap height)

''Helvetica Black,'' knocked out of a 1″ (2.54 cm) deep band. All other type is 24 pt. (¼″ (.64 cm) cap height.)

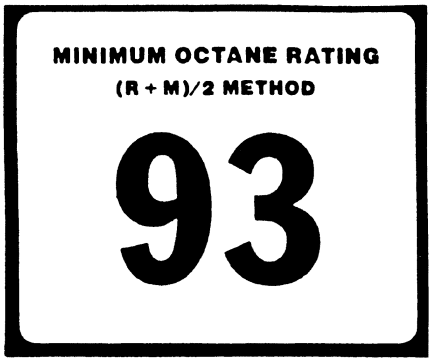
(c) *Colors*—(1) *For gasoline labels.* The basic color on all octane labels is process yellow. All type is process black. All borders are process black. All colors must be non-fade.

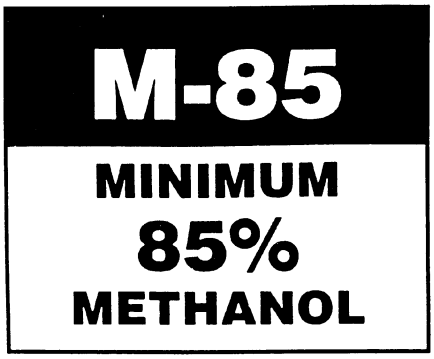
(2) *For alternative liquid automotive fuel labels.* The background color on all the labels is Orange: PMS 1495. The knock-out type within the black band is orange PMS 1495. All other type is process black. All borders are process black. All colors must be non-fade.

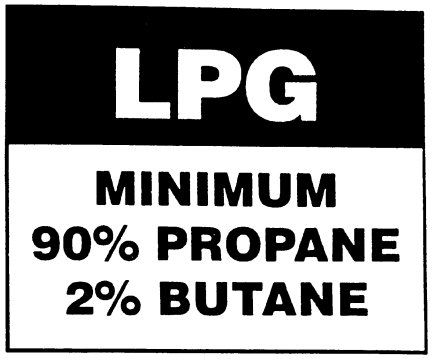
(d) *Contents.* Examples of the contents are shown in the sample labels. The proper octane rating for each gasoline must be shown. The proper automotive fuel rating for each alternative liquid automotive fuel must be shown. No marks or information other than that called for by this rule may appear on the labels.

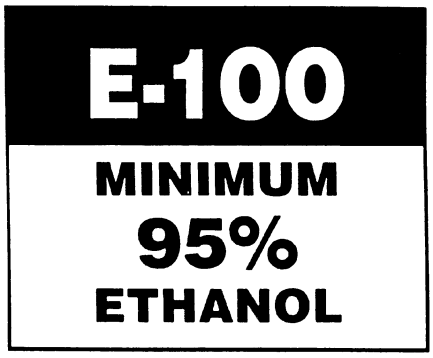
(e) *Special label protection.* All labels must be capable of withstanding extremes of weather conditions for a period of at least one year. They must be resistant to automotive fuel, oil, grease, solvents, detergents, and water.

(f) *Illustrations of labels.* Labels should meet the specifications in this section, and should look like these examples, except the black print should be on the appropriately colored background.









[58 FR 41375, Aug. 3, 1993]

PART 307—REGULATIONS UNDER THE COMPREHENSIVE SMOKELESS TOBACCO HEALTH EDUCATION ACT OF 1986

SCOPE

Sec.
307.1 Scope of regulations in this part.
307.2 Required warnings.

DEFINITIONS

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LABEL DISCLOSURES

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ADVERTISING DISCLOSURES

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307.8 Requirements for disclosure in audio-visual and audio advertising.
307.9 Requirements for disclosure on utilitarian objects.
307.10 Cooperative advertising.

PLANS

307.11 Rotation, display, and distribution of warning statements on smokeless tobacco packages.
307.12 Rotation, display, and dissemination of warning statements in smokeless tobacco advertising.

AUTHORITY: 15 U.S.C. 4401 *et seq.*

SOURCE: 51 FR 40015, Nov. 4, 1986, unless otherwise noted.

SCOPE

§ 307.1 Scope of regulations in this part.

These regulations implement the Comprehensive Smokeless Tobacco Health Education Act of 1986 *to be codified at* 15 U.S.C. 4401.

§ 307.2 Required warnings.

The Comprehensive Smokeless Tobacco Health Education Act of 1986 is the law that requires the enactment of these regulations. Section 7 of this law provides that no statement, other than the three warning statements required by the Act, shall be required by any Federal, State, or local statute or regulation to be included on the package or in the advertisement (unless the advertisement is an outdoor billboard) of a smokeless tobacco product. The warning statements required by the Act are as follows:

WARNING: THIS PRODUCT MAY CAUSE MOUTH CANCER

WARNING: THIS PRODUCT MAY CAUSE GUM DISEASE AND TOOTH LOSS

WARNING: THIS PRODUCT IS NOT A SAFE ALTERNATIVE TO CIGARETTES

DEFINITIONS

§ 307.3 Terms defined.

As used in this part, unless the context otherwise specifically requires:

(a) *Act* means the Comprehensive Smokeless Tobacco Health Education Act of 1986 (Pub. L. 99–252) and any amendments thereto.

(b) *Commission* means the Federal Trade Commission.

(c) *Regulation(s)* means regulations promulgated by the Commission pursuant to sections 3 and 5 of the Act.

(d) *Commerce* means (1) commerce between any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, or Johnston Island and any place outside thereof; (2) commerce between points in any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, or Johnston Island, but through any place outside thereof; or (3) commerce wholly within the District of Columbia, Guam, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, or Johnston Island.

(e) *United States*, when used in a geographical sense, means the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, and installations of the Armed Forces.

(f) *Smokeless tobacco product* means any finely cut, ground, powered, or leaf tobacco that is intended to be placed in the oral cavity, including snuff, chewing tobacco, and plug tobacco.

(g) *Brand* means smokeless tobacco products that bear a common identifying name or mark, regardless of whether the products are differentiated by type of product, size, shape, packaging, or other characteristic, and, in the case of generic or private label smokeless tobacco products, means all products produced by a single manufacturer or its affiliates or imported by a single importer or its affiliates.

(h) *Package* means any pack, can, box, jar, carton, pouch, container, or wrapping in which any smokeless tobacco product is offered for sale, sold, or otherwise distributed to consumers, but for purposes of these regulations *package* does not include (1) any shipping container or wrapping used solely for transporting smokeless tobacco products in bulk or quantity to manufacturers, packagers, processors, wholesalers, or retailers unless the container or wrapping is intended for use as a retail display or (2) any wrapping or container that bears no written, printed, or graphic matter.

(i) *Label* means any written, printed, or graphic matter affixed to or appearing on any smokeless tobacco product or any package containing a smokeless tobacco product with the exception of any revenue stamp affixed to a smokeless tobacco product.

(j) *Billboard* means any outdoor sign with an area of more than 150 square feet.

(k) *Manufacturer* means any person who manufacturers, produces, or processes any smokeless tobacco product.

(l) *Packager* means any person who puts any smokeless tobacco product into packages to be offered for sale, sold, or distributed to consumers.

(m) *Importer* means any person who puts any smokeless tobacco product that was not manufactured inside the United States into commerce to be offered for sale, sold, or distributed to consumers.

(n) *Utilitarian objects* means items, other than smokeless tobacco products, that are sold or given or caused to be sold or given by any manufacturer, packager or importer to consumers for their personal use and that display the brand name, logo, or selling message of any smokeless tobacco product. Such items include, but are not limited to, pens, pencils, clothing or sporting goods.

[51 FR 40015, Nov. 4, 1986, as amended at 56 FR 11662, Mar. 20, 1991]

GENERAL REQUIREMENTS

§ 307.4 Prohibited acts.

(a) No manufacturer, packager, or importer of any smokeless tobacco product shall distribute, or cause to be distributed, in commerce any smokeless tobacco product in a package that, in accordance with the labeling requirements of the Act and these regulations, does not bear one of the following warning statements.

WARNING: THIS PRODUCT MAY CAUSE MOUTH CANCER

WARNING: THIS PRODUCT MAY CAUSE GUM DISEASE AND TOOTH LOSS

WARNING: THIS PRODUCT IS NOT A SAFE ALTERNATIVE TO CIGARETTES

Each smokeless tobacco product shall upon being prepared for distribution in commerce for retail sale, but before it is distributed to be offered for retail sale, be labeled in accordance with the Act and regulations in this part. In the case of an importer, the label statements may be affixed in the country of origin or after importation into the United States, but shall be affixed before the smokeless tobacco product is removed from bond for sale or distribution. This section does not apply to any smokeless tobacco product that is manufactured, packaged, or imported in the United States for export from the United States, if the product is not in fact distributed in commerce for use in the United States.

(b) No manufacturer, packager, or importer of any smokeless tobacco product shall advertise or cause to be advertised (other than through the use of billboard advertising) within the United States any smokeless tobacco product unless the advertising bears one of the warning statements as required by the Act and the regulations and set forth in § 307.4(a). This requirement is not applicable to company and divisional names, when used as such, to signs on factories, plants, warehouses, and other facilities related to the manufacturer or factory storage of smokeless tobacco, to corporate or financial reports, to communications to security holders and others who customarily receive copies of these communications, to employment advertising, to advertising in tobacco trade publications, or to promotional materials that are distributed to smokeless tobacco wholesalers, dealers, or merchants, but not to consumers. In addition, this requirement does not apply to shelf-talkers and similar product locators with a display area of 12 square inches or less.

(c) No manufacturer, packager, or importer shall fail to submit a plan to the Commission which specifies the method that will be used to rotate, display, and distribute the statements required by the Act and regulations in this part. The Commission shall approve a plan if the plan provides for the rotation, display, and distribution of the statements in a manner that complies with the Act and these regulations. Authority to approve plans submitted by smokeless tobacco manufacturers, packagers, and importers has been delegated by the Commission to the Associate Director for Advertising Practices. Where significant issues not previously considered by the Commission are present, however, those plans will be referred by the Associate Director for Advertising Practices to the Commission in the first instance. This delegation is authorized by section 1(a) of the Reorganization Plan No. 4 of 1961 in order to enhance the efficiency and

result in expedited treatment of these plans. Pursuant to section 1(b) of the Reorganization Plan, the Commission will retain the discretionary right to review the actions of the delegate. Any smokeless tobacco manufacturer, packager, or importer may within 30 days of the delegate's action file with the Secretary of the Commission a request for full Commission review of the action. If no review is sought by petition of the submitter of a plan or any intervenor or upon the Commission's own initiative within 30 days of the action, or if a review is sought and denied in this 30 day period, the delegate's action shall be deemed to be the action of the Commission.

(d) A manufacturer, packager, or importer of smokeless tobacco products shall be deemed to be in compliance with the Act and these regulations if it has taken reasonable steps to:

(1) Provide, by written contract or other clear instructions, for the rotation of the label statements required by the Act;

(2) Give clear instructions and, if possible, furnish materials (such as film negatives, acetates, or other facsimiles) for the production of smokeless tobacco packages and advertising that contain the required warning statements; and

(3) Prevent and correct mistakes, errors, or omissions that have come to its attention.

In the event of the distribution of labels or the publication of advertisements that do not conform with the Act and these regulations, the burden of establishing that reasonable steps have been taken (including fulfilling the conditions described in paragraphs (d)(1) through (3) of this section) to comply shall rest with the manufacturer, packager, or importer of smokeless tobacco.

[51 FR 40015, Nov. 4, 1986, as amended at 56 FR 11662, Mar. 20, 1991]

§ 307.5 Language requirements.

The warning statement on the label of a smokeless tobacco product required by the Act and these regulations shall be set out in the English language. If the label of a smokeless tobacco product contains a required warning in a language other than English, the required warning must also appear in English. In the case of an advertisement for a smokeless tobacco product in a newspaper, magazine, periodical, or other publication that is not in English, the warning statement shall appear in the predominant language of the publication in which the advertisement appears. In the case of any other advertisement, the warning statement shall appear in the same language as that principally used in the advertisement.

LABEL DISCLOSURES

§ 307.6 Requirements for disclosure on the label.

(a) In the case of the label of a smokeless tobacco package, the warning statement required by the Act and these regulations must be in a conspicuous and prominent place on the package. A conspicuous and prominent place is a part of a label that is likely to be displayed, presented, shown, or examined. For example, in the case of the following types of packages, the following places shall be deemed to be conspicuous and prominent.

Cylindrical can—Side of the package

Pouch—Front of the package, provided that, in the case of a pouch with two identical face panels, the front of the pouch is the face panel upon which the warning is printed

Rectangular box of snuff, plug of chewing tobacco, or dispenser of individual packages of smokeless tobacco that may be purchased in its entirety—Any side of the package, provided that the side panel used does not bear any written or graphic matter other than the background color of the side panel and reasonable extensions of graphic matter from other panels

However, in the case of any package of smokeless tobacco, absent special circumstances, the required warning statement shall not be deemed to be in a conspicuous and prominent place if it appears on the bottom (that is, the underside) of the package or is printed on the tear line or on any other surface where it will be obliterated when the package is opened. However, in the case of a rectangular package that is wrapped in a continuous sheet of foil or plastic with randomly appearing label information, the required warning shall be deemed to be in a conspicuous

and prominent place if it appears at least once in its entirety on any part of the package that is not crimped or seamed.

(b) The label statement required by the Act and these regulations must also be in a conspicuous format and in a conspicuous and legible type in contrast with all other printed material on the package. The required warning statement shall be deemed to be in a conspicuous format if it appears in two to four lines that are parallel to each other as well as to the base of the package. However, in the case of a cylindrical package with a diameter of 1 and ¾ inches or less the required warning statement need not be parallel with the base of the package to be deemed to be in a conspicuous format. In the case of all packages the required warning statement shall be deemed to be in a conspicuous format if it is separated in every direction from other written or graphic matter on the label by the equivalent of at least twice the point size of the type in which the warning is printed or if it is the only written matter on the surface of the package. The required warning statement shall be deemed to be in a conspicuous and legible type if it appears in all capitals in Univers 57 normal or an equivalent type style. For example, in the case of the following types of packages with the specified capacity, the following type sizes shall be deemed to be conspicuous and legible.

1 and ½ ounce snuff can—Seven point type

2 to 4 ounce pouch or plug of chewing tobacco—Eight point type, provided that if the warning statement is printed in one line, it will be deemed to be conspicuous and legible in eleven point type

Can roll consisting of cans wrapped for sale as a single unit—Twelve point type, provided that, if the warning statements on the individual cans are completely visible no warning statement is required on the outer wrapping

Dispenser of individual packages of smokeless tobacco that may be purchased in its entirety—Twelve point type

The required warning statement shall be deemed to be in contrast with all other printed material on the package if it is printed in a color (including black and white) that is clearly visible against the background on which the warning appears.

ADVERTISING DISCLOSURES

§ 307.7 Requirements for disclosure in print advertising.

(a) In the case of print advertisements for smokeless tobacco, including but not limited to, advertisements in newspapers, magazines, or other periodicals; point-of-sale promotional materials; non-point of sale promotional materials such as leaflets, pamphlets, coupons, direct mail circulars, or paperback book inserts; and posters and placards (other than outdoor billboard advertising), the warning statement required by the Act and these regulations must be in a conspicuous and prominent location, in conspicuous and legible type in contrast with all other printed material in the advertisement and must appear in capital letters in a circle and arrow format. A conspicuous and prominent location is anywhere within the trim area other than the margin in the case of an advertisement in a newspaper, magazine, or other periodical, and in all cases is not immediately next to other written matter or to any circular designs, elements, or similar geometric forms (other than a picture of a smokeless tobacco package such as a cylindrical snuff can). A circle and arrow will not be deemed to be conspicuous and prominent if it is included as an integral part of a specific design or illustration, such as a picture of the package, in the advertisement, unless at least 80 percent of the area of the advertisement is taken up by a picture of the package.

(b) The advertising warning statements required by the Act and these regulations must be in conspicuous and legible type in contrast with all other printed material in the advertisement and must appear in all capital letters in a circle and arrow format. The proportions of the circle and arrow shall be deemed to be conspicuous if they are such that the base of the arrow is equal to ¾ of the diameter of the circle; the neck of the arrow is equal to ⅛ of the diameter of the circle; the widest part of the head of the arrow is equal to the diameter of the circle; the tip of the arrow is centered at a point equal to ¾ of the diameter from the lowest point of the circle; and the distance between the tip of the arrow and the base of the

arrow is equal to ⅜ of the diameter of the circle. The statements shall be deemed to be conspicous if they are parallel to the foot of the advertisement and centered in the circle, and the word ''WARNING'' followed by a colon appears in the neck of the arrow.

(c) The required warning statement shall be deemed to be conspicuous if it is printed in all capitals in Univers 57 normal or an equivalent type style and:

(1) The rule and the statement are printed in a color (including black and white) that is clearly visible against the background upon which they appear; and

(2) The background field within the circle and arrow is clearly visible against the background of the advertisement; and

(3) The warning has the following minimum outside dimensions in relation to the size of the advertisement.

1
Display Area: ***Up to 15 square inches***
Circle Diameter: ***1/2"***
Rule Width: ***1 point***
Type Size: ***4 1/2 point, set solid***
Type Style: ***Univers 57***

2
Display Area: ***15 to 65 square inches***
Circle Diameter: ***1"***
Rule Width: ***1 1/2 point***
Type Size: ***8 point, set solid***
Type Style: ***Univers 57***

3
Display Area: ***65 to 110 square inches***
Circle Diameter: ***1 1/4"***
Rule Width: ***2 point***
Type Size: ***10 point, set solid***
Type Style: ***Univers 57***

4
Display Area: ***110 to 180 square inches***
Circle Diameter: ***1 1/2"***
Rule Width: ***2 1/2 point***
Type Size: ***12 point, set solid***
Type Style: ***Univers 57***

5
Display Area: ***180 to 360 square inches***
Circle Diameter: ***1 3/4"***
Rule Width: ***2 1/2 point***
Type Size: ***14 point, set solid***
Type Style: ***Univers 57***

6
Display Area: ***360 to 470 square inches***
Circle Diameter: ***2"***
Rule Width: ***2 1/2 point***
Type Size: ***16 point, set solid***
Type Style: ***Univers 57***

7
Display Area: ***470 to 720 square inches***
Circle Diameter: ***3 1/4"***
Rule Width: ***3 1/2 point***
Type Size: ***27 point, set solid***
Type Style: ***Univers 57***

8
Display Area: ***5 to 10 square feet***
Circle Diameter: ***3 3/4"***
Rule Width: ***3 1/2 point***
Type Size: ***30 point, set solid***
Type Style: ***Univers 57***

9
Display Area: ***10 to 20 square feet***
Circle Diameter: ***6"***
Rule Width: ***3 1/2 point***
Type Size: ***48 point, set solid***
Type Style: ***Univers 57***

10
Display Area: ***20 to 30 square feet***
Circle Diameter: ***7"***
Rule Width: ***7 point***
Type Size: ***58 point, set solid***
Type Style: ***Univers 57***

11
Display Area: ***30 to 40 square feet***
Circle Diameter: ***8 3/4"***
Rule Width: ***9 point***
Type Size: ***72 point, set solid***
Type Style: ***Univers 57***

12
Display Area: ***40 to 80 square feet***
Circle Diameter: ***11 3/4"***
Rule Width: ***12 point***
Type Size: ***96 point, set solid***
Type Style: ***Univers 57***

13
Display Area: ***Over 80 square feet***
Circle Diameter: ***1' 4 3/4"***
Rule Width: ***14 point***
Type Size: ***1 7/16" cap height, set solid***
Type Style: ***Univers 57***

A warning printed in black in a circle with a black rule and a white interior background shall be deemed a clearly visible color against a clearly visible background, except that any such black on white warning that appears against a uniform white background in an advertisement shall be deemed to be conspicuous only if it meets the size requirements of § 307.7(d) of this section.

(d) As an alternative to the format specified in § 307.7(c), the required

warning statement shall be deemed to be conspicuous if it is printed in all capitals in Univers 67 normal or an equivalent type style and

(1) The rule that forms the circle and arrow and the required statement are printed in a color (including black and white) that is clearly visible against the background upon which they appear,

(2) The background of the circle and arrow is a uniform color, and

(3) The warning has the following minimum outside dimensions in relation to the size of the advertisement.

1
Display Area: ***Up to 15 square inches***
Circle Diameter: ***5/8"***
Rule Width: ***1 point***
Type Size: ***5 point, set solid***
Type Style: ***Univers 67***

2
Display Area: ***15 to 65 square inches***
Circle Diameter: ***1 1/4"***
Rule Width: ***2 point***
Type Size: ***10 point, set solid***
Type Style: ***Univers 67***

3
Display Area: ***65 to 110 square inches***
Circle Diameter: ***1 5/8"***
Rule Width: ***2 1/2 point***
Type Size: ***12 point, set solid***
Type Style: ***Univers 67***

4
Display Area: ***110 to 180 square inches***
Circle Diameter: ***2"***
Rule Width: ***3 point***
Type Size: ***15 point, set solid***
Type Style: ***Univers 67***

5
Display Area: ***180 to 360 square inches***
Circle Diameter: ***2 1/4"***
Rule Width: ***3 point***
Type Size: ***17 point, set solid***
Type Style: ***Univers 67***

6
Display Area: ***360 to 470 square inches***
Circle Diameter: ***2 5/8"***
Rule Width: ***3 point***
Type Size: ***20 point, set solid***
Type Style: ***Univers 67***

7
Display Area: ***470 to 720 square inches***
Circle Diameter: ***4 1/4"***
Rule Width: ***4 point***
Type Size: ***34 point, set solid***
Type Style: ***Univers 67***

8
Display Area: ***5 to 10 square feet***
Circle Diameter: ***4 7/8"***
Rule Width: ***4 point***
Type Size: ***36 point, set solid***
Type Style: ***Univers 67***

9
Display Area: ***10 to 20 square feet***
Circle Diameter: ***7 3/4"***
Rule Width: ***6 point***
Type Size: ***57 point, set solid***
Type Style: ***Univers 67***

10
Display Area: ***20 to 30 square feet***
Circle diameter: ***9 1/8"***
Rule Width: ***9 point***
Type Size: ***76 point, set solid***
Type Style: ***Univers 67***

11
Display Area: ***30 to 40 square feet***
Circle Diameter: ***11 3/8"***
Rule Width: ***11 point***
Type Size: ***94 point, set solid***
Type Style: ***Univers 67***

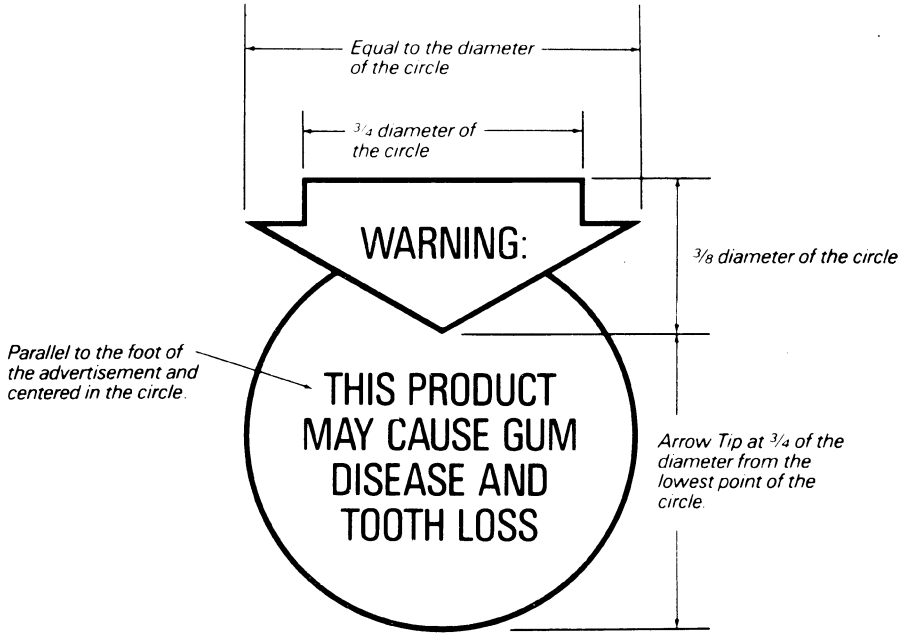
12
Display Area: ***40 to 80 square feet***
Circle Diameter: ***15 1/4"***
Rule Width: ***15 point***
Type Size: ***1 5/16" cap height, set solid***
Type Style: ***Univers 67***

13
Display Area: ***Over 80 square feet***
Circle Diameter: ***1' 9 3/4"***
Rule Width: ***17 point***
Type Size: ***1 13/16" cap height, set solid***
Type Style: ***Univers 67***

(e) An advertisement in a newspaper, magazine, or other periodical that occupies more than one page shall not be required to have more than one warning statement, but the dimensions of the circle and arrow shall be determined by the aggregate area of the entire advertisement, and the warning

statement shall appear on the page that contains most of the advertisement. Point-of-sale and non-point of sale promotional materials of more than one page in length shall not be required to have more than one warning statement, and the dimensions of the circle and arrow shall be determined by the size of the advertisement on the page on which most of the advertisement appears. Warning statements in circles and arrows that meet the specifications of this section and conform to the following diagram shall be deemed to be in a conspicuous format.

How to Conform to the Rule



§307.8 Requirements for disclosure in audiovisual and audio advertising.

In the case of advertisements for smokeless tobacco on videotapes, casettes, or discs; promotional films or filmstrips; and promotional audiotapes or other types of sound recordings, the warning statement required by the Act and these regulations must be conspicuous and prominent. If the advertisement has a visual component, the warning statement shall be deemed to be conspicuous and prominent if it is superimposed on the screen in a circle and arrow format at the end of the advertisement for a length of time and in graphics so that it is easily legible. If the advertisement has an audio component, the warning statement shall be

deemed to be conspicuous and prominent if it is announced at the end of the advertisement in a manner that is clearly audible. If an advertisement has both a visual and an audio component, the warning statement shall be deemed to be conspicuous and prominent if it is superimposed on the screen in a circle and arrow format and announced simultaneously at the end of the advertisement in a manner that is easily legible and clearly audible. Provided, however, in the case of an audio advertisement in a retail store or other place where smokeless tobacco products are offered for sale, no warning shall be required, even if a manufacturer, packager, or importer of smokeless tobacco products provides an incentive for disseminating the ad, so long as the announcement includes only the brand name or product identifier, the price, and the product's location in the store.

§ 307.9 Requirements for disclosure on utilitarian objects.

(a) In the case of advertisements for smokeless tobacco products on utilitarian objects, the warning statements required by the Act and these regulations must be in a conspicuous and legible type in contrast with all other printed material on the object and must appear within the circle and arrow format. The proportions of the circle and arrow shall be deemed to be conspicuous if in accordance with with those set forth in § 307.7(b). The required warning statement shall be deemed conspicuous if it conforms to the requirements and proportions as set forth in §§ 307.7(c) and 307.7(d). For purposes of determining the size of the warning statement, the display area for an advertisement on a utilitarian object shall be the visible area on which the brand name, logo or selling message appears. For example, the display area for a t-shirt with a brand name, logo or selling message on the front or back is the entire front or back of the shirt, excluding any sleeves. For a t-shirt with a brand name, logo or selling message on the sleeve, the display area is the sleeve. However, in no case must the diameter of the circle exceed the longest line displayed in the brand name, logo or selling message. The Commission considers a logo to include any brand specific characteristics of a smokeless tobacco product, including but not limited to any recognizable pattern of colors or symbols associated with a particular brand.

(b) The warning statement required by the Act and these regulations must be printed, embossed, embroidered or otherwise affixed to the utilitarian object with a permanence and durability that is comparable to the permanence and durability of the brand name, logo, or selling message. For example, if a product brand name or logo is embroidered on a hat, and a legible warning cannot be embroidered in the proper size due to technological limitations, the warning may be affixed to the hat by another method, so long as its permanence and durability is comparable to that of the brand name, logo or selling message.

(c) The warning statement required by this Act and these regulations must be in a conspicuous and prominent location on the object. A conspicuous and prominent location on the object is one that is proximate to and on the same surface as the smokeless tobacco brand name, logo, or selling message, and is visible when the brand name, logo or selling message is visible. If the brand name, logo or selling message is displayed in more than one location on the utilitarian object, the warning must appear proximate to each brand name, logo or selling message. In the alternative, the warning may appear only once on the object; in that case, however, the advertising display area consists of the aggregate of all the surface areas on which any brand names, logos or selling messages appear.

(d) *Small Items*. For those utilitarian objects under 8 square inches which are viewed predominantly by the user, the warning statement required by this Act and by these regulations shall be deemed conspicuous and prominent when:

(1) Printed on the package of an item, if the item is disseminated in a package to the consumer. The entire surface area of the package would comprise the display area for purposes of determining warning size in accordance

with §§ 307.7 (c) and (d) of the current regulations; or

(2) Placed in the form of a sticker or decal directly onto the item in the Number 1 warning size as set forth in §§ 307.7 (c) and (d) of the current regulations. The item should be packaged in such a way to ensure that the sticker cannot be removed before placement in the hands of the consumer.

(e) *Hats.* For fabric baseball style hats, the warning statement required by the Act and these regulations shall be deemed conspicuous and prominent in the Number 3 size as set forth in §§ 307.7 (c) and (d).

(f) Any manufacturer, packager or importer may apply to the Commission for an exemption from the warning requirements of the Act and these regulations for items such as food products to which the health warnings could logically apply. Authority to grant such exemptions has been delegated by the Commission to the Associate Director for Advertising Practices. Where significant issues not previously considered by the Commission are present, however, those plans will be referred by the Associate Director for Advertising Practices to the Commission in the first instance. This delegation is authorized by section 1(a) of the Reorganization Plan No. 4 of 1961 in order to enhance the efficiency and result in expedited treatment of any request for an exemption. The Commission's discretionary right to review actions of the delegate, and the procedure by which a smokeless tobacco manufacturer, packager, or importer may request full Commission review of the delegate's action are as set forth in § 307.4(c) of these regulations.

[56 FR 11662, Mar. 20, 1991]

§ 307.10 Cooperative advertising.

The Act prohibits any manufacturer, packager, or importer of smokeless tobacco products from advertising or causing to advertise any smokeless tobacco product within the United States without the required warning. Accordingly, all advertisements for smokeless tobacco products (including cooperative advertisement) paid for, directly or indirectly, in whole or in part, by a manufacturer, packager, or importer of smokeless tobacco products must bear the required warning. Provided, however, in the case of a print advertisement for a smokeless tobacco product disseminated by a retailer of smokeless tobacco products, other than a manufacturer, packager, or importer of smokeless tobacco products, with a display area of 4 square inches or less, no warning is required so long as the advertisement contains only the brand name or other product identifier and a price. In addition, no warning is required in the case of certain in-store audio announcements as described in § 307.8. Any advertisement of a smokeless tobacco product paid for entirely by a retailer or any person other than a manufacturer, packager, or importer of smokeless tobacco products need not carry a warning statement.

[51 FR 40015, Nov. 4, 1986. Redesignated at 56 FR 11662, Mar. 20, 1991]

PLANS

§ 307.11 Rotation, display, and distribution of warning statements on smokeless tobacco packages.

(a) In the case of the package of a smokeless tobacco product, each of the three warning statements required by the Act must (1) be displayed randomly by each manufacturer, packager, or importer of a smokeless tobacco product in each 12-month period in as equal a number of times as possible on each brand of the product and (2) be randomly distributed in all parts of the United States in which the product is marketed. The Commission will interpret the statutory language ''equal number of times as possible'' as permitting deviations of 4 percent or less in a 12-month period. Random distribution means that there is nothing in the production or distribution process of a smokeless tobacco product that would prevent the three warning statements on the package from being distributed evenly in all parts of the United States where the product is marketed.

(b) Each manufacturer, packager, or importer of a smokeless tobacco product shall submit to the Commission or its designated representative a plan that provides for the display of the three warning statements on the package of a smokeless tobacco product as

required by the Act and these regulations. This plan shall be sufficiently detailed to enable the Commission to determine whether the warning statements appear on the package in a manner consistent with the Act and these regulations. These requirements may be satisfied in a number of ways. For example, a plan may satisfy the equal display requirement by providing for the engraving or preparation of cylinders, plates, or equivalent production materials in a manner that results in the simultaneous printing of the three required warnings in as near an equal number of times as possible under the circumstances. Alternatively, a plan may satisfy the equal display requirement by providing that stickers bearing the three required warnings be printed in equal numbers and affixed randomly to packages of the product. Alternatively, a plan may satisfy the equal display requirement by providing for the preparation of separate cylinders, plates, and equivalent production materials and requiring that they be changed at fixed intervals in a manner that results in the display of the three required warnings in as near an equal number of times as possible under the circumstances during a 1-year period. In any event, nothing in these regulations requires the use of more than one warning statement on the label of any brand during a given 4-month period.

(c) A plan for the rotation, display, and distribution of warning statements on smokeless tobacco packages shall include representative samples of labels with each of the three warning statements required by the Act and these regulations. This provision does not require submission of a label with each of the required warning statements for every brand marketed by a manufacturer, packager, or importer of smokeless tobacco products and shall be deemed to be satisfied by submission of labels for different types of smokeless tobacco products, such as moist snuff, scotch snuff, and loose-leaf and plug chewing tobacco, and a range of package sizes for each type of product.

[51 FR 40015, Nov. 4, 1986. Redesignated at 56 FR 11662, Mar. 20, 1991]

§ 307.12 Rotation, display, and dissemination of warning statements in smokeless tobacco advertising.

(a) In the case of advertising for a smokeless tobacco product, each of the three warning statements required by the Act must be rotated every 4 months by each manufacturer, packager, or importer of a smokeless tobacco product in an alternating sequence in the advertisement for each brand of the product. Any rotational system, however, may take into account practical constraints on the production and distribution of advertising.

(b) Each manufacturer, packager, or importer of a smokeless tobacco product must submit a plan to the Commission or its designated representative that ensures that the three warning statements are rotated every four (4) months in alternating sequence. There may be more than one system, however, that complies with the Act and these regulations. For example, a plan may require all brands to display the same warning during each four-month period or require each brand to display a different warning during a given four-month period. A plan shall describe the method of rotation and shall include a list of the designated warnings for each four-month period during the first year for each brand. A plan shall describe the method that will be used to ensure the proper rotation in different advertising media in sufficient detail to ensure compliance with the Act and these regulations, although a number of different methods may satisfy these requirements. For example, a satisfactory plan for advertising in newspapers, magazines, or other periodicals could provide for rotation according to either the cover or closing date of the publication. A satisfactory plan for posters and placards, other than billboard advertising, could provide for rotation according to either the scheduled or the actual appearance of the advertising. A satisfactory plan for point-of-sale and non-point-of-sale promotional materials such as leaflets, pamphlets, coupons, direct mail circulars, paperback book inserts, or non-print items, or for utilitarian objects, could provide for rotation according to the date the materials or objects are

ordered by the smokeless tobacco manufacturer, or the date the objects or materials are scheduled to be disseminated, provided that the production of such materials or objects is carried out in a manner consistent with customary business practices.

(c) A plan for the rotation, display, and dissemination of warning statements in smokeless tobacco advertising shall include a representative sample of each of the three warning statements required by the Act and these regulations. This provision does not require the submission of all advertising for each brand marketed by a manufacturer, packager, or importer of smokeless tobacco products and shall be deemed to be satisfied by submission of actual examples of different types of advertising materials for various brands, prototypes of actual advertising materials, the warning statement as it would appear in different sizes of advertisements, or acetates or other facsimiles for the warning statement as it would appear in different sizes of advertisements.

[51 FR 40015, Nov. 4, 1986. Redesignated and amended at 56 FR 11662, 11663, Mar. 20, 1991; 58 FR 4874, Jan. 15, 1993; 61 FR 45886, Aug. 30, 1996]

PART 308—TRADE REGULATION RULE PURSUANT TO THE TELEPHONE DISCLOSURE AND DISPUTE RESOLUTION ACT OF 1992

Sec.
308.1 Scope of regulations in this part.
308.2 Definitions.
308.3 Advertising of pay-per-call services.
308.4 Special rule for infrequent publications.
308.5 Pay-per-call service standards.
308.6 Access to information.
308.7 Billing and collection for pay-per-call services.
308.8 Severability.
308.9 Rulemaking review.

AUTHORITY: Pub. L. 102–556, 106 Stat. 4181 (15 U.S.C. 5701, et seq.)

SOURCE: 58 FR 42400, Aug. 9, 1993, unless otherwise noted.

§ 308.1 Scope of regulations in this part.

This rule implements titles II and III of the Telephone Disclosure and Dispute Resolution Act of 1992, to be codified in relevant part at 15 U.S.C. 5711–14, 5721–24.

§ 308.2 Definitions.

(a) *Bona fide educational service* means any pay-per-call service dedicated to providing information or instruction relating to education, subjects of academic study, or other related areas of school study.

(b) *Commission* means the Federal Trade Commission.

(c) *Pay-per-call service* has the meaning provided in section 228 of the Communications Act of 1934, 47 U.S.C. 228.[1]

(d) *Person* means any individual, partnership, corporation, association, government or governmental subdivision or agency, or other entity.

(e)(1) *Presubscription or comparable arrangement* means a contractual agreement in which

(i) The service provider clearly and conspicuously discloses to the consumer all material terms and conditions associated with the use of the service, including the service provider's name and address, a business telephone number which the consumer

[1] Section 228 of the Communications Act of 1934 states:

(1) The term *pay-per-call services* means any service—

(A) In which any person provides or purports to provide—

(i) Audio information or audio entertainment produced or packaged by such person;

(ii) Access to simultaneous voice conversation services; or

(iii) Any service, including the provision of a product, the charges for which are assessed on the basis of the completion of the call;

(B) For which the caller pays a per-call or per-time-interval charge that is greater than, or in addition to, the charge for transmission of the call; and

(C) Which is accessed through use of a 900 telephone number or other prefix or area code designated by the (Federal Communications) Commission in accordance with subsection (b)(5) (47 U.S.C. 228(b)(5)).

(2) Such term does not include directory services provided by a common carrier or its affiliate or by a local exchange carrier or its affiliate, or any service the charge for which is tariffed, or any service for which users are assessed charges only after entering into a presubcription or comparable arrangement with the provider of such service.

may use to obtain additional information or to register a complaint, and the rates for the service;

(ii) The service provider agrees to notify the consumer of any future rate changes;

(iii) The consumer agrees to utilize the service on the terms and conditions disclosed by the service provider; and

(iv) The service provider requires the use of an identification number or other means to prevent unauthorized access to the service by nonsubscribers.

(2) Disclosure of a credit card or charge card number, along with authorization to bill that number, made during the course of a call to a pay-per-call service shall constitute a presubscription or comparable arrangement if the credit or charge card is subject to the dispute resolution requirements of the Fair Credit Billing Act and the Truth in Lending Act, as amended. No other action taken by the consumer during the course of a call to a pay-per-call service can be construed as creating a presubscription or comparable arrangement.

(f) *Program-length commercial* means any commercial or other advertisement fifteen (15) minutes in length or longer or intended to fill a television or radio broadcasting or cablecasting time slot of fifteen (15) minutes in length or longer.

(g) *Provider of pay-per-call services* means any person who sells or offers to sell a pay-per-call service. A person who provides only transmission services or billing and collection services shall not be considered a provider of pay-per-call services.

(h) *Reasonably understandable volume* means at an audible level that renders the message intelligible to the receiving audience, and, in any event, at least the same audible level as that principally used in the advertisement or the pay-per-call service.

(i) *Service bureau* means any person, other than a common carrier, who provides, among other things, access to telephone service and voice storage to pay-per-call service providers.

(j) *Slow and deliberate manner* means at a rate that renders the message intelligible to the receiving audience, and, in any event, at a cadence or rate no faster than that principally used in the advertisement or the pay-per-call service.

(k) *Sweepstakes*, including games of chance, means a game or promotional mechanism that involves the elements of a prize and chance and does not require consideration.

§ 308.3 Advertising of pay-per-call services.

(a) *General requirements*. The following requirements apply to disclosures required in advertisements under §§ 308.3 (b)–(d), and (f):

(1) The disclosures shall be made in the same language as that principally used in the advertisement.

(2) Television video and print disclosures shall be of a color or shade that readily contrasts with the background of the advertisement.

(3) In print advertisements, disclosures shall be parallel with the base of the advertisement.

(4) Audio disclosures, whether in television or radio, shall be delivered in a slow and deliberate manner and in a reasonably understandable volume.

(5) Nothing contrary to, inconsistent with, or in mitigation of, the required disclosures shall be used in any advertisement in any medium; nor shall any audio, video or print technique be used that is likely to detract significantly from the communication of the disclosures.

(6) In any program-length commercial, required disclosures shall be made at least three times (unless more frequent disclosure is otherwise required) near the beginning, middle and end of the commercial.

(b) *Cost of the call*. (1) The provider of pay-per-call services shall clearly and conspicuously disclose the cost of the call, in Arabic numerals, in any advertisement for the pay-per-call service, as follows:

(i) If there is a flat fee for the call, the advertisement shall state the total cost of the call.

(ii) If the call is billed on a time-sensitive basis, the advertisement shall state the cost per minute and any minimum charges. If the length of the program can be determined in advance, the advertisement shall also state the

maximum charge that could be incurred if the caller listens to the complete program.

(iii) If the call is billed on a variable rate basis, the advertisement shall state, in accordance with §§ 308.3(b)(1) (i) and (ii), the cost of the initial portion of the call, any minimum charges, and the range of rates that may be charged depending on the options chosen by the caller.

(iv) The advertisement shall disclose any other fees that will be charged for the service.

(v) if the caller may be transferred to another pay-per-call service, the advertisement shall disclose the cost of the other call, in accordance with §§ 308.3(b)(1) (i), (ii), (iii), and (iv).

(2) For purposes of § 308.3(b), disclosures shall be made ''clearly and conspicuously'' as set forth in § 308.3(a) and as follows:

(i) In a television or videotape advertisement, the video disclosure shall appear adjacent to each video presentation of the pay-per-call number. However, in an advertisement displaying more than one pay-per-call number with the same cost, the video disclosure need only appear adjacent to the largest presentation of the pay-per-call number. Each letter or numeral of the video disclosure shall be, at a minimum, one-half the size of each letter or numeral of the pay-per-call number to which the disclosure is adjacent. In addition, the video disclosure shall appear on the screen for the duration of the presentation of the pay-per-call number. An audio disclosure shall be made at least once, simultaneously with a video presentation of the disclosure. However, no audio presentation of the disclosure is required in: (A) An advertisement fifteen (15) seconds or less in length in which the pay-per-call number is not presented in the audio portion, or (B) an advertisement in which there is no audio presentation of information regarding the pay-per-call service, including the pay-per-call number. In an advertisement in which the pay-per-call number is presented *only* in the audio portion, the cost of the call shall be delivered immediately following the first and last delivery of the pay-per-call number, except that in a program-length commercial, the disclosure shall be delivered immediately following each delivery of the pay-per-call number.

(ii) In a print advertisement, the disclosure shall be placed adjacent to each presentation of the pay-per-call number. However, in an advertisement displaying more than one pay-per-call number with the same cost, the disclosure need only appear adjacent to the largest presentation of the pay-per-call number. Each letter or numeral of the disclosure shall be, at a minimum, one-half the size of each letter or numeral of the pay-per-call number to which the disclosure is adjacent.

(iii) In a radio advertisement, the disclosure shall be made at least once, and shall be delivered immediately following the first delivery of the pay-per-call number. In a program-length commercial, the disclosure shall be delivered immediately following each delivery of the pay-per-call number.

(c) *Sweepstakes; games of chance.* (1) The provider of pay-per-call services that advertises a prize or award or a service or product at no cost or for a reduced cost, to be awarded to the winner of any sweepstakes, including games of chance, shall clearly and conspicuously disclose in the advertisement the odds of being able to receive the prize, award, service, or product at no cost or reduced cost. If the odds are not calculable in advance, the advertisement shall disclose the factors used in calculating the odds. Either the advertisement or the preamble required by § 308.5(a) for such service shall clearly and conspicuously disclose that no call to the pay-per-call service is required to participate, and shall also disclose the existence of a free alternative method of entry, and either instructions on how to enter, or a local or toll-free telephone number or address to which consumers may call or write for information on how to enter the sweepstakes. Any description or characterization of the prize, award, service, or product that is being offered at no cost or reduced cost shall be truthful and accurate.

(2) For purposes of § 308.3(c), disclosures shall be made ''clearly and conspicuously'' as set forth in § 308.3(a) and as follows:

(i) In a television or videotape advertisement, the disclosures may be made in either the audio or video portion of the advertisement. If the disclosures are made in the video portion, they shall appear on the screen in sufficient size and for sufficient time to allow consumers to read and comprehend the disclosures.

(ii) In a print advertisement, the disclosures shall appear in a sufficient size and prominence and such location to be readily noticeable, readable and comprehensible.

(d) *Federal programs.* (1) The provider of pay-per-call services that advertises a pay-per-call service that is not operated or expressly authorized by a Federal agency, but that provides information on a Federal program, shall clearly and conspicuously disclose in the advertisement that the pay-per-call service is not authorized, endorsed, or approved by any Federal agency. Advertisements providing information on a Federal program shall include, but not be limited to, advertisements that contain a seal, insignia, trade or brand name, or any other term or symbol that reasonably could be interpreted or construed as implying any Federal government connection, approval, or endorsement.

(2) For purposes of § 308.3(d), disclosures shall be made ''clearly and conspicuously'' as set forth in § 308.3(a) and as follows:

(i) In a television or videotape advertisement, the disclosure may be made in either the audio or video portion of the advertisement. If the disclosure is made in the video portion, it shall appear on the screen in sufficient size and for sufficient time to allow consumers to read and comprehend the disclosure. The disclosure shall begin within the first fifteen (15) seconds of the advertisement.

(ii) In a print advertisement, the disclosure shall appear in a sufficient size and prominence and such location to be readily noticeable, readable and comprehensible. The disclosure shall appear in the top one-third of the advertisement.

(iii) In a radio advertisement, the disclosure shall begin within the first fifteen (15) seconds of the advertisement.

(e) *Prohibition on advertising to children.* (1) The provider of pay-per-call services shall not direct advertisements for such pay-per-call services to children under the age of 12, unless the service is a bona fide educational service.

(2) For the purposes of this regulation, advertisements directed to children under 12 shall include: any pay-per-call advertisement appearing during or immediately adjacent to programming for which competent and reliable audience composition data demonstrate that more than 50% of the audience is composed of children under 12, and any pay-per-call advertisement appearing in a periodical for which competent and reliable readership data demonstrate that more than 50% of the readership is composed of children under 12.

(3) For the purposes of this regulation, if competent and reliable audience composition or readership data does not demonstrate that more than 50% of the audience or readership is composed of children under 12, then the Commission shall consider the following criteria in determining whether an advertisement is directed to children under 12:

(i) Whether the advertisement appears in a publication directed to children under 12, including, but not limited to, books, magazines and comic books;

(ii) Whether the advertisement appears during or immediately adjacent to television programs directed to children under 12, including, but not limited to, children's programming as defined by the Federal Communications Commission, animated programs, and after-school programs;

(iii) Whether the advertisement appears on a television station or channel directed to children under 12;

(iv) Whether the advertisement is broadcast during or immediately adjacent to radio programs directed to children under 12, or broadcast on a radio station directed to children under 12;

(v) Whether the advertisement appears on the same video as a commercially-prepared video directed to children under 12, or preceding a movie directed to children under 12 shown in a movie theater;

(vi) Whether the advertisement or promotion appears on product packaging directed to children under 12; and

(vii) Whether the advertisement, regardless of when or where it appears, is directed to children under 12 in light of its subject matter, visual content, age of models, language, characters, tone, message, or the like.

(f) *Advertising to individuals under the age of 18.* (1) The provider of pay-per-call services shall ensure that any pay-per-call advertisement directed primarily to individuals under the age of 18 shall contain a clear and conspicuous disclosure that all individuals under the age of 18 must have the permission of such individual's parent or legal guardian prior to calling such pay-per-call service.

(2) For purposes of § 308.3(f), disclosures shall be made ''clearly and conspicuously'' as set forth in § 308.3(a) and as follows:

(i) In a television or videotape advertisement, each letter or numeral of the video disclosure shall be, at a minimum, one-half the size of each letter or numeral of the largest presentation of the pay-per-call number. The video disclosure shall appear on the screen for sufficient time to allow consumers to read and comprehend the disclosure. An audio disclosure shall be made at least once, simultaneously with a video presentation of the disclosure. However, no audio presentation of the disclosure is required in: (A) An advertisement fifteen (15) seconds or less in length in which the pay-per-call number is not presented in the audio portion, or (B) an advertisement in which there is no audio presentation of information regarding the pay-per-call service, including the pay-per-call number.

(ii) In a print advertisement, each letter or numeral of the disclosure shall be, at a minimum, one-half the size of each letter or numeral of the largest presentation of the pay-per-call number.

(3) For the purposes of this regulation, advertisements directed primarily to individuals under 18 shall include: Any pay-per-call advertisement appearing during or immediately adjacent to programming for which competent and reliable audience composition data demonstrate that more than 50% of the audience is composed of individuals under 18, and any pay-per-call advertisement appearing in a periodical for which competent and reliable readership data demonstrate that more than 50% of the readership is composed of individuals under 18.

(4) For the purposes of this regulation, if competent and reliable audience composition or readership data does not demonstrate that more than 50% of the audience or readership is composed of individuals under 18, then the Commission shall consider the following criteria in determining whether an advertisement is directed primarily to individuals under 18:

(i) Whether the advertisement appears in publications directed primarily to individuals under 18, including, but not limited to, books, magazines and comic books;

(ii) Whether the advertisement appears during or immediately adjacent to television programs directed primarily to individuals under 18, including, but not limited to, mid-afternoon weekday television shows;

(iii) Whether the advertisement is broadcast on radio stations that are directed primarily to individuals under 18;

(iv) Whether the advertisement appears on a cable or broadcast television station directed primarily to individuals under 18;

(v) Whether the advertisement appears on the same video as a commercially-prepared video directed primarily to individuals under 18, or preceding a movie directed primarily to individuals under 18 shown in a movie theater; and

(vi) Whether the advertisement, regardless of when or where it appears, is directed primarily to individuals under 18 in light of its subject matter, visual content, age of models, language, characters, tone, massage, or the like.

(g) *Electronic tones in advertisements.* The provider of pay-per-call services is prohibited from using advertisements that emit electronic tones that can automatically dial a pay-per-call service.

(h) *Telephone solicitations.* The provider of pay-per-call services shall ensure that any telephone message that solicits calls to the pay-per-call service

discloses the cost of the call in a slow and deliberate manner and in a reasonably understandable volume, in accordance with §§ 308.3(b)(1)(i)-(v).

(i) *Referral to toll-free telephone numbers*. The provider of pay-per-call services is prohibited from referring in advertisements to an 800 telephone number, or any other telephone number advertised as or widely understood to be toll-free, if that number violates the prohibition concerning toll-free numbers set forth in § 308.5(i).

§ 308.4 Special rule for infrequent publications.

(a) The provider of any pay-per-call service that advertises a pay-per-call service in a publication that meets the requirements set forth in § 308.4(c) may include in such advertisement, in lieu of the cost disclosures required by § 308.3(b), a clear and conspicuous disclosure that a call to the advertised pay-per-call service may result in a substantial charge.

(b) The provider of any pay-per-call service that places an alphabetical listing in a publication that meets the requirements set forth in § 308.4(c) is not required to make any of the disclosures required by §§ 308.3 (b), (c), (d) and (f) in the alphabetical listing, provided that such listing does not contain any information except the name, address and telephone number of the pay-per-call provider.

(c) The publication referred to in § 308.4 (a) and (b) must be:

(1) Widely distributed;

(2) Printed annually or less frequently; and

(3) One that has an established policy of not publishing specific prices in advertisements.

§ 308.5 Pay-per-call service standards.

(a) *Preamble message*. The provider of pay-per-call services shall include, in each pay-per-call message, an introductory disclosure message (''preamble'') in the same language as that principally used in the pay-per-call message, that clearly, in a slow and deliberate manner and in a reasonably understandable volume:

(1) Identifies the name of the provider of the pay-per-call service and describes the service being provided;

(2) Specifies the cost of the service as follows:

(i) If there is a flat fee for the call, the preamble shall state the total cost of the call;

(ii) If the call is billed on a time-sensitive basis, the preamble shall state the cost per minute and any minimum charges; if the length of the program can be determined in advance, the preamble shall also state the maximum charge that could be incurred if the caller listens to the complete program;

(iii) If the call is billed on a variable rate basis, the preamble shall state, in accordance with §§ 308.5(a)(2) (i) and (ii), the cost of the initial portion of the call, any minimum charges, and the range of rates that may be charged depending on the options chosen by the caller;

(iv) Any other fees that will be charged for the service shall be disclosed, as well as fees for any other pay-per-call service to which the caller may be transferred;

(3) Informs the caller that charges for the call begin, and that to avoid charges the call must be terminated, three seconds after a clearly discernible signal or tone indicating the end of the preamble;

(4) Informs the caller that anyone under the age of 18 must have the permission of parent or legal guardian in order to complete the call; and

(5) Informs the caller, in the case of a pay-per-call service that is not operated or expressly authorized by a Federal agency but that provides information on a Federal program, or that uses a trade or brand name or any other term that reasonably could be interpreted or construed as implying any Federal government connection, approval or endorsement, that the pay-per-call service is not authorized, endorsed, or approved by any Federal agency.

(b) *No charge to caller for preamble message*. The provider of pay-per-call services is prohibited from charging a caller any amount whatsoever for such a service if the caller hangs up at any time prior to three seconds after the signal or tone indicating the end of the preamble described in § 308.5(a). However, the three-second delay, and the

message concerning such delay described in § 308.5(a)(3), is not required if the provider of pay-per-call services offers the caller an affirmative means (such as pressing a key on a telephone keypad) of indicating a decision to incur the charges.

(c) *Nominal cost calls.* The preamble described in § 308.5(a) is not required when the entire cost of the pay-per-call service, whether billed as a flat rate or on a time sensitive basis, is $2.00 or less.

(d) *Data service calls.* The preamble described in § 308.5(a) is not required when the entire call consists of the non-verbal transmission of information.

(e) *Bypass mechanism.* The provider of pay-per-call services that offers to frequent callers or regular subscribers to such services the option of activating a bypass mechanism to avoid listening to the preamble during subsequent calls shall not be deemed to be in violation of § 308.5(a), *provided that* any such bypass mechanism shall be disabled for a period of no less than 30 days immediately after the institution of an increase in the price for the service or a change in the nature of the service offered.

(f) *Billing limitations.* The provider of pay-per-call services is prohibited from billing consumers in excess of the amount described in the preamble for those services and from billing for any services provided in violation of any section of this rule.

(g) *Stopping the assessment of time-based charges.* The provider of pay-per-call services shall stop the assessment of time-based charges immediately upon disconnection by the caller.

(h) *Prohibition on services to children.* The provider of pay-per-call services shall not direct such services to children under the age of 12, unless such service is a bona fide educational service. The Commission shall consider the following criteria in determining whether a pay-per-call service is directed to children under 12:

(1) Whether the pay-per-call service is advertised in the manner set forth in §§ 308.3(e) (2) and (3); and

(2) Whether the pay-per-call service, regardless of when or where it is advertised, is directed to children under 12, in light of its subject matter, content, language, featured personality, characters, tone, message, or the like.

(i) *Prohibition concerning toll-free numbers.* Any person is prohibited from using an 800 number or other telephone number advertised as or widely understood to be toll-free in a manner that would result in:

(1) The calling party being assessed, by virtue of completing the call, a charge for the call;

(2) The calling party being connected to an access number for, or otherwise transferred to, a pay-per-call service;

(3) The calling party being charged for information conveyed during the call unless the calling party has a presubscription or comparable arrangement to be charged for the information; or

(4) The calling party being called back collect for the provision of audio or data information services, simultaneous voice conversation services, or products.

(j) *Disclosure requirements for billing statements.* The provider of pay-per-call services shall ensure that any billing statement for such provider's charges shall:

(1) Display any charges for pay-per-call services in a portion of the consumer's bill that is identified as not being related to local and long distance telephone charges;

(2) For each charge so displayed, specify the type of service, the amount of the charge, and the date, time, and, for calls billed on a time-sensitive basis, the duration of the call; and

(3) Display the local or toll-free telephone number where consumers can obtain answers to their questions and information on their rights and obligations with regard to their use of pay-per-call services, and can obtain the name and mailing address of the provider of pay-per-call services.

(k) *Refunds to consumers.* The provider of pay-per-call services shall be liable for refunds or credits to consumers who have been billed for pay-per-call services, and who have paid the charges for such services, pursuant to pay-per-call programs that have been found to have violated any provision of this rule or any other Federal rule or law.

(l) *Service bureau liability*. A service bureau shall be liable for violations of the rule by pay-per-call services using its call processing facilities where it knew or should have known of the violation.

§ 308.6 Access to information.

Any common carrier that provides telecommunication services to any provider of pay-per-call services shall make available to the Commission, upon written request, any records and financial information maintained by such carrier relating to the arrangements (other than for the provision of local exchange service) between such carrier and any provider of pay-per-call services.

§ 308.7 Billing and collection for pay-per-call services.

(a) *Definitions*. For the purposes of this section, the following definitions shall apply:

(1) *Billing entity* means any person who transmits a billing statement to a customer for a telephone-billed purchase, or any person who assumes responsibility for receiving and responding to billing error complaints or inquiries.

(2) *Billing error* means any of the following:

(i) A reflection on a billing statement of a telephone-billed purchase that was not made by the customer nor made from the telephone of the customer who was billed for the purchase or, if made, was not in the amount reflected on such statement.

(ii) A reflection on a billing statement of a telephone-billed purchase for which the customer requests additional clarification, including documentary evidence thereof.

(iii) A reflection on a billing statement of a telephone-billed purchase that was not accepted by the customer or not provided to the customer in accordance with the stated terms of the transaction.

(iv) A reflection on a billing statement of a telephone-billed purchase for a call made to an 800 or other toll free telephone number.

(v) The failure to reflect properly on a billing statement a payment made by the customer or a credit issued to the customer with respect to a telephone-billed purchase.

(vi) A computation error or similar error of an accounting nature on a billing statement of a telephone-billed purchase.

(vii) Failure to transmit a billing statement for a telephone-billed purchase to a customer's last known address if that address was furnished by the customer at least twenty days before the end of the billing cycle for which the statement was required.

(viii) A reflection on a billing statement of a telephone-billed purchase that is not identified in accordance with the requirements of § 308.5(j).

(3) *Customer* means any person who acquires or attempts to acquire goods or services in a telephone-billed purchase, or who receives a billing statement for a telephone-billed purchase charged to a telephone number assigned to that person by a providing carrier.

(4) *Preexisting agreement* means a ''presubscription or comparable arrangement,'' as that term is defined in § 308.2(e).

(5) *Providing carrier* means a local exchange or interexchange common carrier providing telephone services (other than local exchange services) to a vendor for a telephone-billed purchase that is the subject of a billing error complaint or inquiry.

(6) *Telephone-billed purchase* means any purchase that is completed solely as a consequence of the completion of the call or a subsequent dialing, touch tone entry, or comparable action of the caller. Such term does not include:

(i) A purchase by a caller pursuant to a preexisting agreement with a vendor;

(ii) Local exchange telephone services or interexchange telephone services or any service that the Federal Communications Commission determines by rule—

(A) Is closely related to the provision of local exchange telephone services or interexchange telephone services; and

(B) Is subject to billing dispute resolution procedures required by Federal or state statute or regulation; or

(iii) The purchase of goods or services that is otherwise subject to billing dispute resolution procedures required by Federal statute or regulation.

(7) *Vendor* means any person who, through the use of the telephone, offers goods or services for a telephone-billed purchase.

(b) *Initiation of billing review*. A customer may initiate a billing review with respect to a telephone-billed purchase by providing the billing entity with notice of a billing error no later than 60 days after the billing entity transmitted the first billing statement that contains a charge for such telephone-billed purchase. If the billing error is the reflection on a billing statement of a telephone-billed purchase not provided to the customer in accordance with the stated terms of the transaction, the 60-day period shall begin to run from the date the goods or services are delivered or, if not delivered, should have been delivered, if such date is later than the date the billing statement was transmitted. A billing error notice shall:

(1) Set forth or otherwise enable the billing entity to identify the customer's name and the telephone number to which the charge was billed;

(2) Indicate the customer's belief that the statement contains a billing error and the type, date, and amount of such; and

(3) Set forth the reasons for the customer's belief, to the extent possible, that the statement contains a billing error.

(c) *Disclosure of method of providing notice; presumption if oral notice is permitted*. A billing entity shall clearly and conspicuously[2] disclose on each billing statement or on other material accompanying the billing statement the method (oral or written) by which the customer may provide notice to initiate review of a billing error in the manner set forth in § 308.7(b). If oral notice is permitted, any customer who orally communicates an allegation of a billing error to a billing entity shall be presumed to have properly initiated a billing review in accordance with the requirements of § 308.7(b).

(d) *Response to customer notice*. A billing entity that receives notice of a billing error as described in § 308.7(b) shall:

(1) Send a written acknowledgement to the customer including a statement that any disputed amount need not be paid pending investigation of the billing error. This shall be done no later than forty (40) days after receiving the notice, unless the action required by § 308.7(d)(2) is taken within such 40-day period; and

(2)(i) Correct the billing error and credit the customer's account for any disputed amount and any related charges, and notify the customer of the correction. The billing entity also shall disclose to the customer that collection efforts may occur despite the credit, and shall provide the names, mailing addresses, and business telephone numbers of the vendor and providing carrier, as applicable, that are the subject of the telephone-billed purchase, or provide the customer with a local or toll-free telephone number that the customer may call to obtain this information directly. However, the billing entity is not required to make the disclosure concerning collection efforts if the vendor, its agent, or the providing carrier, as applicable, will not collect or attempt to collect the disputed charge; or

(ii) Transmit an explanation to the customer, after conducting a reasonable investigation (including, where appropriate, contacting the vendor or providing carrier),[3] setting forth the reasons why it has determined that no

[2] The standard for ''clear and conspicuous'' as used in this section shall be the standard enunciated by the Board of Governors of the Federal Reserve System in its Official Staff Commentary on Regulation Z, which requires simply that the disclosures be in a reasonably understandable form. See 12 CFR part 226, Supplement I, Comment 226.5(a)(1)–1.

[3] If a customer submits a billing error notice alleging either the nondelivery of goods or services or that information appearing on a billing statement has been reported incorrectly to the billing entity, the billing entity shall not deny the assertion unless it conducts a reasonable investigation and determines that the goods or services were actually delivered as agreed or that the information was correct. There shall be a rebuttable presumption that goods or services were actually delivered to the extent that a vendor or providing carrier produces documents prepared and maintained in the ordinary course of business showing the date on, and the place to, which the goods or services were transmitted or delivered.

billing error occurred or that a different billing error occurred from that asserted, make any appropriate adjustments to the customer's account, and, if the customer so requests, provide a written explanation and copies of documentary evidence of the customer's indebtedness.

(3) The action required by § 308.7(d)(2) shall be taken no later than two complete billing cycles of the billing entity (in no event later than ninety (90) days) after receiving the notice of the billing error and before taking any action to collect the disputed amount, or any part thereof. After complying with § 308.7(d)(2), the billing entity shall:

(i) If it is determined that any disputed amount is in error, promptly notify the appropriate providing carrier or vendor, as applicable, of its disposition of the customer's billing error and the reasons therefor; and

(ii) Promptly notify the customer in writing of the time when payment is due of any portion of the disputed amount determined not to be in error, which time shall be the longer of ten (10) days or the number of days the customer is ordinarily allowed (whether by custom, contract or state law) to pay undisputed amounts, and that failure to pay such amount may be reported to a credit reporting agency or subject the customer to a collection action, if that in fact may happen.

(e) *Withdrawal of billing error notice.* A billing entity need not comply with the requirements of § 308.7(d) if the customer has, after giving notice of a billing error and before the expiration of the time limits specified therein, agreed that the billing statement was correct or agreed to withdraw voluntarily the billing error notice.

(f) *Limitation on responsibility for billing error.* After complying with the provisions of § 308.7(d), a billing entity has no further responsibility under that section if the customer continues to make substantially the same allegation with respect to a billing error.

(g) *Customer's right to withhold disputed amount; limitation on collection action.* Once the customer has submitted notice of a billing error to a billing entity, the customer need not pay, and the billing entity, providing carrier, or vendor may not try to collect, any portion of any required payment that the customer reasonably believes is related to the disputed amount until the billing entity receiving the notice has complied with the requirements of § 308.7(d). The billing entity, providing carrier, or vendor are not prohibited from taking any action to collect any undisputed portion of the bill, or from reflecting a disputed amount and related charges on a billing statement, provided that the billing statement clearly states that payment of any disputed amount or related charges is not required pending the billing entity's compliance with § 308.7(d).

(h) *Prohibition on charges for initiating billing review.* A billing entity, providing carrier, or vendor may not impose on the customer any charge related to the billing review, including charges for documentation or investigation.

(i) *Restrictions on credit reporting*—(1) *Adverse credit reports prohibited.* Once the customer has submitted notice of a billing error to a billing entity, a billing entity, providing carrier, vendor, or other agent may not report or threaten directly or indirectly to report adverse information to any person because of the customer's withholding payment of the disputed amount or related charges, until the billing entity has met the requirements of § 308.7(d) and allowed the customer as many days thereafter to make payment as prescribed by § 308.7(d)(3)(ii).

(2) *Reports on continuing disputes.* If a billing entity receives further notice from a customer within the time allowed for payment under § 308.7(i)(1) that any portion of the billing error is still in dispute, a billing entity, providing carrier, vendor, or other agent may not report to any person that the customer's account is delinquent because of the customer's failure to pay that disputed amount unless the billing entity, providing carrier, vendor, or other agent also reports that the amount is in dispute and notifies the customer in writing of the name and address of each person to whom the vendor, billing entity, providing carrier, or other agent has reported the account as delinquent.

(3) *Reporting of dispute resolutions required.* A billing entity, providing carrier, vendor, or other agent shall report in writing any subsequent resolution of any matter reported pursuant to § 308.7(i)(2) to all persons to whom such matter was initially reported.

(j) *Forfeiture of right to collect disputed amount.* Any billing entity, providing carrier, vendor, or other agent who fails to comply with the requirements of §§ 308.7(c), (d), (g), (h), or (i) forfeits any right to collect from the customer the amount indicated by the customer, under § 308.7(b)(2), to be in error, and any late charges or other related charges thereon, up to $50 per transaction.

(k) *Prompt notification of returns and crediting of refunds.* When a vendor other than the billing entity accepts the return of property or forgives a debt for services in connection with a telephone-billed purchase, the vendor shall, within seven (7) business days from accepting the return or forgiving the debt, either:

(1) Mail or deliver a cash refund directly to the customer's address, and notify the appropriate billing entity that the customer has been given a refund, or

(2) Transmit a credit statement to the billing entity through the vendor's normal channels for billing telephone-billed purchases. The billing entity shall, within seven (7) business days after receiving a credit statement, credit the customer's account with the amount of the refund.

(l) *Right of customer to assert claims or defenses.* Any billing entity or providing carrier who seeks to collect charges from a customer for a telephone-billed purchase that is the subject of a dispute between the customer and the vendor shall be subject to all claims (other than tort claims) and defenses arising out of the transaction and relating to the failure to resolve the dispute that the customer could assert against the vendor, if the customer has made a good faith attempt to resolve the dispute with the vendor or providing carrier (other than the billing entity). The billing entity or providing carrier shall not be liable under this paragraph for any amount greater than the amount billed to the customer for the purchase (including any related charges).

(m) *Retaliatory actions prohibited.* A billing entity, providing carrier, vendor, or other agent may not accelerate any part of the customer's indebtedness or restrict or terminate the customer's access to pay-per-call services solely because the customer has exercised in good faith rights provided by this section.

(n) *Notice of billing error rights*—(1) *Annual statement.* (i) A billing entity shall mail or deliver to each customer, with the first billing statement for a telephone-billed purchase mailed or delivered after the effective date of these regulations, a statement of the customer's billing rights with respect to telephone-billed purchases. Thereafter the billing entity shall mail or deliver the billing rights statement at least once per calendar year to each customer to whom it has mailed or delivered a billing statement for a telephone-billed purchase during the previous twelve months. The billing rights statement shall disclose that the rights and obligations of the customer and the billing entity, set forth therein, are provided under the federal Telephone Disclosure and Dispute Resolution Act. The statement shall describe the procedure that the customer must follow to notify the billing entity of a billing error and the steps that the billing entity must take in response to the customer's notice. If the customer is permitted to provide oral notice of a billing error, the statement shall disclose that a customer who orally communicates an allegation of a billing error is presumed to have provided sufficient notice to initiate a billing review. The statement shall also disclose the customer's right to withhold payment of any disputed amount, and that any action to collect any disputed amount will be suspended, pending completion of the billing review. The statement shall further disclose the customer's rights and obligations if the billing entity determines that no billing error occurred, including what action the billing entity may take if the customer continues to withhold payment of the disputed amount. Additionally, the statement shall inform the customer of the billing entity's obligation to forfeit

any disputed amount (up to $50 per transaction) if the billing entity fails to follow the billing and collection procedures prescribed by § 308.7 of this rule.

(ii) A billing entity that is a common carrier may comply with § 308.7(n)(1)(i) by, within 60 days after the effective date of these regulations, mailing or delivering the billing rights statement to all of its customers and, thereafter, mailing or delivering the billing rights statement at least once per calendar year, at intervals of not less than 6 months nor more than 18 months, to all of its customers.

(2) *Alternative summary statement.* As an alternative to § 308.7(n)(1), a billing entity may mail or deliver, on or with each billing statement, a statement that sets forth the procedure that a customer must follow to notify the billing entity of a billing error. The statement shall also disclose the customer's right to withhold payment of any disputed amount, and that any action to collect any disputed amount will be suspended, pending completion of the billing review.

(3) *General disclosure requirements.* (i) The disclosures required by § 308.7(n)(1) shall be made clearly and conspicuously on a separate statement that the customer may keep.

(ii) The disclosures required by § 308.7(n)(2) shall be made clearly and conspicuously and may be made on a separate statement or on the customer's billing statement. If any of the disclosures are provided on the back of the billing statement, the billing entity shall include a reference to those disclosures on the front of the statement.

(iii) At the billing entity's option, additional information or explanations may be supplied with the disclosures required by § 308.7(n), but none shall be stated, utilized, or placed so as to mislead or confuse the customer or contradict, obscure, or detract attention from the information required to be disclosed. The disclosures required by § 308.7(n) shall appear separately and above any other disclosures.

(o) *Multiple billing entities.* If a telephone-billed purchase involves more than one billing entity, only one set of disclosures need by given, and the billing entities shall agree among themselves which billing entity must comply with the requirements that this regulation imposes on any or all of them. The billing entity designated to receive and respond to billing errors shall remain the only billing entity responsible for complying with the terms of § 308.7(d). If a billing entity other than the one designated to receive and respond to billing errors receives notice of a billing error as described in § 308.7(b), that billing entity shall either: (1) Promptly transmit to the customer the name, mailing address, and business telephone number of the billing entity designated to receive and respond to billing errors; or (2) transmit the billing error notice within fifteen (15) days to the billing entity designated to receive and respond to billing errors. The time requirements in § 308.7(d) shall not begin to run until the billing entity designated to receive and respond to billing errors receives notice of the billing error, either from the customer or from the billing entity to whom the customer transmitted the notice.

(p) *Multiple customers.* If there is more than one customer involved in a telephone-billed purchase, the disclosures may be made to any customer who is primarily liable on the account.

§ 308.8 Severability.

The provisions of this rule are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

§ 308.9 Rulemaking review.

No later than four years after the effective date of this Rule, the Commission shall initiate a rulemaking review proceeding to evaluate the operation of the rule.

PART 309—LABELING REQUIREMENTS FOR ALTERNATIVE FUELS AND ALTERNATIVE FUELED VEHICLES

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APPENDIX A TO PART 309—FIGURES FOR PART 309

AUTHORITY: 42 U.S.C. 13232(a).

SOURCE: 60 FR 26955, May 19, 1995, unless otherwise noted.

Subpart A—General

§ 309.1 Definitions.

As used in subparts B and C of this part:

(a) *Acquisition* includes either of the following:

(1) Acquiring the beneficial title to a covered vehicle; or

(2) Acquiring a covered vehicle for transportation purposes pursuant to a contract or similar arrangement for a period of 120 days or more.

(b) *Aftermarket conversion system* means any combination of hardware which allows a vehicle or engine to operate on a fuel other than the fuel which the vehicle or engine was originally certified to use.

(c) *Alternative fuel* means

(1) Methanol, denatured ethanol, and other alcohols;

(2) Mixtures containing 85 percent or more by volume of methanol, denatured ethanol, and/or other alcohols (or such other percentage, but not less than 70 percent, as determined by the Secretary, by rule, to provide for requirements relating to cold start, safety, or vehicle functions), with gasoline or other fuels;

(3) Natural gas;

(4) Liquefied petroleum gas;

(5) Hydrogen;

(6) Coal-derived liquid fuels;

(7) Fuels (other than alcohol) derived from biological materials;

(8) Electricity (including electricity from solar energy); and

(9) Any other fuel the Secretary determines, by rule, is substantially not petroleum and would yield substantial energy security benefits and substantial environmental benefits.

(d)(1) *Consumer* in subpart C means an individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency, department, or instrumentality of the United States.

(2) *Consumer or ultimate purchaser* in subpart B means, with respect to any non-liquid alternative vehicle fuel (including electricity), the first person who purchases such fuel for purposes other than resale.

(e) *Conventional fuel* means gasoline or diesel fuel.

(f) *Covered vehicle* means either of the following:

(1) A dedicated or dual fueled passenger car (or passenger car derivative) capable of seating 12 passengers or less; or

(2) A dedicated or dual fueled motor vehicle (other than a passenger car or passenger car derivative) with a gross vehicle weight rating less than 8,500 pounds which has a vehicle curb weight of less than 6,000 pounds and which has a basic vehicle frontal area of less than 45 square feet, which is:

(i) Designed primarily for purposes of transportation of property or is a derivation of such a vehicle; or

(ii) Designed primarily for transportation of persons and has a capacity of more than 12 persons.

(g) *Dedicated* means designed to operate solely on alternative fuel.

(h) *Distributor* means any person, except a common carrier, who receives non-liquid alternative vehicle fuel (other than electricity) and distributes such fuel to another person other than the consumer. It also means any person, except a common carrier, who receives an electric vehicle fuel dispensing system and distributes such system to a retailer.

(i) *Dual fueled* means capable of operating on alternative fuel and capable of operating on conventional fuel.

(j) *Electric charging system equipment* means equipment that includes an electric battery charger and is used for dispensing electricity to consumers for the purpose of recharging batteries in an electric vehicle.

(k) *Electric vehicle* (''EV'') means a vehicle designed to operate exclusively on electricity stored in a rechargeable battery, multiple batteries, or battery pack.

(l) *Electric vehicle fuel dispensing system* means electric charging system equipment or an electrical energy dispensing system.

(m) *Electrical energy dispensing system* means equipment that does not include an electric charger and is used for dispensing electricity to consumers for the purpose of recharging batteries in an electric vehicle that contains an onboard electric battery charger.

(n) *Emission certification standard* means the emission standard to which a covered vehicle has been certified pursuant to 40 CFR parts 86 and 88.

(o) *Estimated cruising range* for non-EVs means a manufacturer's reasonable estimate of the number of miles a new covered vehicle will travel between refueling, expressed as a lower estimate (i.e., minimum estimated cruising range) and an upper estimate (i.e., maximum estimated cruising range), as determined by § 309.22. Estimated cruising range for EVs means a manufacturer's reasonable estimate of the number of miles a new covered EV will travel between recharging, expressed as a single estimate, as determined by § 309.22.

(p) *Fuel dispenser* means:

(1) For non-liquid alternative vehicle fuels (other than electricity), the dispenser through which a retailer sells the fuel to consumers.

(2) For electric vehicle fuel dispensing systems, the dispenser through which a retailer dispenses electricity to consumers for the purpose of recharging batteries in an electric vehicle.

(q) *Fuel rating* means:

(1) For non-liquid alternative vehicle fuels (other than electricity), including, but not limited to, compressed natural gas and hydrogen gas, the commonly used name of the fuel with a disclosure of the amount, expressed as a minimum molecular percentage, of the principal component of the fuel. A disclosure of other components, expressed as a minimum molecular percentage, may be included, if desired.

(2) For electric vehicle fuel dispensing systems, a common identifier (such as, but not limited to, ''electricity,'' ''electric charging system,'' ''electric charging station'') with a disclosure of the system's kilowatt (''kW'') capacity, voltage, whether the voltage is alternating current (''ac'') or direct current (''dc''), amperage, and whether the system is conductive or inductive.

(r) *Manufacturer* means the person who obtains a certificate of conformity that the vehicle complies with the standards and requirements of 40 CFR parts 86 and 88.

(s) *Manufacturer of an electric vehicle fuel dispensing system* means any person who manufactures or assembles an electric vehicle fuel dispensing system that is distributed specifically for use by retailers in dispensing electricity to consumers for the purpose of recharging batteries in an electric vehicle.

(t) *New covered vehicle* means a covered vehicle which has not been acquired by a consumer.

(u) *New vehicle dealer* means a person who is engaged in the sale or leasing of new covered vehicles.

(v) *New vehicle label* means a window sticker containing the information required by § 309.20(e).

(w) *Non-liquid alternative fueled vehicle* means a vehicle capable of operating on a non-liquid alternative vehicle fuel.

(x) *Non-liquid alternative vehicle fuel* means alternative fuel used for the purpose of powering a non-liquid alternative fueled vehicle, including, but not limited to, compressed natural gas (''CNG''), hydrogen gas (''hydrogen''), electricity, and any other non-liquid vehicle fuel the Secretary determines, by rule, is substantially not petroleum and would yield substantial energy benefits and substantial environmental benefits.

(y) *Person* means an individual, partnership, corporation, or any other business organization.

(z) *Producer* means any person who purchases component elements and combines them to produce and market non-liquid alternative vehicle fuel (other than electricity).

(aa) *Refiner* means any person engaged in the production or importation of non-liquid alternative vehicle fuel (other than electricity).

(bb) *Retailer* means any person who offers for sale, sells, or distributes non-liquid alternative vehicle fuel (including electricity) to consumers.

(cc) *Secretary* means the Secretary of the United States Department of Energy.

(dd) *Used covered vehicle* means a covered vehicle which has been acquired by a consumer, but does not include any vehicle sold only for scrap or parts (title documents surrendered to the State and a salvage certificate issued).

(ee) *Used vehicle dealer* means a person engaged in the sale or leasing of used covered vehicles who has sold or leased five or more used covered vehicles in the previous twelve months, but does not include a bank or financial institution, a business selling or leasing used covered vehicles to an employee of that business, or a lessor selling or leasing a leased vehicle by or to that vehicle's lessee or to an employee of the lessee.

(ff) *Used vehicle label* means a window sticker containing the information required by § 309.21(e).

(gg) *Vehicle fuel tank capacity* means the tank's usable capacity (i.e., the volume of fuel that can be pumped into the tank through the filler pipe with the vehicle on a level surface and with the unusable capacity already in the tank). The term does not include unusable capacity (i.e., the volume of fuel left at the bottom of the tank when the vehicle's fuel pump can no longer draw fuel from the tank), the vapor volume of the tank (i.e., the space above the fuel tank filler neck), or the volume of the fuel tank filler neck.

§ 309.2 What this part does.

This part establishes labeling requirements for non-liquid alternative vehicle fuels, and for certain vehicles powered in whole or in part by alternative fuels.

§ 309.3 Stayed or invalid portions.

If any portion of this part is stayed or held invalid, the rest of it will stay in force.

§ 309.4 Preemption.

Inconsistent state and local regulations are preempted to the extent they would frustrate the purposes of this part.

Subpart B—Requirements for Alternative Fuels

DUTIES OF IMPORTERS, PRODUCERS, AND REFINERS OF NON-LIQUID ALTERNATIVE VEHICLE FUELS (OTHER THAN ELECTRICITY) AND OF MANUFACTURERS OF ELECTRIC VEHICLE FUEL DISPENSING SYSTEMS

§ 309.10 Alternative vehicle fuel rating.

(a) If you are an importer, producer, or refiner of non-liquid alternative vehicle fuel (other than electricity), you must determine the fuel rating of all non-liquid alternative vehicle fuel (other than electricity) before you transfer it. You can do that yourself or through a testing lab. To determine fuel ratings, you must possess a reasonable basis, consisting of competent and reliable evidence, for the minimum percentage of the principal component of the non-liquid alternative vehicle fuel (other than electricity) that you must disclose, and for the minimum

percentages of other components that you choose to disclose. For the purposes of this section, fuel ratings for the minimum percentage of the principal component of compressed natural gas are to be determined in accordance with test methods set forth in American Society for Testing and Materials (''ASTM'') D 1945–91, ''Standard Test Method for Analysis of Natural Gas by Gas Chromatography.'' For the purposes of this section, fuel ratings for the minimum percentage of the principal component of hydrogen gas are to be determined in accordance with test methods set forth in ASTM D 1946–90, ''Standard Practice for Analysis of Reformed Gas by Gas Chromatography.'' This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of D 1945–91 and D 1946–90 may be obtained from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103, or may be inspected at the Federal Trade Commission, Public Reference Room, room 130, 600 Pennsylvania Avenue, NW, Washington, DC, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

(b) If you are a manufacturer of electric vehicle fuel dispensing systems, you must determine the fuel rating of the electric charge delivered by the electric vehicle fuel dispensing system before you transfer such systems. To determine the fuel rating of the electric vehicle fuel dispensing system, you must possess a reasonable basis, consisting of competent and reliable evidence, for the following output information you must disclose: kilowatt (''kW'') capacity, voltage, whether the voltage is alternating current (''ac'') or direct current (''dc''), amperage, and whether the system is conductive or inductive.

[60 FR 26955, May 19, 1995, as amended at 69 FR 18803, Apr. 9, 2004]

§ 309.11 Certification.

(a) For non-liquid alternative vehicle fuel (other than electricity), in each transfer you make to anyone who is not a consumer, you must certify the fuel rating of the non-liquid alternative vehicle fuel (other than electricity) consistent with your determination. You can do this in either of two ways:

(1) Include a delivery ticket or other paper with each transfer of non-liquid alternative vehicle fuel (other than electricity). It may be an invoice, bill of lading, bill of sale, terminal ticket, delivery ticket, or any other written proof of transfer. It must contain at least these four items:

(i) Your name;

(ii) The name of the person to whom the non-liquid alternative vehicle fuel (other than electricity) is transferred;

(iii) The date of the transfer; and

(iv) The fuel rating.

(2) Give the person a letter or written statement. This letter must include the date, your name, the other person's name, and the fuel rating of any non-liquid alternative vehicle fuel (other than electricity) you will transfer to that person from the date of the letter onwards. This letter of certification will be good until you transfer non-liquid alternative vehicle fuel (other than electricity) with a lower percentage of the principal component, or of any other component disclosed in the certification. When this happens, you must certify the fuel rating of the new non-liquid alternative vehicle fuel (other than electricity) either with a delivery ticket or by sending a new letter of certification.

(b) For electric vehicle fuel dispensing systems, in each transfer you make to anyone who is not a consumer, you must certify the fuel rating of the electric vehicle fuel dispensing system consistent with your determination. You can do this in either of two ways:

(1) Include a delivery ticket or other paper with each transfer of an electric vehicle fuel dispensing system. It may be an invoice, bill of lading, bill of sale, delivery ticket, or any other written proof of transfer. It must contain at least these five items:

(i) Your name;

(ii) The name of the person to whom the electric vehicle fuel dispensing system is transferred;

(iii) The date of the transfer;

(iv) The model number, serial number, or other identifier of the electric vehicle fuel dispensing system; and

(v) The fuel rating.

(2) Make the required certification by placing clearly and conspicuously on the electric vehicle fuel dispensing system a permanent legible marking or permanently attached label that discloses the manufacturer's name, the model number, serial number, or other identifier of the system, and the fuel rating. Such marking or label must be located where it can be seen after installation of the system. The marking or label will be deemed ''legible,'' in terms of placement, if it is located in close proximity to the manufacturer's identification marking. This marking or label must be in addition to, and not a substitute for, the label required to be posted on the electric vehicle fuel dispensing system by the retailer.

(c) When you transfer non-liquid alternative vehicle fuel (other than electricity), or an electric vehicle fuel dispensing system, to a common carrier, you must certify the fuel rating of the non-liquid alternative vehicle fuel (other than electricity) or electric vehicle fuel dispensing system to the common carrier, either by letter or on the delivery ticket or other paper, or by a permanent marking or label attached to the electric vehicle fuel dispensing system by the manufacturer.

§ 309.12 Recordkeeping.

You must keep for one year records of how you determined fuel ratings. The records must be available for inspection by Federal Trade Commission staff members, or by people authorized by FTC.

DUTIES OF DISTRIBUTORS OF NON-LIQUID ALTERNATIVE VEHICLE FUELS (OTHER THAN ELECTRICITY) AND OF ELECTRIC VEHICLE FUEL DISPENSING SYSTEMS

§ 309.13 Certification.

(a) If you are a distributor of non-liquid alternative vehicle fuel (other than electricity), you must certify the fuel rating of the fuel in each transfer you make to anyone who is not a consumer. You may certify either by using a delivery ticket or other paper with each transfer of fuel, as outlined in § 309.11(a)(1), or by using a letter of certification, as outlined in § 309.11(a)(2).

(b) If you are a distributor of electric vehicle fuel dispensing systems, you must certify the fuel rating of the system in each transfer you make to anyone who is not a consumer. You may certify by using a delivery ticket or other paper with each transfer, as outlined in § 309.11(b)(1), or by using the permanent marking or permanent label attached to the system by the manufacturer, as outlined in § 309.11(b)(2).

(c) If you do not blend non-liquid alternative vehicle fuels (other than electricity), you must certify consistent with the fuel rating certified to you. If you blend non-liquid alternative vehicle fuel (other than electricity), you must possess a reasonable basis, consisting of competent and reliable evidence, as required by § 309.10(a), for the fuel rating that you certify for the blend.

(d) When you transfer non-liquid alternative vehicle fuel (other than electricity), or an electric vehicle fuel dispensing system, to a common carrier, you must certify the fuel rating of the non-liquid alternative vehicle fuel (other than electricity) or electric vehicle fuel dispensing system to the common carrier, either by letter or on the delivery ticket or other paper, or by a permanent marking or label attached to the electric vehicle fuel dispensing system by the manufacturer. When you receive non-liquid alternative vehicle fuel (other than electricity), or an electric vehicle fuel dispensing system, from a common carrier, you also must receive from the common carrier a certification of the fuel rating of the non-liquid alternative vehicle fuel (other than electricity) or electric vehicle fuel dispensing system, either by letter or on the delivery ticket or other paper, or by a permanent marking or label attached to the electric vehicle fuel dispensing system by the manufacturer.

§ 309.14 Recordkeeping.

You must keep for one year any delivery tickets, letters of certification,

or other paper on which you based your fuel rating certifications for non-liquid alternative vehicle fuels (other than electricity) and for electric vehicle fuel dispensing systems. You also must keep for one year records of any fuel rating determinations you made according to § 309.10. If you rely for your certification on a permanent marking or permanent label attached to the electric vehicle fuel dispensing system by the manufacturer, you must not remove or deface the permanent marking or label. The records must be available for inspection by Federal Trade Commission staff members, or by persons authorized by FTC.

DUTIES OF RETAILERS

§ 309.15 Posting of non-liquid alternative vehicle fuel rating.

(a) If you are a retailer who offers for sale or sells non-liquid alternative vehicle fuel (other than electricity) to consumers, you must post the fuel rating of each non-liquid alternative vehicle fuel. If you are a retailer who offers for sale or sells electricity to consumers through an electric vehicle fuel dispensing system, you must post the fuel rating of the electric vehicle fuel dispensing system you use. You must do this by putting at least one label on the face of each fuel dispenser through which you sell non-liquid alternative vehicle fuel. If you are selling two or more kinds of non-liquid alternative vehicle fuels with different fuel ratings from a single fuel dispenser, you must put separate labels for each kind of non-liquid alternative vehicle fuel on the face of the fuel dispenser.

(b)(1) The label, or labels, must be placed conspicuously on the fuel dispenser so as to be in full view of consumers and as near as reasonably practical to the price per unit of the non-liquid alternative vehicle fuel.

(2) You may petition for an exemption from the placement requirements by writing the Secretary of the Federal Trade Commission, Washington, DC 20580. You must state the reasons that you want the exemption.

(c) If you do not blend non-liquid alternative vehicle fuels (other than electricity), you must post consistent with the fuel rating certified to you. If you blend non-liquid alternative vehicle fuel (other than electricity), you must possess a reasonable basis, consisting of competent and reliable evidence, as required by § 309.10(a), for the fuel rating that you post for the blend.

(d)(1) You must maintain and replace labels as needed to make sure consumers can easily see and read them.

(2) If the labels you have are destroyed or are unusable or unreadable for some unexpected reason, you may satisfy this part by posting a temporary label as much like the required label as possible. You must still get and post the required label without delay.

(e) The following examples of fuel rating disclosures for CNG and hydrogen are meant to serve as illustrations of compliance with this part, but do not limit the rule's coverage to only the mentioned non-liquid alternative vehicle fuels (other than electricity):

(1) ''CNG''

''Minimum''
''XXX%''
''Methane''

(2) ''Hydrogen''

''Minimum''
''XXX%''
''Hydrogen''

(f) The following example of fuel rating disclosures for electric vehicle fuel dispensing systems is meant to serve as an illustration of compliance with this part:

''Electricity''
''XX kW''
''XXX vac/XX amps''
''Inductive''

(g) When you receive non-liquid alternative vehicle fuel (other than electricity), or an electric vehicle fuel dispensing system, from a common carrier, you also must receive from the common carrier a certification of the fuel rating of the non-liquid alternative vehicle fuel (other than electricity) or electric vehicle fuel dispensing system, either by letter or on the delivery ticket or other paper, or by a permanent marking or label attached to the electric vehicle fuel dispensing system by the manufacturer.

§ 309.16 Recordkeeping.

You must keep for one year any delivery tickets, letters of certification, or other paper on which you based your posting of fuel ratings for non-liquid alternative vehicle fuels. You also must keep for one year records of any fuel rating determinations you made according to § 309.10. If you rely for your posting on a permanent marking or permanent label attached to the electric vehicle fuel dispensing system by the manufacturer, you must not remove or deface the permanent marking or label. The required records, other than the permanent marking or label on the electric vehicle fuel dispensing system, may be kept at the retail outlet or at a reasonably close location. The records, including the permanent marking or label on each electric vehicle fuel dispensing system, must be available for inspection by Federal Trade Commission staff members or by persons authorized by FTC.

LABEL SPECIFICATIONS

§ 309.17 Labels.

All labels must meet the following specifications:

(a) *Layout:*

(1) *Non-liquid alternative vehicle fuel (other than electricity) labels with disclosure of principal component only*. The label is 3″ (7.62 cm) wide × 2½″ (6.35 cm) long. ''Helvetica black'' type is used throughout. All type is centered. The band at the top of the label contains the name of the fuel. This band should measure 1″ (2.54 cm) deep. Spacing of the fuel name is ¼″ (.64 cm) from the top of the label and 3⁄16″ (.48 cm) from the bottom of the black band, centered horizontally within the black band. The first line of type beneath the black band is ⅛″ (.32 cm) from the bottom of the black band. All type below the black band is centered horizontally, with ⅛″ (.32 cm) between lines. The bottom line of type is 3⁄16″ (.48 cm) from the bottom of the label. All type should fall no closer than 3⁄16″ (.48 cm) from the side edges of the label. If you wish to change the format of this single component label, you must petition the Federal Trade Commission. You can do this by writing to the Secretary of the Federal Trade Commission, Washington, DC 20580. You must state the size and contents of the label that you wish to use, and the reasons that you want to use it.

(2) *Non-liquid alternative vehicle fuel (other than electricity) labels with disclosure of two components*. The label is 3″ (7.62 cm) wide × 2½″ (6.35 cm) long. ''Helvetica black'' type is used throughout. All type is centered. The band at the top of the label contains the name of the fuel. This band should measure 1″ (2.54 cm) deep. Spacing of the fuel name is ¼″ (.64 cm) from the top of the label and 3⁄16″ (.48 cm) from the bottom of the black band, centered horizontally within the black band. The first line of type beneath the black band is 3⁄16″ (.48 cm) from the bottom of the black band. All type below the black band is centered horizontally, with ⅛″ (.32 cm) between lines. The bottom line of type is ¼″ (.64 cm) from the bottom of the label. All type should fall no closer than 3⁄16″ (.48 cm) from the side edges of the label. If you wish to change the format of this two component label, you must petition the Federal Trade Commission. You can do this by writing to the Secretary of the Federal Trade Commission, Washington, DC 20580. You must state the size and contents of the label that you wish to use, and the reasons that you want to use it.

(3) *Electric vehicle fuel dispensing system labels*. The label is 3″ (7.62 cm) wide × 2½″ (6.35 cm) long. ''Helvetica black'' type is used throughout. All type is centered. The band at the top of the label contains the common identifier of the fuel. This band should measure 1″ (2.54 cm) deep. Spacing of the common identifier is ¼″ (.64 cm) from the top of the label and 3⁄16″ (.48 cm) from the bottom of the black band, centered horizontally within the black band. The first line of type beneath the black band is 3⁄16″ (.48 cm) from the bottom of the black band. All type below the black band is centered horizontally, with ⅛″ (.32 cm) between lines. The bottom line of type is ¼″ (.64 cm) from the bottom of the label. All type should fall no closer than 3⁄16″ (.48 cm) from the side edges of the label.

(b) *Type size and setting:*

(1) *Labels for non-liquid alternative vehicle fuels (other than electricity) with*

disclosure of principal component only. All type should be set in upper case (all caps) ''Helvetica Black'' throughout. Helvetica Black is available in a variety of computer desk-top and phototypesetting systems. Its name may vary, but the type must conform in style and thickness to the sample provided here. The spacing between letters and words should be set as ''normal.'' The type for the fuel name is 50 point (½″ (1.27 cm) cap height) knocked out of a 1″ (2.54 cm) deep band. The type for the words ''MINIMUM'' and the principal component is 24 pt. (¼″ (.64 cm) cap height). The type for percentage is 36 pt. (⅜″ (.96 cm) cap height).

(2) *Labels for non-liquid alternative vehicle fuels (other than electricity) with disclosure of two components.* All type should be set in upper case (all caps) ''Helvetica Black'' throughout. Helvetica Black is available in a variety of computer desk-top and phototypesetting systems. Its name may vary, but the type must conform in style and thickness to the sample provided here. The spacing between letters and words should be set as ''normal.'' The type for the fuel name is 50 point (½″ 1.27 cm) cap height) knocked out of a 1″ (2.54 cm) deep band. All other type is 24 pt. (¼″ (.64 cm) cap height).

(3) *Labels for electric vehicle fuel dispensing systems.* All type should be set in upper case (all caps) ''Helvetica Black'' throughout. Helvetica Black is available in a variety of computer desk-top and photo-typesetting systems. Its name may vary, but the type must conform in style and thickness to the sample provided here. The spacing between letters and words should be set as ''normal.'' The type for the common identifier is 50 point (½″ 1.27 cm) cap height) knocked out of a 1″ (2.54 cm) deep band. All other type is 24 pt. (¼″ (.64 cm) cap height).

(c) *Colors:* The background color on the labels for all non-liquid alternative vehicle fuels (including electricity), and the color of the knock-out type within the black band, is Orange: PMS 1495. All other type is process black. All borders are process black. All colors must be non-fade.

(d) *Contents.* Examples of the contents are shown in Figures 1 through 3. The proper fuel rating for each non-liquid alternative vehicle fuel (including electricity) must be shown. No marks or information other than that called for by this part may appear on the labels.

(e) *Special label protection.* All labels must be capable of withstanding extremes of weather conditions for a period of at least one year. They must be resistant to vehicle fuel, oil, grease, solvents, detergents, and water.

(f) *Illustrations of labels.* Labels must meet the specifications in this section and look like Figures 1 through 3 of appendix A, except the black print should be on the appropriately colored background.

Subpart C—Requirements for Alternative Fueled Vehicles

§ 309.20 Labeling requirements for new covered vehicles.

(a) *Affixing and maintaining labels.* (1) Before offering a new covered vehicle for acquisition to consumers, manufacturers shall affix or cause to be affixed, and new vehicle dealers shall maintain or cause to be maintained, a new vehicle label on a visible surface of each such vehicle.

(2) If an aftermarket conversion system is installed on a vehicle by a person other than the manufacturer prior to such vehicle's being acquired by a consumer, the manufacturer shall provide that person with the vehicle's estimated cruising range (as determined by § 309.22(a) for dedicated vehicles and § 309.22(b) for dual fueled vehicles) and ensure that new vehicle labels are affixed to such vehicles as required by paragraph (a) of this section.

(b) *Layout.* Figures 4, 5, and 5.1 are prototype labels that demonstrate the proper layout. All positioning, spacing, type size, and line widths shall be similar to and consistent with the prototype labels. Labels required by this section are one-sided and rectangular in shape measuring 7 inches (17.78 cm) wide and 7½ inches (19.05 cm) long. Figure 4 of appendix A represents the prototype for the labels for dedicated vehicles. Figures 5 and 5.1 of appendix A represent the prototype of the labels for dual-fueled vehicles; Figure 5 of appendix A represents the prototype for vehicles with one fuel tank and Figure

5.1 of appendix A represents the prototype for vehicles with two fuel tanks. No marks or information other than that specified in this subpart shall appear on this label except that the label may include part numbers, bar codes, and vehicle identification numbers consistent with Figures 4, 5, and 5.1.

(c) *Type size and setting.* The Helvetica Condensed and Helvetica family typefaces or equivalent shall be used exclusively on the label. Specific type sizes and faces to be used are indicated on the prototype labels (Figures 4, 5, and 5.1 of appendix A). No hyphenation should be used in setting headline or text copy. Positioning and spacing should follow the prototypes closely.

(d) *Colors and paper stock.* All labels shall be printed in process black ink on Hammermill Offset Opaque Vellum/S.70 Sky Blue (or equivalent) paper.

(e) *Content.* (1) Headlines and text, as illustrated in Figures 4, 5, and 5.1 of appendix A, are standard for all labels.

(2) *Estimated cruising range.* (i) For dedicated vehicles, determined in accordance with § 309.22(a).

(ii) For dual fueled vehicles, determined in accordance with § 309.22(b).

[69 FR 55338, Sept. 14, 2004]

§ 309.21 Labeling requirements for used covered vehicles.

(a) *Affixing and maintaining labels.* Before offering a used covered vehicle for acquisition to consumers, used vehicle dealers shall affix and maintain, or cause to be affixed and maintained, a used vehicle label on a visible surface of each such vehicle.

(b) *Layout.* Figure 6 of appendix A is the prototype label that demonstrates the proper layout. All positioning, spacing, type size, and line widths should be similar to and consistent with the prototype label. The label required by this section is one-sided and rectangular in shape measuring 7 inches (17.78 cm) in width and 7½ inches (19.05 cm) in height. No marks or information other than that specified in this subpart shall appear on this label, except that the label may include part numbers, bar codes, and vehicle identification numbers consistent with Figure 6.

(c) *Type size and setting.* The Helvetica Condensed and Helvetica family typefaces or equivalent shall be used exclusively on the label. Specific type sizes and faces to be used are indicated on the prototype label (Figure 6 of appendix A). No hyphenation should be used in setting headline or text copy. Positioning and spacing should follow the prototype closely.

(d) *Colors and paper stock.* All labels shall be printed in process black ink on Hammermill Offset Opaque Vellum/S.70 Sky Blue (or equivalent) paper.

(e) *Contents.* Headlines and text, as illustrated in Figure 6 of appendix A, are standard for all labels.

[69 FR 55338, Sept. 14, 2004]

§ 309.22 Determining estimated cruising range.

(a) *Dedicated vehicles.* (1) Estimated cruising range values for dedicated vehicles required to comply with the provisions of 40 CFR part 600 are to be calculated in accordance with the following:

(i) The lower range value shall be determined by multiplying the vehicle's estimated city fuel-economy by its fuel tank capacity, then rounding to the next lower integer value.

(ii) The upper range value shall be determined by multiplying the vehicle's estimated highway fuel-economy by its fuel tank capacity, then rounding to the next higher integer value.

(2) Estimated cruising range for an EV is the actual vehicle range determined in accordance with test methods set forth in Society of Automotive Engineers (''SAE'') Surface Vehicle Recommended Practice SAE J1634–1993–05–20, ''Electric Vehicle Energy Consumption and Range Test Procedure.'' This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of SAE J1634–1993–05–20 may be obtained from the Society of Automotive Engineers, 400 Commonwealth Drive, Warrendale, PA, 15096–0001, or may be inspected at the Federal Trade Commission, Public Reference Room, room 130, 600 Pennsylvania Avenue, NW, Washington, DC, or at the National Archives and Records

Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

(3) To determine the estimated cruising range values for dedicated vehicles not required to comply with the provisions of 40 CFR part 600 (other than electric vehicles), you must possess a reasonable basis, consisting of competent and reliable evidence that substantiates the minimum and maximum number of miles the vehicle will travel between refuelings or rechargings that is claimed.

(b) *Dual-fueled vehicles*. (1) Estimated cruising range values for dual-fueled vehicles required to comply with the provisions of 40 CFR part 600 are to be calculated in accordance with the following:

(i) The lower range value for the vehicle while operating exclusively on alternative fuel shall be determined by multiplying the vehicle's estimated city fuel-economy by its alternative-fuel tank capacity, then rounding to the next lower integer value.

(ii) The upper range value for the vehicle while operating exclusively on alternative fuel shall be determined by multiplying the vehicle's estimated highway fuel-economy by its alternative-fuel tank capacity, then rounding to the next higher integer value.

(iii) The lower range value for the vehicle while operating exclusively on conventional fuel shall be determined by multiplying the vehicle's estimated city fuel-economy by its conventional-fuel tank capacity, then rounding to the next lower integer value.

(iv) The upper range value for the vehicle while operating exclusively on conventional fuel shall be determined by multiplying the vehicle's estimated highway fuel-economy by its conventional-fuel tank capacity, then rounding to the next higher integer value.

(2) [Reserved]

(3) To determine the estimated cruising range values for dual-fueled vehicles not required to comply with the provisions of 40 CFR part 600 (other than electric vehicles), you must possess a reasonable basis, consisting of competent and reliable evidence, of:

(i) The minimum and maximum number of miles the vehicle will travel between refuelings or rechargings when operated exclusively on alternative fuel, and

(ii) The minimum and maximum number of miles the vehicle will travel between refuelings or rechargings when operated exclusively on conventional fuel.

[60 FR 26955, May 19, 1995, as amended at 69 FR 18803, Apr. 9, 2004]

§ 309.23 Recordkeeping.

Manufacturers required to comply this subpart shall establish, maintain, and retain copies of all data, reports, records, and procedures used to meet the requirements of this subpart for three years after the end of the model year to which they relate. They must be available for inspection by Federal Trade Commission staff members, or by people authorized by the Federal Trade Commission.

APPENDIX A TO PART 309—FIGURES FOR PART 309

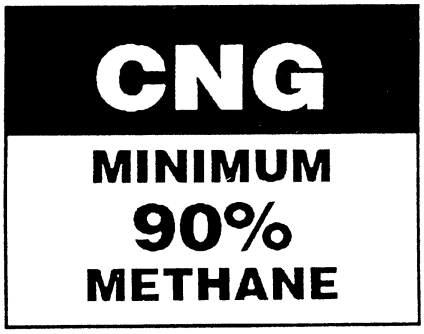

Figure 1

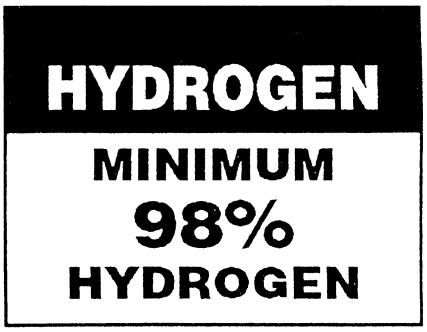

Figure 2

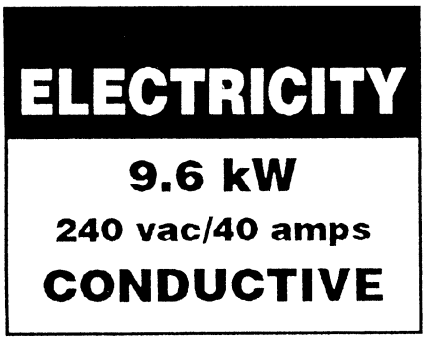

Figure 3

ALTERNATIVE FUELED VEHICLE BUYERS GUIDE

Compare the Cruising Range of this Vehicle with Other Alternative Fueled Vehicles (AFVs) Before You Buy

Manufacturer's Estimated Cruising Range

440-520

Miles on one tank or charge.

Actual cruising range will vary with options, driving conditions, driving habits, and vehicle condition.

Before Selecting An Alternative Fueled Vehicle Consider:

☑ **FUEL TYPE AND AVAILABILITY:** Know which fuel(s) power this vehicle. Determine whether refueling and/or recharging facilities that meet your driving needs are readily available.

☑ **OPERATING COSTS:** Fuel and maintenance costs for AFVs differ from gasoline or diesel-fueled vehicles and can vary considerably. Visit www.fueleconomy.gov.

☑ **PERFORMANCE/CONVENIENCE:** Vehicles powered by different fuels differ in their ability to start a cold engine, how long it takes to refill the vehicle's tank to full capacity, acceleration rates, and refueling methods.

☑ **ENERGY SECURITY/RENEWABILITY:** Consider where and how the fuel powering this vehicle is typically produced.

☑ **EMISSIONS:** Emissions are an important factor. For more information about how the vehicle you are considering compares to others, visit www.epa.gov/greenvehicle.

Additional Information

DEPARTMENT OF ENERGY (DOE)
For more information about AFVs, contact DOE's National Alternative Fuels Hotline, 1-800-423-1DOE, or visit DOE's Alternative Fuels Data Center website, www.afdc.doe.gov.

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION (NHTSA)
For more information about vehicle safety, contact NHTSA's Auto Safety Hotline, 1-800-424-9393.

The information on this label is required by the Federal Trade Commission, 16 CFR Part 309.
For more information call toll-free (877) FTC-HELP or visit www.ftc.gov.

Space Reserved for Part Numbers, Bar Codes, and Vehicle Identification Numbers

← 7.5 inches →

← 7 inches →

Figure 4

ALTERNATIVE FUELED VEHICLE BUYERS GUIDE

Compare the Cruising Range of this Vehicle with Other Alternative Fueled Vehicles (AFVs) Before You Buy

Manufacturer's Estimated Cruising Range	
400-480	**440-520**
Miles on one tank or charge exclusively on alternative fuel	**Miles on one tank exclusively on gasoline/diesel**

Actual cruising range will vary with options, driving conditions, driving habits and vehicle condition.

Before Selecting An Alternative Fueled Vehicle Consider:

☑ **FUEL TYPE AND AVAILABILITY:** Know which fuel(s) power this vehicle. Determine whether refueling and/or recharging facilities that meet your driving needs are readily available.

☑ **OPERATING COSTS:** Fuel and maintenance costs for AFVs differ from gasoline or diesel-fueled vehicles and can vary considerably. Visit www.fueleconomy.gov.

☑ **PERFORMANCE/CONVENIENCE:** Vehicles powered by different fuels differ in their ability to start a cold engine, how long it takes to refill the vehicle's tank to full capacity, acceleration rates, and refueling methods.

☑ **ENERGY SECURITY/RENEWABILITY:** Consider where and how the fuel powering this vehicle is typically produced.

☑ **EMISSIONS:** Emissions are an important factor. For more information about how the vehicle you are considering compares to others, visit www.epa.gov/greenvehicle.

Additional Information

DEPARTMENT OF ENERGY (DOE)
For more information about AFVs, contact DOE's National Alternative Fuels Hotline, 1-800-423-1DOE, or visit DOE's Alternative Fuels Data Center website, www.afdc.doe.gov.

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION (NHTSA)
For more information about vehicle safety, contact NHTSA's Auto Safety Hotline, 1-800-424-9393.

The information on this label is required by the Federal Trade Commission, 16 CFR Part 309.
For more information call toll-free (877) FTC-HELP or visit www.ftc.gov.

← 7.5 inches →

← 7 inches →

Figure 5

ALTERNATIVE FUELED VEHICLE BUYERS GUIDE

Compare the Cruising Range of this Vehicle with Other Alternative Fueled Vehicles (AFVs) Before You Buy

Manufacturer's Estimated Cruising Range	
400-480	**440-520**
Miles on one tank or charge exclusively on alternative fuel	**Miles on one tank exclusively on gasoline/diesel**

The total possible cruising range of this vehicle is the sum of the alternative fuel range and the conventional fuel range. Actual cruising range will vary with options, driving conditions, driving habits, and vehicle condition.

Before Selecting An Alternative Fueled Vehicle Consider:

☑ **FUEL TYPE AND AVAILABILITY:** Know which fuel(s) power this vehicle. Determine whether refueling and/or recharging facilities that meet your driving needs are readily available.

☑ **OPERATING COSTS:** Fuel and maintenance costs for AFVs differ from gasoline or diesel-fueled vehicles and can vary considerably. Visit www.fueleconomy.gov.

☑ **PERFORMANCE/CONVENIENCE:** Vehicles powered by different fuels differ in their ability to start a cold engine, how long it takes to refill the vehicle's tank to full capacity, acceleration rates, and refueling methods.

☑ **ENERGY SECURITY/RENEWABILITY:** Consider where and how the fuel powering this vehicle is typically produced.

☑ **EMISSIONS:** Emissions are an important factor. For more information about how the vehicle you are considering compares to others, visit www.epa.gov/greenvehicle.

Additional Information

DEPARTMENT OF ENERGY (DOE)
For more information about AFVs, contact DOE's National Alternative Fuels Hotline, 1-800-423-1DOE, or visit DOE's Alternative Fuels Data Center website, www.afdc.doe.gov.

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Figure 5.1

ALTERNATIVE FUELED VEHICLE BUYERS GUIDE

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← 7.5 inches →

← 7 inches →

Figure 6

[60 FR 26955, May 19, 1995, as amended at 69 FR 55339, Sept. 14, 2004]

PART 310—TELEMARKETING SALES RULE

Sec.
310.1 Scope of regulations in this part.
310.2 Definitions.
310.3 Deceptive telemarketing acts or practices.
310.4 Abusive telemarketing acts or practices.
310.5 Recordkeeping requirements.
310.6 Exemptions.
310.7 Actions by states and private persons.
310.8 Fee for access to the National Do Not Call Registry.
310.9 Severability.

AUTHORITY: 15 U.S.C. 6101–6108.

SOURCE: 68 FR 4669, Jan. 29, 2003, unless otherwise noted.

§310.1 Scope of regulations in this part.

This part implements the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. 6101-6108, as amended.

§ 310.2 Definitions.

(a) *Acquirer* means a business organization, financial institution, or an agent of a business organization or financial institution that has authority from an organization that operates or licenses a credit card system to authorize merchants to accept, transmit, or process payment by credit card through the credit card system for money, goods or services, or anything else of value.

(b) *Attorney General* means the chief legal officer of a state.

(c) *Billing information* means any data that enables any person to access a customer's or donor's account, such as a credit card, checking, savings, share or similar account, utility bill, mortgage loan account, or debit card.

(d) *Caller identification service* means a service that allows a telephone subscriber to have the telephone number, and, where available, name of the calling party transmitted contemporaneously with the telephone call, and displayed on a device in or connected to the subscriber's telephone.

(e) *Cardholder* means a person to whom a credit card is issued or who is authorized to use a credit card on behalf of or in addition to the person to whom the credit card is issued.

(f) *Charitable contribution* means any donation or gift of money or any other thing of value.

(g) *Commission* means the Federal Trade Commission.

(h) *Credit* means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

(i) *Credit card* means any card, plate, coupon book, or other credit device existing for the purpose of obtaining money, property, labor, or services on credit.

(j) *Credit card sales draft* means any record or evidence of a credit card transaction.

(k) *Credit card system* means any method or procedure used to process credit card transactions involving credit cards issued or licensed by the operator of that system.

(l) *Customer* means any person who is or may be required to pay for goods or services offered through telemarketing.

(m) *Donor* means any person solicited to make a charitable contribution.

(n) *Established business relationship* means a relationship between a seller and a consumer based on:

(1) the consumer's purchase, rental, or lease of the seller's goods or services or a financial transaction between the consumer and seller, within the eighteen (18) months immediately preceding the date of a telemarketing call; or

(2) the consumer's inquiry or application regarding a product or service offered by the seller, within the three (3) months immediately preceding the date of a telemarketing call.

(o) *Free-to-pay conversion* means, in an offer or agreement to sell or provide any goods or services, a provision under which a customer receives a product or service for free for an initial period and will incur an obligation to pay for the product or service if he or she does not take affirmative action to cancel before the end of that period.

(p) *Investment opportunity* means anything, tangible or intangible, that is offered, offered for sale, sold, or traded based wholly or in part on representations, either express or implied, about past, present, or future income, profit, or appreciation.

(q) *Material* means likely to affect a person's choice of, or conduct regarding, goods or services or a charitable contribution.

(r) *Merchant* means a person who is authorized under a written contract with an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services or a charitable contribution.

(s) *Merchant agreement* means a written contract between a merchant and an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services or a charitable contribution.

(t) *Negative option feature* means, in an offer or agreement to sell or provide any goods or services, a provision under which the customer's silence or failure to take an affirmative action to reject goods or services or to cancel the agreement is interpreted by the seller as acceptance of the offer.

(u) *Outbound telephone call* means a telephone call initiated by a telemarketer to induce the purchase of goods or services or to solicit a charitable contribution.

(v) *Person* means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.

(w) *Preacquired account information* means any information that enables a seller or telemarketer to cause a charge to be placed against a customer's or donor's account without obtaining the account number directly from the customer or donor during the telemarketing transaction pursuant to which the account will be charged.

(x) *Prize* means anything offered, or purportedly offered, and given, or purportedly given, to a person by chance. For purposes of this definition, chance exists if a person is guaranteed to receive an item and, at the time of the offer or purported offer, the telemarketer does not identify the specific item that the person will receive.

(y) *Prize promotion* means:

(1) A sweepstakes or other game of chance; or

(2) An oral or written express or implied representation that a person has won, has been selected to receive, or may be eligible to receive a prize or purported prize.

(z) *Seller* means any person who, in connection with a telemarketing transaction, provides, offers to provide, or arranges for others to provide goods or services to the customer in exchange for consideration.

(aa) *State* means any state of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, and any territory or possession of the United States.

(bb) *Telemarketer* means any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer or donor.

(cc) *Telemarketing* means a plan, program, or campaign which is conducted to induce the purchase of goods or services or a charitable contribution, by use of one or more telephones and which involves more than one interstate telephone call. The term does not include the solicitation of sales through the mailing of a catalog which: contains a written description or illustration of the goods or services offered for sale; includes the business address of the seller; includes multiple pages of written material or illustrations; and has been issued not less frequently than once a year, when the person making the solicitation does not solicit customers by telephone but only receives calls initiated by customers in response to the catalog and during those calls takes orders only without further solicitation. For purposes of the previous sentence, the term ''further solicitation'' does not include providing the customer with information about, or attempting to sell, any other item included in the same catalog which prompted the customer's call or in a substantially similar catalog.

(dd) *Upselling* means soliciting the purchase of goods or services following an initial transaction during a single telephone call. The upsell is a separate telemarketing transaction, not a continuation of the initial transaction. An ''external upsell'' is a solicitation made by or on behalf of a seller different from the seller in the initial transaction, regardless of whether the initial transaction and the subsequent solicitation are made by the same telemarketer. An ''internal upsell'' is a solicitation made by or on behalf of the same seller as in the initial transaction, regardless of whether the initial transaction and subsequent solicitation are made by the same telemarketer.

§310.3 Deceptive telemarketing acts or practices.

(a) *Prohibited deceptive telemarketing acts or practices*. It is a deceptive telemarketing act or practice and a violation of this Rule for any seller or telemarketer to engage in the following conduct:

(1) Before a customer pays[1] for goods or services offered, failing to disclose

[1] When a seller or telemarketer uses, or directs a customer to use, a courier to transport payment, the seller or telemarketer must make the disclosures required by §310.3(a)(1) before sending a courier to pick up payment or authorization for payment, or

Continued

truthfully, in a clear and conspicuous manner, the following material information:

(i) The total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of the sales offer;[2]

(ii) All material restrictions, limitations, or conditions to purchase, receive, or use the goods or services that are the subject of the sales offer;

(iii) If the seller has a policy of not making refunds, cancellations, exchanges, or repurchases, a statement informing the customer that this is the seller's policy; or, if the seller or telemarketer makes a representation about a refund, cancellation, exchange, or repurchase policy, a statement of all material terms and conditions of such policy;

(iv) In any prize promotion, the odds of being able to receive the prize, and, if the odds are not calculable in advance, the factors used in calculating the odds; that no purchase or payment is required to win a prize or to participate in a prize promotion and that any purchase or payment will not increase the person's chances of winning; and the no-purchase/no-payment method of participating in the prize promotion with either instructions on how to participate or an address or local or toll-free telephone number to which customers may write or call for information on how to participate;

(v) All material costs or conditions to receive or redeem a prize that is the subject of the prize promotion;

(vi) In the sale of any goods or services represented to protect, insure, or otherwise limit a customer's liability in the event of unauthorized use of the customer's credit card, the limits on a cardholder's liability for unauthorized use of a credit card pursuant to 15 U.S.C. 1643; and

(vii) If the offer includes a negative option feature, all material terms and conditions of the negative option feature, including, but not limited to, the fact that the customer's account will be charged unless the customer takes an affirmative action to avoid the charge(s), the date(s) the charge(s) will be submitted for payment, and the specific steps the customer must take to avoid the charge(s).

(2) Misrepresenting, directly or by implication, in the sale of goods or services any of the following material information:

(i) The total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of a sales offer;

(ii) Any material restriction, limitation, or condition to purchase, receive, or use goods or services that are the subject of a sales offer;

(iii) Any material aspect of the performance, efficacy, nature, or central characteristics of goods or services that are the subject of a sales offer;

(iv) Any material aspect of the nature or terms of the seller's refund, cancellation, exchange, or repurchase policies;

(v) Any material aspect of a prize promotion including, but not limited to, the odds of being able to receive a prize, the nature or value of a prize, or that a purchase or payment is required to win a prize or to participate in a prize promotion;

(vi) Any material aspect of an investment opportunity including, but not limited to, risk, liquidity, earnings potential, or profitability;

(vii) A seller's or telemarketer's affiliation with, or endorsement or sponsorship by, any person or government entity;

(viii) That any customer needs offered goods or services to provide protections a customer already has pursuant to 15 U.S.C. 1643; or

(ix) Any material aspect of a negative option feature including, but not limited to, the fact that the customer's account will be charged unless the customer takes an affirmative action to avoid the charge(s), the date(s) the charge(s) will be submitted for payment, and the specific steps the customer must take to avoid the charge(s).

directing a customer to have a courier pick up payment or authorization for payment.

[2] For offers of consumer credit products subject to the Truth in Lending Act, 15 U.S.C. 1601 *et seq.*, and Regulation Z, 12 CFR 226, compliance with the disclosure requirements under the Truth in Lending Act and Regulation Z shall constitute compliance with § 310.3(a)(1)(i) of this Rule.

(3) Causing billing information to be submitted for payment, or collecting or attempting to collect payment for goods or services or a charitable contribution, directly or indirectly, without the customer's or donor's express verifiable authorization, except when the method of payment used is a credit card subject to protections of the Truth in Lending Act and Regulation Z,[3] or a debit card subject to the protections of the Electronic Fund Transfer Act and Regulation E.[4] Such authorization shall be deemed verifiable if any of the following means is employed:

(i) Express written authorization by the customer or donor, which includes the customer's or donor's signature;[5]

(ii) Express oral authorization which is audio-recorded and made available upon request to the customer or donor, and the customer's or donor's bank or other billing entity, and which evidences clearly both the customer's or donor's authorization of payment for the goods or services or charitable contribution that are the subject of the telemarketing transaction and the customer's or donor's receipt of all of the following information:

(A) The number of debits, charges, or payments (if more than one);

(B) The date(s) the debit(s), charge(s), or payment(s) will be submitted for payment;

(C) The amount(s) of the debit(s), charge(s), or payment(s);

(D) The customer's or donor's name;

(E) The customer's or donor's billing information, identified with sufficient specificity such that the customer or donor understands what account will be used to collect payment for the goods or services or charitable contribution that are the subject of the telemarketing transaction;

(F) A telephone number for customer or donor inquiry that is answered during normal business hours; and

(G) The date of the customer's or donor's oral authorization; or

(iii) Written confirmation of the transaction, identified in a clear and conspicuous manner as such on the outside of the envelope, sent to the customer or donor via first class mail prior to the submission for payment of the customer's or donor's billing information, and that includes all of the information contained in §§310.3(a)(3)(ii)(A)-(G) and a clear and conspicuous statement of the procedures by which the customer or donor can obtain a refund from the seller or telemarketer or charitable organization in the event the confirmation is inaccurate; *provided*, however, that this means of authorization shall not be deemed verifiable in instances in which goods or services are offered in a transaction involving a free-to-pay conversion and preacquired account information.

(4) Making a false or misleading statement to induce any person to pay for goods or services or to induce a charitable contribution.

(b) *Assisting and facilitating*. It is a deceptive telemarketing act or practice and a violation of this Rule for a person to provide substantial assistance or support to any seller or telemarketer when that person knows or consciously avoids knowing that the seller or telemarketer is engaged in any act or practice that violates §§310.3(a), (c) or (d), or §310.4 of this Rule.

(c) *Credit card laundering*. Except as expressly permitted by the applicable credit card system, it is a deceptive telemarketing act or practice and a violation of this Rule for:

(1) A merchant to present to or deposit into, or cause another to present to or deposit into, the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the merchant;

(2) Any person to employ, solicit, or otherwise cause a merchant, or an employee, representative, or agent of the merchant, to present to or deposit into

[3] Truth in Lending Act, 15 U.S.C. 1601 *et seq.*, and Regulation Z, 12 CFR part 226.

[4] Electronic Fund Transfer Act, 15 U.S.C. 1693 *et seq.*, and Regulation E, 12 CFR part 205.

[5] For purposes of this Rule, the term ''signature'' shall include an electronic or digital form of signature, to the extent that such form of signature is recognized as a valid signature under applicable federal law or state contract law.

the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the merchant; or

(3) Any person to obtain access to the credit card system through the use of a business relationship or an affiliation with a merchant, when such access is not authorized by the merchant agreement or the applicable credit card system.

(d) *Prohibited deceptive acts or practices in the solicitation of charitable contributions.* It is a fraudulent charitable solicitation, a deceptive telemarketing act or practice, and a violation of this Rule for any telemarketer soliciting charitable contributions to misrepresent, directly or by implication, any of the following material information:

(1) The nature, purpose, or mission of any entity on behalf of which a charitable contribution is being requested;

(2) That any charitable contribution is tax deductible in whole or in part;

(3) The purpose for which any charitable contribution will be used;

(4) The percentage or amount of any charitable contribution that will go to a charitable organization or to any particular charitable program;

(5) Any material aspect of a prize promotion including, but not limited to: the odds of being able to receive a prize; the nature or value of a prize; or that a charitable contribution is required to win a prize or to participate in a prize promotion; or

(6) A charitable organization's or telemarketer's affiliation with, or endorsement or sponsorship by, any person or government entity.

§ 310.4 Abusive telemarketing acts or practices.

(a) *Abusive conduct generally.* It is an abusive telemarketing act or practice and a violation of this Rule for any seller or telemarketer to engage in the following conduct:

(1) Threats, intimidation, or the use of profane or obscene language;

(2) Requesting or receiving payment of any fee or consideration for goods or services represented to remove derogatory information from, or improve, a person's credit history, credit record, or credit rating until:

(i) The time frame in which the seller has represented all of the goods or services will be provided to that person has expired; and

(ii) The seller has provided the person with documentation in the form of a consumer report from a consumer reporting agency demonstrating that the promised results have been achieved, such report having been issued more than six months after the results were achieved. Nothing in this Rule should be construed to affect the requirement in the Fair Credit Reporting Act, 15 U.S.C. 1681, that a consumer report may only be obtained for a specified permissible purpose;

(3) Requesting or receiving payment of any fee or consideration from a person for goods or services represented to recover or otherwise assist in the return of money or any other item of value paid for by, or promised to, that person in a previous telemarketing transaction, until seven (7) business days after such money or other item is delivered to that person. This provision shall not apply to goods or services provided to a person by a licensed attorney;

(4) Requesting or receiving payment of any fee or consideration in advance of obtaining a loan or other extension of credit when the seller or telemarketer has guaranteed or represented a high likelihood of success in obtaining or arranging a loan or other extension of credit for a person;

(5) Disclosing or receiving, for consideration, unencrypted consumer account numbers for use in telemarketing; *provided,* however, that this paragraph shall not apply to the disclosure or receipt of a customer's or donor's billing information to process a payment for goods or services or a charitable contribution pursuant to a transaction;

(6) Causing billing information to be submitted for payment, directly or indirectly, without the express informed consent of the customer or donor. In any telemarketing transaction, the seller or telemarketer must obtain the express informed consent of the customer or donor to be charged for the

goods or services or charitable contribution and to be charged using the identified account. In any telemarketing transaction involving preacquired account information, the requirements in paragraphs (a)(6)(i) through (ii) of this section must be met to evidence express informed consent.

(i) In any telemarketing transaction involving preacquired account information and a free-to-pay conversion feature, the seller or telemarketer must:

(A) obtain from the customer, at a minimum, the last four (4) digits of the account number to be charged;

(B) obtain from the customer his or her express agreement to be charged for the goods or services and to be charged using the account number pursuant to paragraph (a)(6)(i)(A) of this section; and,

(C) make and maintain an audio recording of the entire telemarketing transaction.

(ii) In any other telemarketing transaction involving preacquired account information not described in paragraph (a)(6)(i) of this section, the seller or telemarketer must:

(A) at a minimum, identify the account to be charged with sufficient specificity for the customer or donor to understand what account will be charged; and

(B) obtain from the customer or donor his or her express agreement to be charged for the goods or services and to be charged using the account number identified pursuant to paragraph (a)(6)(ii)(A) of this section; or

(7) Failing to transmit or cause to be transmitted the telephone number, and, when made available by the telemarketer's carrier, the name of the telemarketer, to any caller identification service in use by a recipient of a telemarketing call; *provided* that it shall not be a violation to substitute (for the name and phone number used in, or billed for, making the call) the name of the seller or charitable organization on behalf of which a telemarketing call is placed, and the seller's or charitable organization's customer or donor service telephone number, which is answered during regular business hours.

(b) *Pattern of calls.* (1) It is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer to engage in, or for a seller to cause a telemarketer to engage in, the following conduct:

(i) Causing any telephone to ring, or engaging any person in telephone conversation, repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number;

(ii) Denying or interfering in any way, directly or indirectly, with a person's right to be placed on any registry of names and/or telephone numbers of persons who do not wish to receive outbound telephone calls established to comply with §310.4(b)(1)(iii);

(iii) Initiating any outbound telephone call to a person when:

(A) that person previously has stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the seller whose goods or services are being offered or made on behalf of the charitable organization for which a charitable contribution is being solicited; or

(B) that person's telephone number is on the ''do-not-call'' registry, maintained by the Commission, of persons who do not wish to receive outbound telephone calls to induce the purchase of goods or services unless the seller

(*i*) has obtained the express agreement, in writing, of such person to place calls to that person. Such written agreement shall clearly evidence such person's authorization that calls made by or on behalf of a specific party may be placed to that person, and shall include the telephone number to which the calls may be placed and the signature[6] of that person; or

(*ii*) has an established business relationship with such person, and that person has not stated that he or she does not wish to receive outbound telephone calls under paragraph (b)(1)(iii)(A) of this section; or

(iv) Abandoning any outbound telephone call. An outbound telephone call is ''abandoned'' under this section if a person answers it and the telemarketer

[6] For purposes of this Rule, the term ''signature'' shall include an electronic or digital form of signature, to the extent that such form of signature is recognized as a valid signature under applicable federal law or state contract law.

does not connect the call to a sales representative within two (2) seconds of the person's completed greeting.

(2) It is an abusive telemarketing act or practice and a violation of this Rule for any person to sell, rent, lease, purchase, or use any list established to comply with § 310.4(b)(1)(iii)(A), or maintained by the Commission pursuant to § 310.4(b)(1)(iii)(B), for any purpose except compliance with the provisions of this Rule or otherwise to prevent telephone calls to telephone numbers on such lists.

(3) A seller or telemarketer will not be liable for violating § 310.4(b)(1)(ii) and (iii) if it can demonstrate that, as part of the seller's or telemarketer's routine business practice:

(i) It has established and implemented written procedures to comply with § 310.4(b)(1)(ii) and (iii);

(ii) It has trained its personnel, and any entity assisting in its compliance, in the procedures established pursuant to § 310.4(b)(3)(i);

(iii) The seller, or a telemarketer or another person acting on behalf of the seller or charitable organization, has maintained and recorded a list of telephone numbers the seller or charitable organization may not contact, in compliance with § 310.4(b)(1)(iii)(A);

(iv) The seller or a telemarketer uses a process to prevent telemarketing to any telephone number on any list established pursuant to § 310.4(b)(3)(iii) or 310.4(b)(1)(iii)(B), employing a version of the ''do-not-call'' registry obtained from the Commission no more than thirty-one (31) days prior to the date any call is made, and maintains records documenting this process;

(v) The seller or a telemarketer or another person acting on behalf of the seller or charitable organization, monitors and enforces compliance with the procedures established pursuant to § 310.4(b)(3)(i); and

(vi) Any subsequent call otherwise violating § 310.4(b)(1)(ii) or (iii) is the result of error.

(4) A seller or telemarketer will not be liable for violating 310.4(b)(1)(iv) if:

(i) the seller or telemarketer employs technology that ensures abandonment of no more than three (3) percent of all calls answered by a person, measured per day per calling campaign;

(ii) the seller or telemarketer, for each telemarketing call placed, allows the telephone to ring for at least fifteen (15) seconds or four (4) rings before disconnecting an unanswered call;

(iii) whenever a sales representative is not available to speak with the person answering the call within two (2) seconds after the person's completed greeting, the seller or telemarketer promptly plays a recorded message that states the name and telephone number of the seller on whose behalf the call was placed[7]; and

(iv) the seller or telemarketer, in accordance with § 310.5(b)-(d), retains records establishing compliance with § 310.4(b)(4)(i)-(iii).

(c) *Calling time restrictions.* Without the prior consent of a person, it is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer to engage in outbound telephone calls to a person's residence at any time other than between 8:00 a.m. and 9:00 p.m. local time at the called person's location.

(d) *Required oral disclosures in the sale of goods or services.* It is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer in an outbound telephone call or internal or external upsell to induce the purchase of goods or services to fail to disclose truthfully, promptly, and in a clear and conspicuous manner to the person receiving the call, the following information:

(1) The identity of the seller;

(2) That the purpose of the call is to sell goods or services;

(3) The nature of the goods or services; and

(4) That no purchase or payment is necessary to be able to win a prize or participate in a prize promotion if a prize promotion is offered and that any purchase or payment will not increase the person's chances of winning. This disclosure must be made before or in conjunction with the description of the prize to the person called. If requested by that person, the telemarketer must disclose the no-purchase/no-payment

[7] This provision does not affect any seller's or telemarketer's obligation to comply with relevant state and federal laws, including but not limited to the TCPA, 47 U.S.C. 227, and 47 CFR part 64.1200.

entry method for the prize promotion; *provided*, however, that, in any internal upsell for the sale of goods or services, the seller or telemarketer must provide the disclosures listed in this section only to the extent that the information in the upsell differs from the disclosures provided in the initial telemarketing transaction.

(e) *Required oral disclosures in charitable solicitations.* It is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer, in an outbound telephone call to induce a charitable contribution, to fail to disclose truthfully, promptly, and in a clear and conspicuous manner to the person receiving the call, the following information:

(1) The identity of the charitable organization on behalf of which the request is being made; and

(2) That the purpose of the call is to solicit a charitable contribution.

[68 FR 4669, Jan. 29, 2003, as amended at 69 FR 16373, Mar. 29, 2004]

§310.5 Recordkeeping requirements.

(a) Any seller or telemarketer shall keep, for a period of 24 months from the date the record is produced, the following records relating to its telemarketing activities:

(1) All substantially different advertising, brochures, telemarketing scripts, and promotional materials;

(2) The name and last known address of each prize recipient and the prize awarded for prizes that are represented, directly or by implication, to have a value of $25.00 or more;

(3) The name and last known address of each customer, the goods or services purchased, the date such goods or services were shipped or provided, and the amount paid by the customer for the goods or services;[8]

(4) The name, any fictitious name used, the last known home address and telephone number, and the job title(s) for all current and former employees directly involved in telephone sales or solicitations; *provided*, however, that if the seller or telemarketer permits fictitious names to be used by employees, each fictitious name must be traceable to only one specific employee; and

(5) All verifiable authorizations or records of express informed consent or express agreement required to be provided or received under this Rule.

(b) A seller or telemarketer may keep the records required by §310.5(a) in any form, and in the same manner, format, or place as they keep such records in the ordinary course of business. Failure to keep all records required by §310.5(a) shall be a violation of this Rule.

(c) The seller and the telemarketer calling on behalf of the seller may, by written agreement, allocate responsibility between themselves for the recordkeeping required by this Section. When a seller and telemarketer have entered into such an agreement, the terms of that agreement shall govern, and the seller or telemarketer, as the case may be, need not keep records that duplicate those of the other. If the agreement is unclear as to who must maintain any required record(s), or if no such agreement exists, the seller shall be responsible for complying with §§310.5(a)(1)-(3) and (5); the telemarketer shall be responsible for complying with §310.5(a)(4).

(d) In the event of any dissolution or termination of the seller's or telemarketer's business, the principal of that seller or telemarketer shall maintain all records as required under this Section. In the event of any sale, assignment, or other change in ownership of the seller's or telemarketer's business, the successor business shall maintain all records required under this Section.

§310.6 Exemptions.

(a) Solicitations to induce charitable contributions via outbound telephone calls are not covered by §310.4(b)(1)(iii)(B) of this Rule.

(b) The following acts or practices are exempt from this Rule:

(1) The sale of pay-per-call services subject to the Commission's Rule entitled "Trade Regulation Rule Pursuant

[8] For offers of consumer credit products subject to the Truth in Lending Act, 15 U.S.C. 1601 *et seq.*, and Regulation Z, 12 CFR 226, compliance with the recordkeeping requirements under the Truth in Lending Act, and Regulation Z, shall constitute compliance with §310.5(a)(3) of this Rule.

to the Telephone Disclosure and Dispute Resolution Act of 1992,'' 16 CFR Part 308, *provided,* however, that this exemption does not apply to the requirements of §§310.4(a)(1), (a)(7), (b), and (c);

(2) The sale of franchises subject to the Commission's Rule entitled ''Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures,'' (''Franchise Rule'') 16 CFR Part 436, *provided,* however, that this exemption does not apply to the requirements of §§310.4(a)(1), (a)(7), (b), and (c);

(3) Telephone calls in which the sale of goods or services or charitable solicitation is not completed, and payment or authorization of payment is not required, until after a face-to-face sales or donation presentation by the seller or charitable organization, *provided,* however, that this exemption does not apply to the requirements of §§310.4(a)(1), (a)(7), (b), and (c);

(4) Telephone calls initiated by a customer or donor that are not the result of any solicitation by a seller, charitable organization, or telemarketer, *provided,* however, that this exemption does not apply to any instances of upselling included in such telephone calls;

(5) Telephone calls initiated by a customer or donor in response to an advertisement through any medium, other than direct mail solicitation, *provided,* however, that this exemption does not apply to calls initiated by a customer or donor in response to an advertisement relating to investment opportunities, business opportunities other than business arrangements covered by the Franchise Rule, or advertisements involving goods or services described in §§310.3(a)(1)(vi) or 310.4(a)(2)-(4); or to any instances of upselling included in such telephone calls;

(6) Telephone calls initiated by a customer or donor in response to a direct mail solicitation, including solicitations via the U.S. Postal Service, facsimile transmission, electronic mail, and other similar methods of delivery in which a solicitation is directed to specific address(es) or person(s), that clearly, conspicuously, and truthfully discloses all material information listed in §310.3(a)(1) of this Rule, for any goods or services offered in the direct mail solicitation, and that contains no material misrepresentation regarding any item contained in §310.3(d) of this Rule for any requested charitable contribution; *provided,* however, that this exemption does not apply to calls initiated by a customer in response to a direct mail solicitation relating to prize promotions, investment opportunities, business opportunities other than business arrangements covered by the Franchise Rule, or goods or services described in §§310.3(a)(1)(vi) or 310.4(a)(2)-(4); or to any instances of upselling included in such telephone calls; and

(7) Telephone calls between a telemarketer and any business, except calls to induce the retail sale of nondurable office or cleaning supplies; *provided,* however, that §310.4(b)(1)(iii)(B) and §310.5 of this Rule shall not apply to sellers or telemarketers of nondurable office or cleaning supplies.

§ 310.7 Actions by states and private persons.

(a) Any attorney general or other officer of a state authorized by the state to bring an action under the Telemarketing and Consumer Fraud and Abuse Prevention Act, and any private person who brings an action under that Act, shall serve written notice of its action on the Commission, if feasible, prior to its initiating an action under this Rule. The notice shall be sent to the Office of the Director, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580, and shall include a copy of the state's or private person's complaint and any other pleadings to be filed with the court. If prior notice is not feasible, the state or private person shall serve the Commission with the required notice immediately upon instituting its action.

(b) Nothing contained in this Section shall prohibit any attorney general or other authorized state official from proceeding in state court on the basis of an alleged violation of any civil or criminal statute of such state.

§ 310.8 Fee for access to the National Do Not Call Registry.

(a) It is a violation of this Rule for any seller to initiate, or cause any

telemarketer to initiate, an outbound telephone call to any person whose telephone number is within a given area code unless such seller, either directly or through another person, first has paid the annual fee, required by §310.8(c), for access to telephone numbers within that area code that are included in the National Do Not Call Registry maintained by the Commission under §310.4(b)(1)(iii)(B); *provided,* however, that such payment is not necessary if the seller initiates, or causes a telemarketer to initiate, calls solely to persons pursuant to §§310.4(b)(1)(iii)(B)(*i*) or (*ii*), and the seller does not access the National Do Not Call Registry for any other purpose.

(b) It is a violation of this Rule for any telemarketer, on behalf of any seller, to initiate an outbound telephone call to any person whose telephone number is within a given area code unless that seller, either directly or through another person, first has paid the annual fee, required by §310.8(c), for access to the telephone numbers within that area code that are included in the National Do Not Call Registry; *provided,* however, that such payment is not necessary if the seller initiates, or causes a telemarketer to initiate, calls solely to persons pursuant to §§310.4(b)(1)(iii)(B)(*i*) or (*ii*), and the seller does not access the National Do Not Call Registry for any other purpose.

(c) The annual fee, which must be paid by any person prior to obtaining access to the National Do Not Call Registry, is $62 per area code of data accessed, up to a maximum of $17,050; *provided,* however, that there shall be no charge for the first five area codes of data accessed by any person, and *provided further,* that there shall be no charge to any person engaging in or causing others to engage in outbound telephone calls to consumers and who is accessing the National Do Not Call Registry without being required under this Rule, 47 CFR 64.1200, or any other Federal law. Any person accessing the National Do Not Call Registry may not participate in any arrangement to share the cost of accessing the registry, including any arrangement with any telemarketer or service provider to divide the costs to access the registry among various clients of that telemarketer or service provider.

(d) After a person, either directly or through another person, pays the fees set forth in §310.8(c), the person will be provided a unique account number which will allow that person to access the registry data for the selected area codes at any time for twelve months following the first day of the month in which the person paid the fee (''the annual period''). To obtain access to additional area codes of data during the first six months of the annual period, the person must first pay $62 for each additional area code of data not initially selected. To obtain access to additional area codes of data during the second six months of the annual period, the person must first pay $31 for each additional area code of data not initially selected. The payment of the additional fee will permit the person to access the additional area codes of data for the remainder of the annual period.

(e) Access to the National Do Not Call Registry is limited to telemarketers, sellers, others engaged in or causing others to engage in telephone calls to consumers, service providers acting on behalf of such persons, and any government agency that has law enforcement authority. Prior to accessing the National Do Not Call Registry, a person must provide the identifying information required by the operator of the registry to collect the fee, and must certify, under penalty of law, that the person is accessing the registry solely to comply with the provisions of this Rule or to otherwise prevent telephone calls to telephone numbers on the registry. If the person is accessing the registry on behalf of sellers, that person also must identify each of the sellers on whose behalf it is accessing the registry, must provide each seller's unique account number for access to the national registry, and must certify, under penalty of law, that the sellers will be using the information gathered from the registry solely to comply with the provisions of

this Rule or otherwise to prevent telephone calls to telephone numbers on the registry.

[68 FR 45144, July 31, 2003, as amended at 69 FR 45585, July 30, 2004; 70 FR 43280, July 27, 2005; 71 FR 43054, July 31, 2006]

§ 310.9 Severability.

The provisions of this Rule are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

PART 311—TEST PROCEDURES AND LABELING STANDARDS FOR RECYCLED OIL

Sec.
311.1 Definitions.
311.2 Stayed or invalid parts.
311.3 Preemption.
311.4 Testing.
311.5 Labeling.
311.6 Prohibited acts.

AUTHORITY: 42 U.S.C. 6363(d).

SOURCE: 60 FR 55421, Oct. 31, 1995, unless otherwise noted.

§ 311.1 Definitions.

As used in this part:

(a) *Manufacturer* means any person who re-refines or otherwise processes used oil to remove physical or chemical impurities acquired through use or who blends such re-refined or otherwise processed used oil with new oil or additives.

(b) *New oil* means any synthetic oil or oil that has been refined from crude oil and which has not been used and may or may not contain additives. Such term does not include used oil or recycled oil.

(c) *Processed used* oil means re-refined or otherwise processed used oil or blend of oil, consisting of such re-refined or otherwise processed used oil and new oil or additives.

(d) *Recycled oil* means processed used oil that the manufacturer has determined, pursuant to section 311.4 of this part, is substantially equivalent to new oil for use as engine oil.

(e) *Used oil* means any synthetic oil or oil that has been refined from crude oil, which has been used and, as a result of such use, has been contaminated by physical or chemical impurities.

(f) *Re-refined oil* means used oil from which physical and chemical contaminants acquired through use have been removed.

§ 311.2 Stayed or invalid parts.

If any part of this rule is stayed or held invalid, the rest of it will remain in force.

§ 311.3 Preemption.

No law, regulation, or order of any State or political subdivision thereof may apply, or remain applicable, to any container of recycled oil, if such law, regulation, or order requires any container of recycled oil, which container bears a label in accordance with the terms of § 311.5 of this part, to bear any label with respect to the comparative characteristics of such recycled oil with new oil that is not identical to that permitted by § 311.5 of this part.

§ 311.4 Testing.

To determine the substantial equivalency of processed used oil with new oil for use as engine oil, manufacturers or their designees must use the test procedures that were reported to the Commission by the National Institute of Standards and Technology (''NIST'') on July 27, 1995, entitled ''Engine Oil Licensing and Certification System,'' American Petroleum Institute (''API'') Publication 1509, Thirteenth Edition, January, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of API Publication 1509, ''Engine Oil Licensing and Certification System,'' may be obtained from the American Petroleum Institute, 1220 L Street, NW., Washington, DC 20005, or may be inspected at the Federal Trade Commission, Public Reference Room, room 130, 600 Pennsylvania Avenue, NW., Washington, DC, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/*

code_of_federal_regulations/ibr_locations.html.

[60 FR 55421, Oct. 31, 1995, as amended at 69 FR 18803, Apr. 9, 2004]

§311.5 Labeling.

A manufacturer or other seller may represent, on a label on a container of processed used oil, that such oil is substantially equivalent to new oil for use as engine oil only if the manufacturer has determined that the oil is substantially equivalent to new oil for use as engine oil in accordance with the NIST test procedures prescribed under §311.4 of this part, and has based the representation on that determination.

§311.6 Prohibited acts.

It is unlawful for any manufacturer or other seller to represent, on a label on a container of processed used oil, that such oil is substantially equivalent to new oil for use as engine oil unless the manufacturer or other seller has based such representation on the manufacturer's determination that the processed used oil is substantially equivalent to new oil for use as engine oil in accordance with the NIST test procedures prescribed under §311.4 of this part. Violations will be subject to enforcement through civil penalties (as adjusted for inflation pursuant to §1.98 of this chapter), imprisonment, and/or injunctive relief in accordance with the enforcement provisions of Section 525 of the Energy Policy and Conservation Act (42 U.S.C. 6395).

[60 FR 55421, Oct. 31, 1995, as amended at 65 FR 69666, Nov. 20, 2000]

PART 312—CHILDREN'S ONLINE PRIVACY PROTECTION RULE

Sec.

312.1 Scope of regulations in this part.
312.2 Definitions.
312.3 Regulation of unfair or deceptive acts or practices in connection with the collection, use, and/or disclosure of personal information from and about children on the Internet.
312.4 Notice.
312.5 Parental consent.
312.6 Right of parent to review personal information provided by a child.
312.7 Prohibition against conditioning a child's participation on collection of personal information.
312.8 Confidentiality, security, and integrity of personal information collected from children.
312.9 Enforcement.
312.10 Safe harbors.
312.11 Rulemaking review.
312.12 Severability.

AUTHORITY: 15 U.S.C. 6501–6508.

SOURCE: 64 FR 59911, Nov. 3, 1999, unless otherwise noted.

§312.1 Scope of regulations in this part.

This part implements the Children's Online Privacy Protection Act of 1998, (15 U.S.C. 6501, *et seq.*,) which prohibits unfair or deceptive acts or practices in connection with the collection, use, and/or disclosure of personal information from and about children on the Internet. The effective date of this part is April 21, 2000.

§312.2 Definitions.

Child means an individual under the age of 13.

Collects or collection means the gathering of any personal information from a child by any means, including but not limited to:

(a) Requesting that children submit personal information online;

(b) Enabling children to make personal information publicly available through a chat room, message board, or other means, *except where* the operator deletes all individually identifiable information from postings by children before they are made public, and also deletes such information from the operator's records; or

(c) The passive tracking or use of any identifying code linked to an individual, such as a cookie.

Commission means the Federal Trade Commission.

Delete means to remove personal information such that it is not maintained in retrievable form and cannot be retrieved in the normal course of business.

Disclosure means, with respect to personal information:

(a) The release of personal information collected from a child in identifiable form by an operator for any purpose, except where an operator provides such information to a person who

provides support for the internal operations of the website or online service and who does not disclose or use that information for any other purpose. For purposes of this definition:

(1) *Release of personal information* means the sharing, selling, renting, or any other means of providing personal information to any third party, and

(2) *Support for the internal operations of the website or online service* means those activities necessary to maintain the technical functioning of the website or online service, or to fulfill a request of a child as permitted by § 312.5(c)(2) and (3); or

(b) Making personal information collected from a child by an operator publicly available in identifiable form, by any means, including by a public posting through the Internet, or through a personal home page posted on a website or online service; a pen pal service; an electronic mail service; a message board; or a chat room.

Federal agency means an agency, as that term is defined in Section 551(1) of title 5, United States Code.

Internet means collectively the myriad of computer and telecommunications facilities, including equipment and operating software, which comprise the interconnected world-wide network of networks that employ the Transmission Control Protocol/Internet Protocol, or any predecessor or successor protocols to such protocol, to communicate information of all kinds by wire, radio, or other methods of transmission.

Online contact information means an e-mail address or any other substantially similar identifier that permits direct contact with a person online.

Operator means any person who operates a website located on the Internet or an online service and who collects or maintains personal information from or about the users of or visitors to such website or online service, or on whose behalf such information is collected or maintained, where such website or online service is operated for commercial purposes, including any person offering products or services for sale through that website or online service, involving commerce:

(a) Among the several States or with 1 or more foreign nations;

(b) In any territory of the United States or in the District of Columbia, or between any such territory and

(1) Another such territory, or

(2) Any State or foreign nation; or

(c) Between the District of Columbia and any State, territory, or foreign nation. This definition does not include any nonprofit entity that would otherwise be exempt from coverage under Section 5 of the Federal Trade Commission Act (15 U.S.C. 45).

Parent includes a legal guardian.

Person means any individual, partnership, corporation, trust, estate, cooperative, association, or other entity.

Personal information means individually identifiable information about an individual collected online, including:

(a) A first and last name;

(b) A home or other physical address including street name and name of a city or town;

(c) An e-mail address or other online contact information, including but not limited to an instant messaging user identifier, or a screen name that reveals an individual's e-mail address;

(d) A telephone number;

(e) A Social Security number;

(f) A persistent identifier, such as a customer number held in a cookie or a processor serial number, where such identifier is associated with individually identifiable information; or a combination of a last name or photograph of the individual with other information such that the combination permits physical or online contacting; or

(g) Information concerning the child or the parents of that child that the operator collects online from the child and combines with an identifier described in this definition.

Third party means any person who is not:

(a) An operator with respect to the collection or maintenance of personal information on the website or online service; or

(b) A person who provides support for the internal operations of the website or online service and who does not use or disclose information protected under this part for any other purpose.

Obtaining *verifiable consent* means making any reasonable effort (taking

into consideration available technology) to ensure that before personal information is collected from a child, a parent of the child:

(a) Receives notice of the operator's personal information collection, use, and disclosure practices; and

(b) Authorizes any collection, use, and/or disclosure of the personal information.

Website or online service directed to children means a commercial website or online service, or portion thereof, that is targeted to children. *Provided, however*, that a commercial website or online service, or a portion thereof, shall not be deemed directed to children solely because it refers or links to a commercial website or online service directed to children by using information location tools, including a directory, index, reference, pointer, or hypertext link. In determining whether a commercial website or online service, or a portion thereof, is targeted to children, the Commission will consider its subject matter, visual or audio content, age of models, language or other characteristics of the website or online service, as well as whether advertising promoting or appearing on the website or online service is directed to children. The Commission will also consider competent and reliable empirical evidence regarding audience composition; evidence regarding the intended audience; and whether a site uses animated characters and/or child-oriented activities and incentives.

§312.3 Regulation of unfair or deceptive acts or practices in connection with the collection, use, and/or disclosure of personal information from and about children on the Internet.

General requirements. It shall be unlawful for any operator of a website or online service directed to children, or any operator that has actual knowledge that it is collecting or maintaining personal information from a child, to collect personal information from a child in a manner that violates the regulations prescribed under this part. Generally, under this part, an operator must:

(a) Provide notice on the website or online service of what information it collects from children, how it uses such information, and its disclosure practices for such information (§312.4(b));

(b) Obtain verifiable parental consent prior to any collection, use, and/or disclosure of personal information from children (§312.5);

(c) Provide a reasonable means for a parent to review the personal information collected from a child and to refuse to permit its further use or maintenance (§312.6);

(d) Not condition a child's participation in a game, the offering of a prize, or another activity on the child disclosing more personal information than is reasonably necessary to participate in such activity (§312.7); and

(e) Establish and maintain reasonable procedures to protect the confidentiality, security, and integrity of personal information collected from children (§312.8).

§312.4 Notice.

(a) *General principles of notice.* All notices under §§312.3(a) and 312.5 must be clearly and understandably written, be complete, and must contain no unrelated, confusing, or contradictory materials.

(b) *Notice on the website or online service.* Under §312.3(a), an operator of a website or online service directed to children must post a link to a notice of its information practices with regard to children on the home page of its website or online service and at each area on the website or online service where personal information is collected from children. An operator of a general audience website or online service that has a separate children's area or site must post a link to a notice of its information practices with regard to children on the home page of the children's area.

(1) *Placement of the notice.* (i) The link to the notice must be clearly labeled as a notice of the website or online service's information practices with regard to children;

(ii) The link to the notice must be placed in a clear and prominent place and manner on the home page of the website or online service; and

(iii) The link to the notice must be placed in a clear and prominent place and manner at each area on the

website or online service where children directly provide, or are asked to provide, personal information, and in close proximity to the requests for information in each such area.

(2) *Content of the notice.* To be complete, the notice of the website or online service's information practices must state the following:

(i) The name, address, telephone number, and e-mail address of all operators collecting or maintaining personal information from children through the website or online service. *Provided that:* the operators of a website or online service may list the name, address, phone number, and e-mail address of one operator who will respond to all inquiries from parents concerning the operators' privacy policies and use of children's information, as long as the names of all the operators collecting or maintaining personal information from children through the website or online service are also listed in the notice;

(ii) The types of personal information collected from children and whether the personal information is collected directly or passively;

(iii) How such personal information is or may be used by the operator(s), including but not limited to fulfillment of a requested transaction, recordkeeping, marketing back to the child, or making it publicly available through a chat room or by other means;

(iv) Whether personal information is disclosed to third parties, and if so, the types of business in which such third parties are engaged, and the general purposes for which such information is used; whether those third parties have agreed to maintain the confidentiality, security, and integrity of the personal information they obtain from the operator; and that the parent has the option to consent to the collection and use of their child's personal information without consenting to the disclosure of that information to third parties;

(v) That the operator is prohibited from conditioning a child's participation in an activity on the child's disclosing more personal information than is reasonably necessary to participate in such activity; and

(vi) That the parent can review and have deleted the child's personal information, and refuse to permit further collection or use of the child's information, and state the procedures for doing so.

(c) *Notice to a parent.* Under § 312.5, an operator must make reasonable efforts, taking into account available technology, to ensure that a parent of a child receives notice of the operator's practices with regard to the collection, use, and/or disclosure of the child's personal information, including notice of any material change in the collection, use, and/or disclosure practices to which the parent has previously consented.

(1) *Content of the notice to the parent.* (i) All notices must state the following:

(A) That the operator wishes to collect personal information from the child;

(B) The information set forth in paragraph (b) of this section.

(ii) In the case of a notice to obtain verifiable parental consent under § 312.5(a), the notice must also state that the parent's consent is required for the collection, use, and/or disclosure of such information, and state the means by which the parent can provide verifiable consent to the collection of information.

(iii) In the case of a notice under the exception in § 312.5(c)(3), the notice must also state the following:

(A) That the operator has collected the child's e-mail address or other online contact information to respond to the child's request for information and that the requested information will require more than one contact with the child;

(B) That the parent may refuse to permit further contact with the child and require the deletion of the information, and how the parent can do so; and

(C) That if the parent fails to respond to the notice, the operator may use the information for the purpose(s) stated in the notice.

(iv) In the case of a notice under the exception in § 312.5(c)(4), the notice must also state the following:

(A) That the operator has collected the child's name and e-mail address or other online contact information to

protect the safety of the child participating on the website or online service;

(B) That the parent may refuse to permit the use of the information and require the deletion of the information, and how the parent can do so; and

(C) That if the parent fails to respond to the notice, the operator may use the information for the purpose stated in the notice.

§312.5 Parental consent.

(a) *General requirements.* (1) An operator is required to obtain verifiable parental consent before any collection, use, and/or disclosure of personal information from children, including consent to any material change in the collection, use, and/or disclosure practices to which the parent has previously consented.

(2) An operator must give the parent the option to consent to the collection and use of the child's personal information without consenting to disclosure of his or her personal information to third parties.

(b) *Mechanisms for verifiable parental consent.* (1) An operator must make reasonable efforts to obtain verifiable parental consent, taking into consideration available technology. Any method to obtain verifiable parental consent must be reasonably calculated, in light of available technology, to ensure that the person providing consent is the child's parent.

(2) Methods to obtain verifiable parental consent that satisfy the requirements of this paragraph include: providing a consent form to be signed by the parent and returned to the operator by postal mail or facsimile; requiring a parent to use a credit card in connection with a transaction; having a parent call a toll-free telephone number staffed by trained personnel; using a digital certificate that uses public key technology; and using e-mail accompanied by a PIN or password obtained through one of the verification methods listed in this paragraph. *Provided that:* Until the Commission otherwise determines, methods to obtain verifiable parental consent for uses of information other than the ''disclosures'' defined by §312.2 may also include use of e-mail coupled with additional steps to provide assurances that the person providing the consent is the parent. Such additional steps include: sending a confirmatory e-mail to the parent following receipt of consent; or obtaining a postal address or telephone number from the parent and confirming the parent's consent by letter or telephone call. Operators who use such methods must provide notice that the parent can revoke any consent given in response to the earlier e-mail.

(c) *Exceptions to prior parental consent.* Verifiable parental consent is required prior to any collection, use and/or disclosure of personal information from a child except as set forth in this paragraph. The exceptions to prior parental consent are as follows:

(1) Where the operator collects the name or online contact information of a parent or child to be used for the sole purpose of obtaining parental consent or providing notice under §312.4. If the operator has not obtained parental consent after a reasonable time from the date of the information collection, the operator must delete such information from its records;

(2) Where the operator collects online contact information from a child for the sole purpose of responding directly on a one-time basis to a specific request from the child, and where such information is not used to recontact the child and is deleted by the operator from its records;

(3) Where the operator collects online contact information from a child to be used to respond directly more than once to a specific request from the child, and where such information is not used for any other purpose. In such cases, the operator must make reasonable efforts, taking into consideration available technology, to ensure that a parent receives notice and has the opportunity to request that the operator make no further use of the information, as described in §312.4(c), immediately after the initial response and before making any additional response to the child. Mechanisms to provide such notice include, but are not limited to, sending the notice by postal mail or sending the notice to the parent's e-mail address, but do not include asking a child to print a notice form or sending an e-mail to the child;

(4) Where the operator collects a child's name and online contact information to the extent reasonably necessary to protect the safety of a child participant on the website or online service, and the operator uses reasonable efforts to provide a parent notice as described in § 312.4(c), where such information is:

(i) Used for the sole purpose of protecting the child's safety;

(ii) Not used to recontact the child or for any other purpose;

(iii) Not disclosed on the website or online service; and

(5) Where the operator collects a child's name and online contact information and such information is not used for any other purpose, to the extent reasonably necessary:

(i) To protect the security or integrity of its website or online service;

(ii) To take precautions against liability;

(iii) To respond to judicial process; or

(iv) To the extent permitted under other provisions of law, to provide information to law enforcement agencies or for an investigation on a matter related to public safety.

[64 FR 59911, Nov. 3, 1999, as amended at 67 FR 18821, Apr. 17, 2002; 70 FR 21106, Apr. 22, 2005]

§ 312.6 Right of parent to review personal information provided by a child.

(a) Upon request of a parent whose child has provided personal information to a website or online service, the operator of that website or online service is required to provide to that parent the following:

(1) A description of the specific types or categories of personal information collected from children by the operator, such as name, address, telephone number, e-mail address, hobbies, and extracurricular activities;

(2) The opportunity at any time to refuse to permit the operator's further use or future online collection of personal information from that child, and to direct the operator to delete the child's personal information; and

(3) Notwithstanding any other provision of law, a means of reviewing any personal information collected from the child. The means employed by the operator to carry out this provision must:

(i) Ensure that the requestor is a parent of that child, taking into account available technology; and

(ii) Not be unduly burdensome to the parent.

(b) Neither an operator nor the operator's agent shall be held liable under any Federal or State law for any disclosure made in good faith and following reasonable procedures in responding to a request for disclosure of personal information under this section.

(c) Subject to the limitations set forth in § 312.7, an operator may terminate any service provided to a child whose parent has refused, under paragraph (a)(2) of this section, to permit the operator's further use or collection of personal information from his or her child or has directed the operator to delete the child's personal information.

§ 312.7 Prohibition against conditioning a child's participation on collection of personal information.

An operator is prohibited from conditioning a child's participation in a game, the offering of a prize, or another activity on the child's disclosing more personal information than is reasonably necessary to participate in such activity.

§ 312.8 Confidentiality, security, and integrity of personal information collected from children.

The operator must establish and maintain reasonable procedures to protect the confidentiality, security, and integrity of personal information collected from children.

§ 312.9 Enforcement.

Subject to sections 6503 and 6505 of the Children's Online Privacy Protection Act of 1998, a violation of a regulation prescribed under section 6502 (a) of this Act shall be treated as a violation of a rule defining an unfair or deceptive act or practice prescribed under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

§ 312.10 Safe harbors.

(a) *In general.* An operator will be deemed to be in compliance with the

requirements of this part if that operator complies with self-regulatory guidelines, issued by representatives of the marketing or online industries, or by other persons, that, after notice and comment, are approved by the Commission.

(b) *Criteria for approval of self-regulatory guidelines.* To be approved by the Commission, guidelines must include the following:

(1) A requirement that operators subject to the guidelines (''subject operators'') implement substantially similar requirements that provide the same or greater protections for children as those contained in §§ 312.2 through 312.9;

(2) An effective, mandatory mechanism for the independent assessment of subject operators' compliance with the guidelines. This performance standard may be satisfied by:

(i) Periodic reviews of subject operators' information practices conducted on a random basis either by the industry group promulgating the guidelines or by an independent entity;

(ii) Periodic reviews of all subject operators' information practices, conducted either by the industry group promulgating the guidelines or by an independent entity;

(iii) Seeding of subject operators' databases, if accompanied by either paragraphs (b)(2)(i) or (b)(2)(ii) of this section; or

(iv) Any other equally effective independent assessment mechanism; and

(3) Effective incentives for subject operators' compliance with the guidelines. This performance standard may be satisfied by:

(i) Mandatory, public reporting of disciplinary action taken against subject operators by the industry group promulgating the guidelines;

(ii) Consumer redress;

(iii) Voluntary payments to the United States Treasury in connection with an industry-directed program for violators of the guidelines;

(iv) Referral to the Commission of operators who engage in a pattern or practice of violating the guidelines; or

(v) Any other equally effective incentive.

(4) The assessment mechanism required under paragraph (b)(2) of this section can be provided by an independent enforcement program, such as a seal program. In considering whether to initiate an investigation or to bring an enforcement action for violations of this part, and in considering appropriate remedies for such violations, the Commission will take into account whether an operator has been subject to self-regulatory guidelines approved under this section and whether the operator has taken remedial action pursuant to such guidelines, including but not limited to actions set forth in paragraphs (b)(3)(i) through (iii) of this section.

(c) *Request for Commission approval of self-regulatory guidelines.* (1) To obtain Commission approval of self-regulatory guidelines, industry groups or other persons must file a request for such approval. A request shall be accompanied by the following:

(i) A copy of the full text of the guidelines for which approval is sought and any accompanying commentary;

(ii) A comparison of each provision of §§ 312.3 through 312.8 with the corresponding provisions of the guidelines; and

(iii) A statement explaining:

(A) How the guidelines, including the applicable assessment mechanism, meet the requirements of this part; and

(B) How the assessment mechanism and compliance incentives required under paragraphs (b)(2) and (3) of this section provide effective enforcement of the requirements of this part.

(2) The Commission shall act upon a request under this section within 180 days of the filing of such request and shall set forth its conclusions in writing.

(3) Industry groups or other persons whose guidelines have been approved by the Commission must submit proposed changes in those guidelines for review and approval by the Commission in the manner required for initial approval of guidelines under paragraph (c)(1). The statement required under paragraph (c)(1)(iii) must describe how the proposed changes affect existing provisions of the guidelines.

(d) *Records.* Industry groups or other persons who seek safe harbor treatment by compliance with guidelines that have been approved under this

part shall maintain for a period not less than three years and upon request make available to the Commission for inspection and copying:

(1) Consumer complaints alleging violations of the guidelines by subject operators;

(2) Records of disciplinary actions taken against subject operators; and

(3) Results of the independent assessments of subject operators' compliance required under paragraph (b)(2) of this section.

(e) *Revocation of approval.* The Commission reserves the right to revoke any approval granted under this section if at any time it determines that the approved self-regulatory guidelines and their implementation do not, in fact, meet the requirements of this part.

§ 312.11 Rulemaking review.

No later than April 21, 2005, the Commission shall initiate a rulemaking review proceeding to evaluate the implementation of this part, including the effect of the implementation of this part on practices relating to the collection and disclosure of information relating to children, children's ability to obtain access to information of their choice online, and on the availability of websites directed to children; and report to Congress on the results of this review.

§ 312.12 Severability.

The provisions of this part are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

PART 313—PRIVACY OF CONSUMER FINANCIAL INFORMATION

Sec.

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APPENDIX A TO PART 313—SAMPLE CLAUSES

AUTHORITY: 15 U.S.C. 6801 *et seq.*

SOURCE: 65 FR 33677, May 24, 2000, unless otherwise noted.

§ 313.1 Purpose and scope.

(a) *Purpose.* This part governs the treatment of nonpublic personal information about consumers by the financial institutions listed in paragraph (b) of this section. This part:

(1) Requires a financial institution in specified circumstances to provide notice to customers about its privacy policies and practices;

(2) Describes the conditions under which a financial institution may disclose nonpublic personal information about consumers to nonaffiliated third parties; and

(3) Provides a method for consumers to prevent a financial institution from disclosing that information to most nonaffiliated third parties by ''opting out'' of that disclosure, subject to the exceptions in §§ 313.13, 313.14, and 313.15.

(b) *Scope.* This part applies only to nonpublic personal information about

individuals who obtain financial products or services primarily for personal, family or household purposes from the institutions listed below. This part does not apply to information about companies or about individuals who obtain financial products or services for business, commercial, or agricultural purposes. This part applies to those ''financial institutions'' and ''other persons'' over which the Federal Trade Commission (''Commission'') has enforcement authority pursuant to Section 505(a)(7) of the Gramm-Leach-Bliley Act. An entity is a ''financial institution'' if its business is engaging in a financial activity as described in Section 4(k) of the Bank Holding Company Act of 1956, 12 U.S.C. 1843(k), which incorporates by reference activities enumerated by the Federal Reserve Board in 12 CFR 211.5(d) and 12 CFR 225.28. The ''financial institutions'' subject to the Commission's enforcement authority are those that are not otherwise subject to the enforcement authority of another regulator under Section 505 of the Gramm-Leach-Bliley Act. More specifically, those entities include, but are not limited to, mortgage lenders, ''pay day'' lenders, finance companies, mortgage brokers, account servicers, check cashers, wire transferors, travel agencies operated in connection with financial services, collection agencies, credit counselors and other financial advisors, tax preparation firms, nonfederally insured credit unions, and investment advisors that are not required to register with the Securities and Exchange Commission. They are referred to in this part as ''You.'' The ''other persons'' to whom this part applies are third parties that are not financial institutions, but that receive nonpublic personal information from financial institutions with whom they are not affiliated. Nothing in this part modifies, limits, or supersedes the standards governing individually identifiable health information promulgated by the Secretary of Health and Human Services under the authority of sections 262 and 264 of the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. 1320d–1320d–8. Any institution of higher education that complies with the Federal Educational Rights and Privacy Act (''FERPA''), 20 U.S.C. 1232g, and its implementing regulations, 34 CFR part 99, and that is also a financial institution subject to the requirements of this part, shall be deemed to be in compliance with this part if it is in compliance with FERPA.

§313.2 Rule of construction.

The examples in this part and the sample clauses in Appendix A of this part are not exclusive. Compliance with an example or use of a sample clause, to the extent applicable, constitutes compliance with this part. For non-federally insured credit unions, compliance with an example or use of a sample clause contained in 12 CFR part 716, to the extent applicable, constitutes compliance with this part. For intrastate securities broker-dealers and investment advisors not registered with the Securities and Exchange Commission, compliance with an example or use of a sample clause contained in 17 CFR part 248, to the extent applicable, constitutes compliance with this part.

§313.3 Definitions.

As used in this part, unless the context requires otherwise:

(a) *Affiliate* means any company that controls, is controlled by, or is under common control with another company.

(b)(1) *Clear and conspicuous* means that a notice is reasonably understandable and designed to call attention to the nature and significance of the information in the notice.

(2) *Examples*—(i) *Reasonably understandable.* You make your notice reasonably understandable if you:

(A) Present the information in the notice in clear, concise sentences, paragraphs, and sections;

(B) Use short explanatory sentences or bullet lists whenever possible;

(C) Use definite, concrete, everyday words and active voice whenever possible;

(D) Avoid multiple negatives;

(E) Avoid legal and highly technical business terminology whenever possible; and

(F) Avoid explanations that are imprecise and readily subject to different interpretations.

(ii) *Designed to call attention.* You design your notice to call attention to the nature and significance of the information in it if you:

(A) Use a plain-language heading to call attention to the notice;

(B) Use a typeface and type size that are easy to read;

(C) Provide wide margins and ample line spacing;

(D) Use boldface or italics for key words; and

(E) In a form that combines your notice with other information, use distinctive type size, style, and graphic devices, such as shading or sidebars, when you combine your notice with other information.

(iii) *Notices on web sites.* If you provide a notice on a web page, you design your notice to call attention to the nature and significance of the information in it if you use text or visual cues to encourage scrolling down the page if necessary to view the entire notice and ensure that other elements on the web site (such as text, graphics, hyperlinks, or sound) do not distract attention from the notice, and you either:

(A) Place the notice on a screen that consumers frequently access, such as a page on which transactions are conducted; or

(B) Place a link on a screen that consumers frequently access, such as a page on which transactions are conducted, that connects directly to the notice and is labeled appropriately to convey the importance, nature and relevance of the notice.

(c) *Collect* means to obtain information that you organize or can retrieve by the name of an individual or by identifying number, symbol, or other identifying particular assigned to the individual, irrespective of the source of the underlying information.

(d) *Company* means any corporation, limited liability company, business trust, general or limited partnership, association, or similar organization.

(e)(1) *Consumer* means an individual who obtains or has obtained a financial product or service from you that is to be used primarily for personal, family, or household purposes, or that individual's legal representative.

(2) *Examples*—(i) An individual who applies to you for credit for personal, family, or household purposes is a consumer of a financial service, regardless of whether the credit is extended.

(ii) An individual who provides nonpublic personal information to you in order to obtain a determination about whether he or she may qualify for a loan to be used primarily for personal, family, or household purposes is a consumer of a financial service, regardless of whether the loan is extended.

(iii) An individual who provides nonpublic personal information to you in connection with obtaining or seeking to obtain financial, investment, or economic advisory services is a consumer, regardless of whether you establish a continuing advisory relationship.

(iv) If you hold ownership or servicing rights to an individual's loan that is used primarily for personal, family, or household purposes, the individual is your consumer, even if you hold those rights in conjunction with one or more other institutions. (The individual is also a consumer with respect to the other financial institutions involved.) An individual who has a loan in which you have ownership or servicing rights is your consumer, even if you, or another institution with those rights, hire an agent to collect on the loan.

(v) An individual who is a consumer of another financial institution is not your consumer solely because you act as agent for, or provide processing or other services to, that financial institution.

(vi) An individual is not your consumer solely because he or she has designated you as trustee for a trust.

(vii) An individual is not your consumer solely because he or she is a beneficiary of a trust for which you are a trustee.

(viii) An individual is not your consumer solely because he or she is a participant or a beneficiary of an employee benefit plan that you sponsor or for which you act as a trustee or fiduciary.

(f) *Consumer reporting agency* has the same meaning as in section 603(f) of the Fair Credit Reporting Act (15 U.S.C. 1681a(f)).

(g) *Control* of a company means:

(1) Ownership, control, or power to vote 25 percent or more of the outstanding shares of any class of voting

security of the company, directly or indirectly, or acting through one or more other persons;

(2) Control in any manner over the election of a majority of the directors, trustees, or general partners (or individuals exercising similar functions) of the company; or

(3) The power to exercise, directly or indirectly, a controlling influence over the management or policies of the company.

(h) *Customer* means a consumer who has a customer relationship with you.

(i)(1) *Customer relationship* means a continuing relationship between a consumer and you under which you provide one or more financial products or services to the consumer that are to be used primarily for personal, family, or household purposes.

(2) *Examples*—(i) *Continuing relationship*. A consumer has a continuing relationship with you if the consumer:

(A) Has a credit or investment account with you;

(B) Obtains a loan from you;

(C) Purchases an insurance product from you;

(D) Holds an investment product through you, such as when you act as a custodian for securities or for assets in an Individual Retirement Arrangement;

(E) Enters into an agreement or understanding with you whereby you undertake to arrange or broker a home mortgage loan, or credit to purchase a vehicle, for the consumer;

(F) Enters into a lease of personal property on a non-operating basis with you;

(G) Obtains financial, investment, or economic advisory services from you for a fee;

(H) Becomes your client for the purpose of obtaining tax preparation or credit counseling services from you;

(I) Obtains career counseling while seeking employment with a financial institution or the finance, accounting, or audit department of any company (or while employed by such a financial institution or department of any company);

(J) Is obligated on an account that you purchase from another financial institution, regardless of whether the account is in default when purchased, unless you do not locate the consumer or attempt to collect any amount from the consumer on the account;

(K) Obtains real estate settlement services from you; or

(L) Has a loan for which you own the servicing rights.

(ii) *No continuing relationship*. A consumer does not, however, have a continuing relationship with you if:

(A) The consumer obtains a financial product or service from you only in isolated transactions, such as using your ATM to withdraw cash from an account at another financial institution; purchasing a money order from you; cashing a check with you; or making a wire transfer through you;

(B) You sell the consumer's loan and do not retain the rights to service that loan;

(C) You sell the consumer airline tickets, travel insurance, or traveler's checks in isolated transactions;

(D) The consumer obtains one-time personal or real property appraisal services from you; or

(E) The consumer purchases checks for a personal checking account from you.

(j) *Federal functional regulator* means:

(1) The Board of Governors of the Federal Reserve System;

(2) The Office of the Comptroller of the Currency;

(3) The Board of Directors of the Federal Deposit Insurance Corporation;

(4) The Director of the Office of Thrift Supervision;

(5) The National Credit Union Administration Board; and

(6) The Securities and Exchange Commission.

(k)(1) *Financial institution* means any institution the business of which is engaging in financial activities as described in section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)). An institution that is significantly engaged in financial activities is a financial institution.

(2) *Examples of financial institution*. (i) A retailer that extends credit by issuing its own credit card directly to consumers is a financial institution because extending credit is a financial activity listed in 12 CFR 225.28(b)(1) and referenced in section 4(k)(4)(F) of the Bank Holding Company Act and

issuing that extension of credit through a proprietary credit card demonstrates that a retailer is significantly engaged in extending credit.

(ii) A personal property or real estate appraiser is a financial institution because real and personal property appraisal is a financial activity listed in 12 CFR 225.28(b)(2)(i) and referenced in section 4(k)(4)(F) of the Bank Holding Company Act.

(iii) An automobile dealership that, as a usual part of its business, leases automobiles on a nonoperating basis for longer than 90 days is a financial institution with respect to its leasing business because leasing personal property on a nonoperating basis where the initial term of the lease is at least 90 days is a financial activity listed in 12 CFR 225.28(b)(3) and referenced in section 4(k)(4)(F) of the Bank Holding Company Act.

(iv) A career counselor that specializes in providing career counseling services to individuals currently employed by or recently displaced from a financial organization, individuals who are seeking employment with a financial organization, or individuals who are currently employed by or seeking placement with the finance, accounting or audit departments of any company is a financial institution because such career counseling activities are financial activities listed in 12 CFR 225.28(b)(9)(iii) and referenced in section 4(k)(4)(F) of the Bank Holding Company Act.

(v) A business that prints and sells checks for consumers, either as its sole business or as one of its product lines, is a financial institution because printing and selling checks is a financial activity that is listed in 12 CFR 225.28(b)(10)(ii) and referenced in section 4(k)(4)(F) of the Bank Holding Company Act.

(vi) A business that regularly wires money to and from consumers is a financial institution because transferring money is a financial activity referenced in section 4(k)(4)(A) of the Bank Holding Company Act and regularly providing that service demonstrates that the business is significantly engaged in that activity.

(vii) A check cashing business is a financial institution because cashing a check is exchanging money, which is a financial activity listed in section 4(k)(4)(A) of the Bank Holding Company Act.

(viii) An accountant or other tax preparation service that is in the business of completing income tax returns is a financial institution because tax preparation services is a financial activity listed in 12 CFR 225.28(b)(6)(vi) and referenced in section 4(k)(4)(G) of the Bank Holding Company Act.

(ix) A business that operates a travel agency in connection with financial services is a financial institution because operating a travel agency in connection with financial services is a financial activity listed in 12 CFR 211.5(d)(15) and referenced in section 4(k)(4)(G) of the Bank Holding Company Act.

(x) An entity that provides real estate settlement services is a financial institution because providing real estate settlement services is a financial activity listed in 12 CFR 225.28(b)(2)(viii) and referenced in section 4(k)(4)(F) of the Bank Holding Company Act.

(xi) A mortgage broker is a financial institution because brokering loans is a financial activity listed in 12 CFR 225.28(b)(1) and referenced in section 4(k)(4)(F) of the Bank Holding Company Act.

(xii) An investment advisory company and a credit counseling service are each financial institutions because providing financial and investment advisory services are financial activities referenced in section 4(k)(4)(C) of the Bank Holding Company Act.

(3) *Financial institution* does not include:

(i) Any person or entity with respect to any financial activity that is subject to the jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*);

(ii) The Federal Agricultural Mortgage Corporation or any entity chartered and operating under the Farm Credit Act of 1971 (12 U.S.C. 2001 *et seq.*); or

(iii) Institutions chartered by Congress specifically to engage in securitizations, secondary market sales (including sales of servicing rights) or

similar transactions related to a transaction of a consumer, as long as such institutions do not sell or transfer nonpublic personal information to a nonaffiliated third party other than as permitted by §§313.14 and 313.15 of this part.

(iv) Entities that engage in financial activities but that are not significantly engaged in those financial activities.

(4) *Examples of entities that are not significantly engaged in financial activities.* (i) A retailer is not a financial institution if its only means of extending credit are occasional ''lay away'' and deferred payment plans or accepting payment by means of credit cards issued by others.

(ii) A retailer is not a financial institution merely because it accepts payment in the form of cash, checks, or credit cards that it did not issue.

(iii) A merchant is not a financial institution merely because it allows an individual to ''run a tab.''

(iv) A grocery store is not a financial institution merely because it allows individuals to whom it sells groceries to cash a check, or write a check for a higher amount than the grocery purchase and obtain cash in return.

(l)(1) *Financial product or service* means any product or service that a financial holding company could offer by engaging in a financial activity under section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).

(2) *Financial service* includes your evaluation or brokerage of information that you collect in connection with a request or an application from a consumer for a financial product or service.

(m)(1) *Nonaffiliated third party* means any person except:

(i) Your affiliate; or

(ii) A person employed jointly by you and any company that is not your affiliate (but *nonaffiliated third party* includes the other company that jointly employs the person).

(2) *Nonaffiliated third party* includes any company that is an affiliate by virtue of your or your affiliate's direct or indirect ownership or control of the company in conducting merchant banking or investment banking activities of the type described in section 4(k)(4)(H) or insurance company investment activities of the type described in section 4(k)(4)(I) of the Bank Holding Company Act (12 U.S.C. 1843(k)(4)(H) and (I)).

(n)(1) *Nonpublic personal information* means:

(i) Personally identifiable financial information; and

(ii) Any list, description, or other grouping of consumers (and publicly available information pertaining to them) that is derived using any personally identifiable financial information that is not publicly available.

(2) *Nonpublic personal information* does not include:

(i) Publicly available information, except as included on a list described in paragraph (n)(1)(ii) of this section; or

(ii) Any list, description, or other grouping of consumers (and publicly available information pertaining to them) that is derived without using any personally identifiable financial information that is not publicly available.

(3) *Examples of lists*—(i) Nonpublic personal information includes any list of individuals' names and street addresses that is derived in whole or in part using personally identifiable financial information (that is not publicly available), such as account numbers.

(ii) Nonpublic personal information does not include any list of individuals' names and addresses that contains only publicly available information, is not derived, in whole or in part, using personally identifiable financial information that is not publicly available, and is not disclosed in a manner that indicates that any of the individuals on the list is a consumer of a financial institution.

(o)(1) *Personally identifiable financial information* means any information:

(i) A consumer provides to you to obtain a financial product or service from you;

(ii) About a consumer resulting from any transaction involving a financial product or service between you and a consumer; or

(iii) You otherwise obtain about a consumer in connection with providing a financial product or service to that consumer.

(2) *Examples*—(i) *Information included.* Personally identifiable financial information includes:

(A) Information a consumer provides to you on an application to obtain a loan, credit card, or other financial product or service;

(B) Account balance information, payment history, overdraft history, and credit or debit card purchase information;

(C) The fact that an individual is or has been one of your customers or has obtained a financial product or service from you;

(D) Any information about your consumer if it is disclosed in a manner that indicates that the individual is or has been your consumer;

(E) Any information that a consumer provides to you or that you or your agent otherwise obtain in connection with collecting on, or servicing, a credit account;

(F) Any information you collect through an Internet ''cookie'' (an information collecting device from a web server); and

(G) Information from a consumer report.

(ii) *Information not included.* Personally identifiable financial information does not include:

(A) A list of names and addresses of customers of an entity that is not a financial institution; and

(B) Information that does not identify a consumer, such as aggregate information or blind data that does not contain personal identifiers such as account numbers, names, or addresses.

(p)(1) *Publicly available information* means any information that you have a reasonable basis to believe is lawfully made available to the general public from:

(i) Federal, State, or local government records;

(ii) Widely distributed media; or

(iii) Disclosures to the general public that are required to be made by Federal, State, or local law.

(2) *Reasonable basis.* You have a reasonable basis to believe that information is lawfully made available to the general public if you have taken steps to determine:

(i) That the information is of the type that is available to the general public; and

(ii) Whether an individual can direct that the information not be made available to the general public and, if so, that your consumer has not done so.

(3) *Examples*—(i) *Government records.* Publicly available information in government records includes information in government real estate records and security interest filings.

(ii) *Widely distributed media.* Publicly available information from widely distributed media includes information from a telephone book, a television or radio program, a newspaper, or a web site that is available to the general public on an unrestricted basis. A web site is not restricted merely because an Internet service provider or a site operator requires a fee or a password, so long as access is available to the general public.

(iii) *Reasonable basis*—(A) You have a reasonable basis to believe that mortgage information is lawfully made available to the general public if you have determined that the information is of the type included on the public record in the jurisdiction where the mortgage would be recorded.

(B) You have a reasonable basis to believe that an individual's telephone number is lawfully made available to the general public if you have located the telephone number in the telephone book or the consumer has informed you that the telephone number is not unlisted.

(q) *You* includes each ''financial institution'' (but excludes any ''other person'') over which the Commission has enforcement jurisdiction pursuant to section 505(a)(7) of the Gramm-Leach-Bliley Act.

Subpart A—Privacy and Opt Out Notices

§ 313.4 Initial privacy notice to consumers required.

(a) *Initial notice requirement.* You must provide a clear and conspicuous notice that accurately reflects your privacy policies and practices to:

(1) *Customer.* An individual who becomes your customer, not later than

when you establish a customer relationship, except as provided in paragraph (e) of this section; and

(2) *Consumer*. A consumer, before you disclose any nonpublic personal information about the consumer to any nonaffiliated third party, if you make such a disclosure other than as authorized by §§313.14 and 313.15.

(b) *When initial notice to a consumer is not required*. You are not required to provide an initial notice to a consumer under paragraph (a) of this section if:

(1) You do not disclose any nonpublic personal information about the consumer to any nonaffiliated third party, other than as authorized by §§313.14 and 313.15; and

(2) You do not have a customer relationship with the consumer.

(c) *When you establish a customer relationship*—(1) *General rule*. You establish a customer relationship when you and the consumer enter into a continuing relationship.

(2) *Special rule for loans*. You establish a customer relationship with a consumer when you originate a loan to the consumer for personal, family, or household purposes. If you subsequently transfer the servicing rights to that loan to another financial institution, the customer relationship transfers with the servicing rights.

(3)(i) *Examples of establishing customer relationship*. You establish a customer relationship when the consumer:

(A) Opens a credit card account with you;

(B) Executes the contract to obtain credit from you or purchase insurance from you;

(C) Agrees to obtain financial, economic, or investment advisory services from you for a fee; or

(D) Becomes your client for the purpose of your providing credit counseling or tax preparation services, or to obtain career counseling while seeking employment with a financial institution or the finance, accounting, or audit department of any company (or while employed by such a company or financial institution);

(E) Provides any personally identifiable financial information to you in an effort to obtain a mortgage loan through you;

(F) Executes the lease for personal property with you;

(G) Is an obligor on an account that you purchased from another financial institution and whom you have located and begun attempting to collect amounts owed on the account; or

(H) Provides you with the information necessary for you to compile and provide access to all of the consumer's on-line financial accounts at your Web site.

(ii) *Examples of loan rule*. You establish a customer relationship with a consumer who obtains a loan for personal, family, or household purposes when you:

(A) Originate the loan to the consumer and retain the servicing rights; or

(B) Purchase the servicing rights to the consumer's loan.

(d) *Existing customers*. When an existing customer obtains a new financial product or service from you that is to be used primarily for personal, family, or household purposes, you satisfy the initial notice requirements of paragraph (a) of this section as follows:

(1) You may provide a revised privacy notice, under §313.8, that covers the customer's new financial product or service; or

(2) If the initial, revised, or annual notice that you most recently provided to that customer was accurate with respect to the new financial product or service, you do not need to provide a new privacy notice under paragraph (a) of this section.

(e) *Exceptions to allow subsequent delivery of notice*. (1) You may provide the initial notice required by paragraph (a)(1) of this section within a reasonable time after you establish a customer relationship if:

(i) Establishing the customer relationship is not at the customer's election; or

(ii) Providing notice not later than when you establish a customer relationship would substantially delay the customer's transaction and the customer agrees to receive the notice at a later time.

(2) *Examples of exceptions*—(i) *Not at customer's election*. Establishing a customer relationship is not at the customer's election if you acquire a customer's loan, or the servicing rights, from another financial institution and the customer does not have a choice about your acquisition.

(ii) *Substantial delay of customer's transaction*. Providing notice not later than when you establish a customer relationship would substantially delay the customer's transaction when:

(A) You and the individual agree over the telephone to enter into a customer relationship involving prompt delivery of the financial product or service; or

(B) You establish a customer relationship with an individual under a program authorized by Title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 *et seq.*) or similar student loan programs where loan proceeds are disbursed promptly without prior communication between you and the customer.

(iii) *No substantial delay of customer's transaction*. Providing notice not later than when you establish a customer relationship would not substantially delay the customer's transaction when the relationship is initiated in person at your office or through other means by which the customer may view the notice, such as through a web site.

(f) *Delivery*. When you are required to deliver an initial privacy notice by this section, you must deliver it according to § 313.9. If you use a short-form initial notice for non-customers according to § 313.6(d), you may deliver your privacy notice according to § 313.6(d)(3).

§ 313.5 Annual privacy notice to customers required.

(a)(1) *General rule*. You must provide a clear and conspicuous notice to customers that accurately reflects your privacy policies and practices not less than annually during the continuation of the customer relationship. *Annually* means at least once in any period of 12 consecutive months during which that relationship exists. You may define the 12-consecutive-month period, but you must apply it to the customer on a consistent basis.

(2) *Example*. You provide a notice annually if you define the 12-consecutive-month period as a calendar year and provide the annual notice to the customer once in each calendar year following the calendar year in which you provided the initial notice. For example, if a customer opens an account on any day of year 1, you must provide an annual notice to that customer by December 31 of year 2.

(b)(1) *Termination of customer relationship*. You are not required to provide an annual notice to a former customer.

(2) *Examples*. Your customer becomes a former customer when:

(i) In the case of a closed-end loan, the customer pays the loan in full, you charge off the loan, or you sell the loan without retaining servicing rights;

(ii) In the case of a credit card relationship or other open-end credit relationship, you sell the receivables without retaining servicing rights;

(iii) In the case of credit counseling services, the customer has failed to make required payments under a debt management plan, has been notified that the plan is terminated, and you no longer provide any statements or notices to the customer concerning that relationship;

(iv) In the case of mortgage or vehicle loan brokering services, your customer has obtained a loan through you (and you no longer provide any statements or notices to the customer concerning that relationship), or has ceased using your services for such purposes;

(v) In the case of tax preparation services, you have provided and received payment for the service and no longer provide any statements or notices to the customer concerning that relationship;

(vi) In the case of providing real estate settlement services, at the time the customer completes execution of all documents related to the real estate closing, you have received payment, or you have completed all of your responsibilities with respect to the settlement, including filing documents on the public record, whichever is later.

(vii) In cases where there is no definitive time at which the customer relationship has terminated, you have not communicated with the customer about the relationship for a period of 12

consecutive months, other than to provide annual privacy notices or promotional material.

(c) *Special rule for loans.* If you do not have a customer relationship with a consumer under the special rule for loans in §313.4(c)(2), then you need not provide an annual notice to that consumer under this section.

(d) *Delivery.* When you are required to deliver an annual privacy notice by this section, you must deliver it according to §313.9.

§313.6 Information to be included in privacy notices.

(a) *General rule.* The initial, annual, and revised privacy notices that you provide under §§313.4, 313.5, and 313.8 must include each of the following items of information that applies to you or to the consumers to whom you send your privacy notice, in addition to any other information you wish to provide:

(1) The categories of nonpublic personal information that you collect;

(2) The categories of nonpublic personal information that you disclose;

(3) The categories of affiliates and nonaffiliated third parties to whom you disclose nonpublic personal information, other than those parties to whom you disclose information under §§313.14 and 313.15;

(4) The categories of nonpublic personal information about your former customers that you disclose and the categories of affiliates and nonaffiliated third parties to whom you disclose nonpublic personal information about your former customers, other than those parties to whom you disclose information under §§313.14 and 313.15;

(5) If you disclose nonpublic personal information to a nonaffiliated third party under §313.13 (and no exception under §§313.14 or 313.15 applies to that disclosure), a separate statement of the categories of information you disclose and the categories of third parties with whom you have contracted;

(6) An explanation of the consumer's right under §313.10(a) to opt out of the disclosure of nonpublic personal information to nonaffiliated third parties, including the method(s) by which the consumer may exercise that right at that time;

(7) Any disclosures that you make under section 603(d)(2)(A)(iii) of the Fair Credit Reporting Act (15 U.S.C. 1681a(d)(2)(A)(iii)) (that is, notices regarding the ability to opt out of disclosures of information among affiliates);

(8) Your policies and practices with respect to protecting the confidentiality and security of nonpublic personal information; and

(9) Any disclosure that you make under paragraph (b) of this section.

(b) *Description of nonaffiliated third parties subject to exceptions.* If you disclose nonpublic personal information to third parties as authorized under §§313.14 and 313.15, you are not required to list those exceptions in the initial or annual privacy notices required by §§313.4 and 313.5. When describing the categories with respect to those parties, you are required to state only that you make disclosures to other nonaffiliated third parties as permitted by law.

(c) *Examples*—(1) *Categories of nonpublic personal information that you collect.* You satisfy the requirement to categorize the nonpublic personal information that you collect if you list the following categories, as applicable:

(i) Information from the consumer;

(ii) Information about the consumer's transactions with you or your affiliates;

(iii) Information about the consumer's transactions with nonaffiliated third parties; and

(iv) Information from a consumer reporting agency.

(2) *Categories of nonpublic personal information you disclose*—(i) You satisfy the requirement to categorize the nonpublic personal information that you disclose if you list the categories described in paragraph (e)(1) of this section, as applicable, and a few examples to illustrate the types of information in each category.

(ii) If you reserve the right to disclose all of the nonpublic personal information about consumers that you collect, you may simply state that fact without describing the categories or examples of the nonpublic personal information you disclose.

(3) *Categories of affiliates and nonaffiliated third parties to whom you disclose.* You satisfy the requirement to categorize the affiliates and nonaffiliated third parties to whom you disclose nonpublic personal information if you list them using the following categories, as applicable, and a few applicable examples to illustrate the significant types of third parties covered in each category.

(i) Financial service providers, followed by illustrative examples such as mortgage bankers, securities broker-dealers, and insurance agents.

(ii) Non-financial companies, followed by illustrative examples such as retailers, magazine publishers, airlines, and direct marketers; and

(iii) Others, followed by examples such as nonprofit organizations.

(4) *Disclosures under exception for service providers and joint marketers.* If you disclose nonpublic personal information under the exception in § 313.13 to a nonaffiliated third party to market products or services that you offer alone or jointly with another financial institution, you satisfy the disclosure requirement of paragraph (a)(5) of this section if you:

(i) List the categories of nonpublic personal information you disclose, using the same categories and examples you used to meet the requirements of paragraph (a)(2) of this section, as applicable; and

(ii) State whether the third party is:

(A) A service provider that performs marketing services on your behalf or on behalf of you and another financial institution; or

(B) A financial institution with whom you have a joint marketing agreement.

(5) *Simplified notices.* If you do not disclose, and do not wish to reserve the right to disclose, nonpublic personal information about customers or former customers to affiliates or nonaffiliated third parties except as authorized under §§ 313.14 and 313.15, you may simply state that fact, in addition to the information you must provide under paragraphs (a)(1), (a)(8), (a)(9), and (b) of this section.

(6) *Confidentiality and security.* You describe your policies and practices with respect to protecting the confidentiality and security of nonpublic personal information if you do both of the following:

(i) Describe in general terms who is authorized to have access to the information; and

(ii) State whether you have security practices and procedures in place to ensure the confidentiality of the information in accordance with your policy. You are not required to describe technical information about the safeguards you use.

(d) *Short-form initial notice with opt out notice for non-customers*—(1) You may satisfy the initial notice requirements in §§ 313.4(a)(2), 313.7(b), and 313.7(c) for a consumer who is not a customer by providing a short-form initial notice at the same time as you deliver an opt out notice as required in § 313.7.

(2) A short-form initial notice must:

(i) Be clear and conspicuous;

(ii) State that your privacy notice is available upon request; and

(iii) Explain a reasonable means by which the consumer may obtain that notice.

(3) You must deliver your short-form initial notice according to § 313.9. You are not required to deliver your privacy notice with your short-form initial notice. You instead may simply provide the consumer a reasonable means to obtain your privacy notice. If a consumer who receives your short-form notice requests your privacy notice, you must deliver your privacy notice according to § 313.9.

(4) *Examples of obtaining privacy notice.* You provide a reasonable means by which a consumer may obtain a copy of your privacy notice if you:

(i) Provide a toll-free telephone number that the consumer may call to request the notice; or

(ii) For a consumer who conducts business in person at your office, maintain copies of the notice on hand that you provide to the consumer immediately upon request.

(e) *Future disclosures.* Your notice may include:

(1) Categories of nonpublic personal information that you reserve the right to disclose in the future, but do not currently disclose; and

(2) Categories of affiliates or nonaffiliated third parties to whom you reserve the right in the future to disclose, but to whom you do not currently disclose, nonpublic personal information.

(f) *Sample clauses.* Sample clauses illustrating some of the notice content required by this section are included in Appendix A of this part.

§313.7 Form of opt out notice to consumers; opt out methods.

(a)(1) *Form of opt out notice.* If you are required to provide an opt out notice under §313.10(a), you must provide a clear and conspicuous notice to each of your consumers that accurately explains the right to opt out under that section. The notice must state:

(i) That you disclose or reserve the right to disclose nonpublic personal information about your consumer to a nonaffiliated third party;

(ii) That the consumer has the right to opt out of that disclosure; and

(iii) A reasonable means by which the consumer may exercise the opt out right.

(2) *Examples*—(i) *Adequate opt out notice.* You provide adequate notice that the consumer can opt out of the disclosure of nonpublic personal information to a nonaffiliated third party if you:

(A) Identify all of the categories of nonpublic personal information that you disclose or reserve the right to disclose, and all of the categories of nonaffiliated third parties to which you disclose the information, as described in §313.6(a) (2) and (3) and state that the consumer can opt out of the disclosure of that information; and

(B) Identify the financial products or services that the consumer obtains from you, either singly or jointly, to which the opt out direction would apply.

(ii) *Reasonable opt out means.* You provide a reasonable means to exercise an opt out right if you:

(A) Designate check-off boxes in a prominent position on the relevant forms with the opt out notice;

(B) Include a reply form that includes the address to which the form should be mailed; or

(C) Provide an electronic means to opt out, such as a form that can be sent via electronic mail or a process at your web site, if the consumer agrees to the electronic delivery of information; or

(D) Provide a toll-free telephone number that consumers may call to opt out.

(iii) *Unreasonable opt out means.* You *do not* provide a reasonable means of opting out if:

(A) The only means of opting out is for the consumer to write his or her own letter to exercise that opt out right; or

(B) The only means of opting out as described in any notice subsequent to the initial notice is to use a check-off box that you provided with the initial notice but did not include with the subsequent notice.

(iv) *Specific opt out means.* You may require each consumer to opt out through a specific means, as long as that means is reasonable for that consumer.

(b) *Same form as initial notice permitted.* You may provide the opt out notice together with or on the same written or electronic form as the initial notice you provide in accordance with §313.4.

(c) *Initial notice required when opt out notice delivered subsequent to initial notice.* If you provide the opt out notice later than required for the initial notice in accordance with §313.4, you must also include a copy of the initial notice with the opt out notice in writing or, if the consumer agrees, electronically.

(d) *Joint relationships*—(1) If two or more consumers jointly obtain a financial product or service from you, you may provide a single opt out notice, unless one or more of those consumers requests a separate opt out notice. Your opt out notice must explain how you will treat an opt out direction by a joint consumer (as explained in paragraph (d)(5)(ii)of this section).

(2) Any of the joint consumers may exercise the right to opt out. You may either:

(i) Treat an opt out direction by a joint consumer as applying to all of the associated joint consumers; or

(ii) Permit each joint consumer to opt out separately.

(3) If you permit each joint consumer to opt out separately, you must permit

one of the joint consumers to opt out on behalf of all of the joint consumers.

(4) You may not require *all* joint consumers to opt out before you implement *any* opt out direction.

(5) *Example*. If John and Mary have a joint credit card account with you and arrange for you to send statements to John's address, you may do any of the following, but you must explain in your opt out notice which opt out policy you will follow:

(i) Send a single opt out notice to John's address, but you must accept an opt out direction from either John or Mary.

(ii) Treat an opt out direction by either John or Mary as applying to the entire account. If you do so, and John opts out, you may not require Mary to opt out as well before implementing John's opt out direction.

(iii) Permit John and Mary to make different opt out directions. If you do so,

(A) You must permit John and Mary to opt out for each other;

(B) If both opt out, you must permit both to notify you in a single response (such as on a form or through a telephone call); and

(C) If John opts out and Mary does not, you may only disclose nonpublic personal information about Mary, but not about John and not about John and Mary jointly.

(e) *Time to comply with opt out*. You must comply with a consumer's opt out direction as soon as reasonably practicable after you receive it.

(f) *Continuing right to opt out*. A consumer may exercise the right to opt out at any time.

(g) *Duration of consumer's opt out direction*—(1) A consumer's direction to opt out under this section is effective until the consumer revokes it in writing or, if the consumer agrees, electronically.

(2) When a customer relationship terminates, the customer's opt out direction continues to apply to the nonpublic personal information that you collected during or related to that relationship. If the individual subsequently establishes a new customer relationship with you, the opt out direction that applied to the former relationship does not apply to the new relationship.

(h) *Delivery*. When you are required to deliver an opt out notice by this section, you must deliver it according to § 313.9.

§ 313.8 Revised privacy notices.

(a) *General rule*. Except as otherwise authorized in this part, you must not, directly or through any affiliate, disclose any nonpublic personal information about a consumer to a nonaffiliated third party other than as described in the initial notice that you provided to that consumer under § 313.4, unless:

(1) You have provided to the consumer a clear and conspicuous revised notice that accurately describes your policies and practices;

(2) You have provided to the consumer a new opt out notice;

(3) You have given the consumer a reasonable opportunity, before you disclose the information to the nonaffiliated third party, to opt out of the disclosure; and

(4) the consumer does not opt out.

(b) *Examples*—(1) Except as otherwise permitted by §§ 313.13, 313.14, and 313.15, you must provide a revised notice before you:

(i) Disclose a new category of nonpublic personal information to any nonaffiliated third party;

(ii) Disclose nonpublic personal information to a new category of nonaffiliated third party; or

(iii) Disclose nonpublic personal information about a former customer to a nonaffiliated third party if that former customer has not had the opportunity to exercise an opt out right regarding that disclosure.

(2) A revised notice is not required if you disclose nonpublic personal information to a new nonaffiliated third party that you adequately described in your prior notice.

(c) *Delivery*. When you are required to deliver a revised privacy notice by this section, you must deliver it according to § 313.9.

§ 313.9 Delivering privacy and opt out notices.

(a) *How to provide notices*. You must provide any privacy notices and opt out notices, including short-form initial notices, that this part requires so

that each consumer can reasonably be expected to receive actual notice in writing or, if the consumer agrees, electronically.

(b)(1) *Examples of reasonable expectation of actual notice.* You may reasonably expect that a consumer will receive actual notice if you:

(i) Hand-deliver a printed copy of the notice to the consumer;

(ii) Mail a printed copy of the notice to the last known address of the consumer;

(iii) For the consumer who conducts transactions electronically, clearly and conspicuously post the notice on the electronic site and require the consumer to acknowledge receipt of the notice as a necessary step to obtaining a particular financial product or service;

(iv) For an isolated transaction with the consumer, such as an ATM transaction, post the notice on the ATM screen and require the consumer to acknowledge receipt of the notice as a necessary step to obtaining the particular financial product or service.

(2) *Examples of unreasonable expectation of actual notice.* You may *not*, however, reasonably expect that a consumer will receive actual notice of your privacy policies and practices if you:

(i) Only post a sign in your branch or office or generally publish advertisements of your privacy policies and practices;

(ii) Send the notice via electronic mail to a consumer who does not obtain a financial product or service from you electronically.

(c) *Annual notices only.* You may reasonably expect that a customer will receive actual notice of your annual privacy notice if:

(1) The customer uses your web site to access financial products and services electronically and agrees to receive notices at the web site and you post your current privacy notice continuously in a clear and conspicuous manner on the web site; or

(2) The customer has requested that you refrain from sending any information regarding the customer relationship, and your current privacy notice remains available to the customer upon request.

(d) *Oral description of notice insufficient.* You may not provide any notice required by this part solely by orally explaining the notice, either in person or over the telephone.

(e) *Retention or accessibility of notices for customers*—(1) For customers only, you must provide the initial notice required by §313.4(a)(1), the annual notice required by §313.5(a), and the revised notice required by §313.8 so that the customer can retain them or obtain them later in writing or, if the customer agrees, electronically.

(2) *Examples of retention or accessibility.* You provide a privacy notice to the customer so that the customer can retain it or obtain it later if you:

(i) Hand-deliver a printed copy of the notice to the customer;

(ii) Mail a printed copy of the notice to the last known address of the customer; or

(iii) Make your current privacy notice available on a web site (or a link to another web site) for the customer who obtains a financial product or service electronically and agrees to receive the notice at the web site.

(f) *Joint notice with other financial institutions.* You may provide a joint notice from you and one or more of your affiliates or other financial institutions, as identified in the notice, as long as the notice is accurate with respect to you and the other institutions.

(g) *Joint relationships.* If two or more consumers jointly obtain a financial product or service from you, you may satisfy the initial, annual, and revised notice requirements of §§313.4(a), 313.5(a), and 313.8(a) by providing one notice to those consumers jointly, unless one or more of those consumers requests separate notices.

Subpart B—Limits on Disclosures

§313.10 Limits on disclosure of nonpublic personal information to nonaffiliated third parties.

(a)(1) *Conditions for disclosure.* Except as otherwise authorized in this part, you may not, directly or through any affiliate, disclose any nonpublic personal information about a consumer to a nonaffiliated third party unless:

(i) You have provided to the consumer an initial notice as required under § 313.4;

(ii) You have provided to the consumer an opt out notice as required in § 313.7;

(iii) You have given the consumer a reasonable opportunity, before you disclose the information to the nonaffiliated third party, to opt out of the disclosure; and

(iv) The consumer does not opt out.

(2) *Opt out definition*. Opt out means a direction by the consumer that you not disclose nonpublic personal information about that consumer to a nonaffiliated third party, other than as permitted by §§ 313.13, 313.14, and 313.15.

(3) *Examples of reasonable opportunity to opt out*. You provide a consumer with a reasonable opportunity to opt out if:

(i) *By mail*. You mail the notices required in paragraph (a)(1) of this section to the consumer and allow the consumer to opt out by mailing a form, calling a toll-free telephone number, or any other reasonable means within 30 days from the date you mailed the notices.

(ii) *By electronic means*. A customer opens an on-line account with you and agrees to receive the notices required in paragraph (a)(1) of this section electronically, and you allow the customer to opt out by any reasonable means within 30 days after the date that the customer acknowledges receipt of the notices in conjunction with opening the account.

(iii) *Isolated transaction with consumer*. For an isolated transaction, such as the purchase of a money order by a consumer, you provide the consumer with a reasonable opportunity to opt out if you provide the notices required in paragraph (a)(1) of this section at the time of the transaction and request that the consumer decide, as a necessary part of the transaction, whether to opt out before completing the transaction.

(b) *Application of opt out to all consumers and all nonpublic personal information*—(1) You must comply with this section, regardless of whether you and the consumer have established a customer relationship

(2) Unless you comply with this section, you may not, directly or through any affiliate, disclose any nonpublic personal information about a consumer that you have collected, regardless of whether you collected it before or after receiving the direction to opt out from the consumer.

(c) *Partial opt out*. You may allow a consumer to select certain nonpublic personal information or certain nonaffiliated third parties with respect to which the consumer wishes to opt out.

§ 313.11 Limits on redisclosure and reuse of information.

(a)(1) *Information you receive under an exception*. If you receive nonpublic personal information from a nonaffiliated financial institution under an exception in § 313.14 or 313.15 of this part, your disclosure and use of that information is limited as follows:

(i) You may disclose the information to the affiliates of the financial institution from which you received the information;

(ii) You may disclose the information to your affiliates, but your affiliates may, in turn, disclose and use the information only to the extent that you may disclose and use the information; and

(iii) You may disclose and use the information pursuant to an exception in § 313.14 or 313.15 in the ordinary course of business to carry out the activity covered by the exception under which you received the information.

(2) *Example*. If you receive a customer list from a nonaffiliated financial institution in order to provide account processing services under the exception in § 313.14(a), you may disclose that information under any exception in § 313.14 or 313.15 in the ordinary course of business in order to provide those services. You could also disclose that information in response to a properly authorized subpoena. You could not disclose that information to a third party for marketing purposes or use that information for your own marketing purposes.

(b)(1) *Information you receive outside of an exception*. If you receive nonpublic personal information from a nonaffiliated financial institution other than under an exception in § 313.14 or 313.15 of this part, you may disclose the information only:

(i) To the affiliates of the financial institution from which you received the information;

(ii) To your affiliates, but your affiliates may, in turn, disclose the information only to the extent that you can disclose the information; and

(iii) To any other person, if the disclosure would be lawful if made directly to that person by the financial institution from which you received the information.

(2) *Example.* If you obtain a customer list from a nonaffiliated financial institution outside of the exceptions in § 313.14 and 313.15:

(i) You may use that list for your own purposes; and

(ii) You may disclose that list to another nonaffiliated third party only if the financial institution from which you purchased the list could have lawfully disclosed the list to that third party. That is, you may disclose the list in accordance with the privacy policy of the financial institution from which you received the list, as limited by the opt out direction of each consumer whose nonpublic personal information you intend to disclose, and you may disclose the list in accordance with an exception in § 313.14 or 313.15, such as to your attorneys or accountants.

(c) *Information you disclose under an exception.* If you disclose nonpublic personal information to a nonaffiliated third party under an exception in § 313.14 or 313.15 of this part, the third party may disclose and use that information only as follows:

(1) The third party may disclose the information to your affiliates;

(2) The third party may disclose the information to its affiliates, but its affiliates may, in turn, disclose and use the information only to the extent that the third party may disclose and use the information; and

(3) The third party may disclose and use the information pursuant to an exception in § 313.14 or 313.15 in the ordinary course of business to carry out the activity covered by the exception under which it received the information.

(d) *Information you disclose outside of an exception.* If you disclose nonpublic personal information to a nonaffiliated third party other than under an exception in § 313.14 or 313.15 of this part, the third party may disclose the information only:

(1) To your affiliates;

(2) To its affiliates, but its affiliates, in turn, may disclose the information only to the extent the third party can disclose the information; and

(3) To any other person, if the disclosure would be lawful if you made it directly to that person.

§ 313.12 Limits on sharing account number information for marketing purposes.

(a) *General prohibition on disclosure of account numbers.* You must not, directly or through an affiliate, disclose, other than to a consumer reporting agency, an account number or similar form of access number or access code for a consumer's credit card account, deposit account, or transaction account to any nonaffiliated third party for use in telemarketing, direct mail marketing, or other marketing through electronic mail to the consumer.

(b) *Exceptions.* Paragraph (a) of this section does not apply if you disclose an account number or similar form of access number or access code:

(1) To your agent or service provider solely in order to perform marketing for your own products or services, as long as the agent or service provider is not authorized to directly initiate charges to the account; or

(2) To a participant in a private label credit card program or an affinity or similar program where the participants in the program are identified to the customer when the customer enters into the program.

(c) *Examples*—(1) *Account number.* An account number, or similar form of access number or access code, does not include a number or code in an encrypted form, as long as you do not provide the recipient with a means to decode the number or code.

(2) *Transaction account.* A transaction account is an account other than a deposit account or a credit card account. A transaction account does not include an account to which third parties cannot initiate charges.

Subpart C—Exceptions

§ 313.13 Exception to opt out requirements for service providers and joint marketing.

(a) *General rule.* (1) The opt out requirements in §§ 313.7 and 313.10 do not apply when you provide nonpublic personal information to a nonaffiliated third party to perform services for you or functions on your behalf, if you:

(i) Provide the initial notice in accordance with § 313.4; and

(ii) Enter into a contractual agreement with the third party that prohibits the third party from disclosing or using the information other than to carry out the purposes for which you disclosed the information, including use under an exception in § 313.14 or 313.15 in the ordinary course of business to carry out those purposes.

(2) *Example.* If you disclose nonpublic personal information under this section to a financial institution with which you perform joint marketing, your contractual agreement with that institution meets the requirements of paragraph (a)(1)(ii) of this section if it prohibits the institution from disclosing or using the nonpublic personal information except as necessary to carry out the joint marketing or under an exception in § 313.14 or 313.15 in the ordinary course of business to carry out that joint marketing.

(b) *Service may include joint marketing.* The services a nonaffiliated third party performs for you under paragraph (a) of this section may include marketing of your own products or services or marketing of financial products or services offered pursuant to joint agreements between you and one or more financial institutions.

(c) *Definition of joint agreement.* For purposes of this section, joint agreement means a written contract pursuant to which you and one or more financial institutions jointly offer, endorse, or sponsor a financial product or service.

§ 313.14 Exceptions to notice and opt out requirements for processing and servicing transactions.

(a) *Exceptions for processing transactions at consumer's request.* The requirements for initial notice in § 313.4(a)(2), for the opt out in §§ 313.7 and 313.10, and for service providers and joint marketing in § 313.13 do not apply if you disclose nonpublic personal information as necessary to effect, administer, or enforce a transaction that a consumer requests or authorizes, or in connection with:

(1) Servicing or processing a financial product or service that a consumer requests or authorizes;

(2) Maintaining or servicing the consumer's account with you, or with another entity as part of a private label credit card program or other extension of credit on behalf of such entity; or

(3) A proposed or actual securitization, secondary market sale (including sales of servicing rights), or similar transaction related to a transaction of the consumer.

(b) *Necessary to effect, administer, or enforce a transaction* means that the disclosure is:

(1) Required, or is one of the lawful or appropriate methods, to enforce your rights or the rights of other persons engaged in carrying out the financial transaction or providing the product or service; or

(2) Required, or is a usual, appropriate or acceptable method:

(i) To carry out the transaction or the product or service business of which the transaction is a part, and record, service, or maintain the consumer's account in the ordinary course of providing the financial service or financial product;

(ii) To administer or service benefits or claims relating to the transaction or the product or service business of which it is a part;

(iii) To provide a confirmation, statement, or other record of the transaction, or information on the status or value of the financial service or financial product to the consumer or the consumer's agent or broker;

(iv) To accrue or recognize incentives or bonuses associated with the transaction that are provided by you or any other party;

(v) To underwrite insurance at the consumer's request or for reinsurance purposes, or for any of the following purposes as they relate to a consumer's insurance: account administration, reporting, investigating, or preventing

fraud or material misrepresentation, processing premium payments, processing insurance claims, administering insurance benefits (including utilization review activities), participating in research projects, or as otherwise required or specifically permitted by Federal or State law;

(vi) In connection with:

(A) The authorization, settlement, billing, processing, clearing, transferring, reconciling or collection of amounts charged, debited, or otherwise paid using a debit, credit, or other payment card, check, or account number, or by other payment means;

(B) The transfer of receivables, accounts, or interests therein; or

(C) The audit of debit, credit, or other payment information.

§ 313.15 Other exceptions to notice and opt out requirements.

(a) *Exceptions to opt out requirements.* The requirements for initial notice in § 313.4(a)(2), for the opt out in §§ 313.7 and 313.10, and for service providers and joint marketing in § 313.13 do not apply when you disclose nonpublic personal information:

(1) With the consent or at the direction of the consumer, provided that the consumer has not revoked the consent or direction;

(2)(i) To protect the confidentiality or security of your records pertaining to the consumer, service, product, or transaction;

(ii) To protect against or prevent actual or potential fraud, unauthorized transactions, claims, or other liability;

(iii) For required institutional risk control or for resolving consumer disputes or inquiries;

(iv) To persons holding a legal or beneficial interest relating to the consumer; or

(v) To persons acting in a fiduciary or representative capacity on behalf of the consumer;

(3) To provide information to insurance rate advisory organizations, guaranty funds or agencies, agencies that are rating you, persons that are assessing your compliance with industry standards, and your attorneys, accountants, and auditors;

(4) To the extent specifically permitted or required under other provisions of law and in accordance with the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 *et seq.*), to law enforcement agencies (including a federal functional regulator, the Secretary of the Treasury, with respect to 31 U.S.C. Chapter 53, Subchapter II (Records and Reports on Monetary Instruments and Transactions) and 12 U.S.C. Chapter 21 (Financial Recordkeeping), a State insurance authority, with respect to any person domiciled in that insurance authority's State that is engaged in providing insurance, and the Federal Trade Commission), self-regulatory organizations, or for an investigation on a matter related to public safety;

(5)(i) To a consumer reporting agency in accordance with the Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*), or

(ii) From a consumer report reported by a consumer reporting agency;

(6) In connection with a proposed or actual sale, merger, transfer, or exchange of all or a portion of a business or operating unit if the disclosure of nonpublic personal information concerns solely consumers of such business or unit; or

(7)(i) To comply with Federal, State, or local laws, rules and other applicable legal requirements;

(ii) To comply with a properly authorized civil, criminal, or regulatory investigation, or subpoena or summons by Federal, State, or local authorities; or

(iii) To respond to judicial process or government regulatory authorities having jurisdiction over you for examination, compliance, or other purposes as authorized by law.

(b) *Examples of consent and revocation of consent.* (1) A consumer may specifically consent to your disclosure to a nonaffiliated insurance company of the fact that the consumer has applied to you for a mortgage so that the insurance company can offer homeowner's insurance to the consumer.

(2) A consumer may revoke consent by subsequently exercising the right to opt out of future disclosures of nonpublic personal information as permitted under § 313.7(f).

Subpart D—Relation to Other Laws; Effective Date

§ 313.16 Protection of Fair Credit Reporting Act.

Nothing in this part shall be construed to modify, limit, or supersede the operation of the Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*), and no inference shall be drawn on the basis of the provisions of this part regarding whether information is transaction or experience information under section 603 of that Act.

§ 313.17 Relation to State laws.

(a) *In general.* This part shall not be construed as superseding, altering, or affecting any statute, regulation, order, or interpretation in effect in any State, except to the extent that such State statute, regulation, order, or interpretation is inconsistent with the provisions of this part, and then only to the extent of the inconsistency.

(b) *Greater protection under State law.* For purposes of this section, a State statute, regulation, order, or interpretation is not inconsistent with the provisions of this part if the protection such statute, regulation, order, or interpretation affords any consumer is greater than the protection provided under this part, as determined by the Commission on its own motion or upon the petition of any interested party, after consultation with the applicable federal functional regulator or other authority.

§ 313.18 Effective date; transition rule.

(a) *Effective date*—(1) *General rule.* This part is effective November 13, 2000. In order to provide sufficient time for you to establish policies and systems to comply with the requirements of this part, the Commission has extended the time for compliance with this part until July 1, 2001.

(2) *Exception.* This part is not effective as to any institution that is significantly engaged in activities that the Federal Reserve Board determines, after November 12, 1999, (pursuant to its authority in Section 4(k)(1–3) of the Bank Holding Company Act), are activities that a financial holding company may engage in, until the Commission so determines.

(b)(1) *Notice requirement for consumers who are your customers on the compliance date.* By July 1, 2001, you must have provided an initial notice, as required by § 313.4, to consumers who are your customers on July 1, 2001.

(2) *Example.* You provide an initial notice to consumers who are your customers on July 1, 2001, if, by that date, you have established a system for providing an initial notice to all new customers and have mailed the initial notice to all your existing customers.

(c) *Two-year grandfathering of service agreements.* Until July 1, 2002, a contract that you have entered into with a nonaffiliated third party to perform services for you or functions on your behalf satisfies the provisions of § 313.13(a)(1) of this part, even if the contract does not include a requirement that the third party maintain the confidentiality of nonpublic personal information, as long as you entered into the contract on or before July 1, 2000.

APPENDIX A TO PART 313—SAMPLE CLAUSES

Financial institutions, including a group of financial holding company affiliates that use a common privacy notice, may use the following sample clauses, if the clause is accurate for each institution that uses the notice. (Note that disclosure of certain information, such as assets and income, and information from a consumer reporting agency, may give rise to obligations under the Fair Credit Reporting Act, such as a requirement to permit a consumer to opt out of disclosures to affiliates or designation as a consumer reporting agency if disclosures are made to nonaffiliated third parties.)

A–1—Categories of Information You Collect (All Institutions)

You may use this clause, as applicable, to meet the requirement of § 313.6(a)(1) to describe the categories of nonpublic personal information you collect.

Sample Clause A–1

We collect nonpublic personal information about you from the following sources:

- Information we receive from you on applications or other forms;
- Information about your transactions with us, our affiliates, or others; and
- Information we receive from a consumer reporting agency.

A–2—Categories of Information You Disclose (Institutions That Disclose Outside of the Exceptions)

You may use one of these clauses, as applicable, to meet the requirement of §313.6(a)(2) to describe the categories of nonpublic personal information you disclose. You may use these clauses if you disclose nonpublic personal information other than as permitted by the exceptions in §§313.13, 313.14, and 313.15.

Sample Clause A–2, Alternative 1

We may disclose the following kinds of nonpublic personal information about you:

• Information we receive from you on applications or other forms, such as [*provide illustrative examples, such as ''your name, address, social security number, assets, and income''*];

• Information about your transactions with us, our affiliates, or others, such as [*provide illustrative examples, such as ''your account balance, payment history, parties to transactions, and credit card usage''*]; and

• Information we receive from a consumer reporting agency, such as [*provide illustrative examples, such as ''your creditworthiness and credit history''*].

Sample Clause A–2, Alternative 2

We may disclose all of the information that we collect, as described [*describe location in the notice, such as ''above'' or ''below''*].

A–3—Categories of Information You Disclose and Parties to Whom You Disclose (Institutions That Do Not Disclose Outside of the Exceptions)

You may use this clause, as applicable, to meet the requirements of §§313.6(a)(2), (3), and (4) to describe the categories of nonpublic personal information about customers and former customers that you disclose and the categories of affiliates and nonaffiliated third parties to whom you disclose. You may use this clause if you do not disclose nonpublic personal information to any party, other than as permitted by the exceptions in §§313.14, and 313.15.

Sample Clause A–3

We do not disclose any nonpublic personal information about our customers or former customers to anyone, except as permitted by law.

A–4—Categories of Parties to Whom You Disclose (Institutions That Disclose Outside of the Exceptions)

You may use this clause, as applicable, to meet the requirement of §313.6(a)(3) to describe the categories of affiliates and nonaffiliated third parties to whom you disclose nonpublic personal information. You may use this clause if you disclose nonpublic personal information other than as permitted by the exceptions in §§313.13, 313.14, and 313.15, as well as when permitted by the exceptions in §§313.14, and 313.15.

Sample Clause A–4

We may disclose nonpublic personal information about you to the following types of third parties:

• Financial service providers, such as [*provide illustrative examples, such as ''mortgage bankers, securities broker-dealers, and insurance agents''*];

• Non-financial companies, such as [*provide illustrative examples, such as ''retailers, direct marketers, airlines, and publishers''*]; and

• Others, such as [*provide illustrative examples, such as ''non-profit organizations''*].

We may also disclose nonpublic personal information about you to nonaffiliated third parties as permitted by law.

A–5—Service Provider/Joint Marketing Exception

You may use one of these clauses, as applicable, to meet the requirements of §313.6(a)(5) related to the exception for service providers and joint marketers in §313.13. If you disclose nonpublic personal information under this exception, you must describe the categories of nonpublic personal information you disclose and the categories of third parties with whom you have contracted.

Sample Clause A–5, Alternative 1

We may disclose the following information to companies that perform marketing services on our behalf or to other financial institutions with whom we have joint marketing agreements:

• Information we receive from you on applications or other forms, such as [*provide illustrative examples, such as ''your name, address, social security number, assets, and income''*];

• Information about your transactions with us, our affiliates, or others, such as [*provide illustrative examples, such as ''your account balance, payment history, parties to transactions, and credit card usage''*]; and

• Information we receive from a consumer reporting agency, such as [*provide illustrative examples, such as ''your creditworthiness and credit history''*].

Sample Clause A–5, Alternative 2

We may disclose all of the information we collect, as described [*describe location in the notice, such as ''above'' or ''below''*] to companies that perform marketing services on our behalf or to other financial institutions with whom we have joint marketing agreements.

A–6—Explanation of Opt Out Right (Institutions that Disclose Outside of the Exceptions)

You may use this clause, as applicable, to meet the requirement of §313.6(a)(6) to provide an explanation of the consumer's right to opt out of the disclosure of nonpublic personal information to nonaffiliated third parties, including the method(s) by which the consumer may exercise that right. You may use this clause if you disclose nonpublic personal information other than as permitted by the exceptions in §§313.13, 313.14, and 313.15.

Sample Clause A–6

If you prefer that we not disclose nonpublic personal information about you to nonaffiliated third parties, you may opt out of those disclosures, that is, you may direct us not to make those disclosures (other than disclosures permitted by law). If you wish to opt out of disclosures to nonaffiliated third parties, you may [*describe a reasonable means of opting out, such as ''call the following toll-free number: (insert number)''*].

A–7—Confidentiality and Security (All Institutions)

You may use this clause, as applicable, to meet the requirement of §313.6(a)(8) to describe your policies and practices with respect to protecting the confidentiality and security of nonpublic personal information.

Sample Clause A–7

We restrict access to nonpublic personal information about you to [*provide an appropriate description, such as ''those employees who need to know that information to provide products or services to you''*]. We maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.

PART 314—STANDARDS FOR SAFEGUARDING CUSTOMER INFORMATION

Sec.
314.1 Purpose and scope.
314.2 Definitions.
314.3 Standards for safeguarding customer information.
314.4 Elements.
314.5 Effective date.

AUTHORITY: 15 U.S.C. 6801(b), 6805(b)(2).

SOURCE: 67 FR 36493, May 23, 2002, unless otherwise noted.

§314.1 Purpose and scope.

(a) *Purpose*. This part, which implements sections 501 and 505(b)(2) of the Gramm-Leach-Bliley Act, sets forth standards for developing, implementing, and maintaining reasonable administrative, technical, and physical safeguards to protect the security, confidentiality, and integrity of customer information.

(b) *Scope*. This part applies to the handling of customer information by all financial institutions over which the Federal Trade Commission (''FTC'' or ''Commission'') has jurisdiction. This part refers to such entities as ''you.'' This part applies to all customer information in your possession, regardless of whether such information pertains to individuals with whom you have a customer relationship, or pertains to the customers of other financial institutions that have provided such information to you.

§314.2 Definitions.

(a) *In general*. Except as modified by this part or unless the context otherwise requires, the terms used in this part have the same meaning as set forth in the Commission's rule governing the Privacy of Consumer Financial Information, 16 CFR part 313.

(b) *Customer information* means any record containing nonpublic personal information as defined in 16 CFR 313.3(n), about a customer of a financial institution, whether in paper, electronic, or other form, that is handled or maintained by or on behalf of you or your affiliates.

(c) *Information security program* means the administrative, technical, or physical safeguards you use to access, collect, distribute, process, protect, store, use, transmit, dispose of, or otherwise handle customer information.

(d) *Service provider* means any person or entity that receives, maintains, processes, or otherwise is permitted access to customer information through its provision of services directly to a financial institution that is subject to this part.

§ 314.3 Standards for safeguarding customer information.

(a) *Information security program.* You shall develop, implement, and maintain a comprehensive information security program that is written in one or more readily accessible parts and contains administrative, technical, and physical safeguards that are appropriate to your size and complexity, the nature and scope of your activities, and the sensitivity of any customer information at issue. Such safeguards shall include the elements set forth in § 314.4 and shall be reasonably designed to achieve the objectives of this part, as set forth in paragraph (b) of this section.

(b) *Objectives.* The objectives of section 501(b) of the Act, and of this part, are to:

(1) Insure the security and confidentiality of customer information;

(2) Protect against any anticipated threats or hazards to the security or integrity of such information; and

(3) Protect against unauthorized access to or use of such information that could result in substantial harm or inconvenience to any customer.

§ 314.4 Elements.

In order to develop, implement, and maintain your information security program, you shall:

(a) Designate an employee or employees to coordinate your information security program.

(b) Identify reasonably foreseeable internal and external risks to the security, confidentiality, and integrity of customer information that could result in the unauthorized disclosure, misuse, alteration, destruction or other compromise of such information, and assess the sufficiency of any safeguards in place to control these risks. At a minimum, such a risk assessment should include consideration of risks in each relevant area of your operations, including:

(1) Employee training and management;

(2) Information systems, including network and software design, as well as information processing, storage, transmission and disposal; and

(3) Detecting, preventing and responding to attacks, intrusions, or other systems failures.

(c) Design and implement information safeguards to control the risks you identify through risk assessment, and regularly test or otherwise monitor the effectiveness of the safeguards' key controls, systems, and procedures.

(d) Oversee service providers, by:

(1) Taking reasonable steps to select and retain service providers that are capable of maintaining appropriate safeguards for the customer information at issue; and

(2) Requiring your service providers by contract to implement and maintain such safeguards.

(e) Evaluate and adjust your information security program in light of the results of the testing and monitoring required by paragraph (c) of this section; any material changes to your operations or business arrangements; or any other circumstances that you know or have reason to know may have a material impact on your information security program.

§ 314.5 Effective date.

(a) Each financial institution subject to the Commission's jurisdiction must implement an information security program pursuant to this part no later than May 23, 2003.

(b) Two-year grandfathering of service contracts. Until May 24, 2004, a contract you have entered into with a nonaffiliated third party to perform services for you or functions on your behalf satisfies the provisions of § 314.4(d), even if the contract does not include a requirement that the service provider maintain appropriate safeguards, as long as you entered into the contract not later than June 24, 2002.

PART 315—CONTACT LENS RULE

Sec.

315.1 Scope of regulations in this part.
315.2 Definitions.
315.3 Availability of contact lens prescriptions to patients.
315.4 Limits on requiring immediate payment.
315.5 Prescriber verification.
315.6 Expiration of contact lens prescriptions.

315.7 Content of advertisements and other representations.
315.8 Prohibition of certain waivers.
315.9 Enforcement.
315.10 Severability.
315.11 Effect on state and local laws.

AUTHORITY: Pub. L. 108–164, secs. 1–12; 117 Stat. 2024 (15 U.S.C. 7601–7610).

SOURCE: 69 FR 40508, July 2, 2004, unless otherwise noted.

§ 315.1 Scope of regulations in this part.

This part, which shall be called the ''Contact Lens Rule,'' implements the Fairness to Contact Lens Consumers Act, codified at 15 U.S.C. 7601–7610, which requires that rules be issued to address the release, verification, and sale of contact lens prescriptions. This part specifically governs contact lens prescriptions and related issues. Part 456 of Title 16 governs the availability of eyeglass prescriptions and related issues (the Ophthalmic Practice Rules (Eyeglass Rule)).

§ 315.2 Definitions.

For purposes of this part, the following definitions shall apply:

Business hour means an hour between 9 a.m. and 5 p.m., during a weekday (Monday through Friday), excluding Federal holidays. ''Business hour'' also may include, at the seller's option, a prescriber's regular business hours on Saturdays, provided that the seller has actual knowledge of these hours. ''Business hour'' shall be determined based on the time zone of the prescriber.

''Eight (8) business hours'' shall be calculated from the time the prescriber receives the prescription verification information from the seller, and shall conclude when eight (8) business hours have elapsed. For verification requests received by a prescriber during non-business hours, the calculation of ''eight (8) business hours'' shall begin at 9 a.m. on the next weekday that is not a Federal holiday or, if applicable, on Saturday at the beginning of the prescriber's actual business hours.

Commission means the Federal Trade Commission.

Contact lens means any contact lens for which State or Federal law requires a prescription.

Contact lens fitting means the process that begins after an initial eye examination for contact lenses and ends when a successful fit has been achieved or, in the case of a renewal prescription, ends when the prescriber determines that no change in the existing prescription is required, and such term may include:

(1) An examination to determine lens specifications;

(2) Except in the case of a renewal of a contact lens prescription, an initial evaluation of the fit of the contact lens on the eye; and

(3) Medically necessary follow-up examinations.

Contact lens prescription means a prescription, issued in accordance with State and Federal law, that contains sufficient information for the complete and accurate filling of a prescription for contact lenses, including the following:

(1) The name of the patient;

(2) The date of examination;

(3) The issue date and expiration date of prescription;

(4) The name, postal address, telephone number, and facsimile telephone number of prescriber;

(5) The power, material or manufacturer or both of the prescribed contact lens;

(6) The base curve or appropriate designation of the prescribed contact lens;

(7) The diameter, when appropriate, of the prescribed contact lens; and

(8) In the case of a private label contact lens, the name of the manufacturer, trade name of the private label brand, and, if applicable, trade name of equivalent brand name.

Direct communication means completed communication by telephone, facsimile, or electronic mail.

Issue date means the date on which the patient receives a copy of the prescription at the completion of a contact lens fitting.

Ophthalmic goods are contact lenses, eyeglasses, or any component of eyeglasses.

Ophthalmic services are the measuring, fitting, and adjusting of ophthalmic goods subsequent to an eye examination.

Prescriber means, with respect to contact lens prescriptions, an ophthalmologist, optometrist, or other person permitted under State law to issue prescriptions for contact lenses in compliance with any applicable requirements established by the Food and Drug Administration. ''Other person,'' for purposes of this definition, includes a dispensing optician who is permitted under State law to issue prescriptions and who is authorized or permitted under State law to perform contact lens fitting services.

Private label contact lenses mean contact lenses that are sold under the label of a seller where the contact lenses are identical to lenses made by the same manufacturer but sold under the labels of other sellers.

§315.3 Availability of contact lens prescriptions to patients.

(a) *In general.* When a prescriber completes a contact lens fitting, the prescriber:

(1) Whether or not requested by the patient, shall provide to the patient a copy of the contact lens prescription; and

(2) Shall, as directed by any person designated to act on behalf of the patient, provide or verify the contact lens prescription by electronic or other means.

(b) *Limitations.* A prescriber may not:

(1) Require the purchase of contact lenses from the prescriber or from another person as a condition of providing a copy of a prescription under paragraph (a)(1) or (a)(2) of this section or as a condition of verification of a prescription under paragraph (a)(2) of this section;

(2) Require payment in addition to, or as part of, the fee for an eye examination, fitting, and evaluation as a condition of providing a copy of a prescription under paragraph (a)(1) or (a)(2) of this section or as a condition of verification of a prescription under paragraph (a)(2) of this section; or

(3) Require the patient to sign a waiver or release as a condition of releasing or verifying a prescription under paragraph (a)(1) or (a)(2) of this section.

§315.4 Limits on requiring immediate payment.

A prescriber may require payment of fees for an eye examination, fitting, and evaluation before the release of a contact lens prescription, but only if the prescriber requires immediate payment in the case of an examination that reveals no requirement for ophthalmic goods. For purposes of the preceding sentence, presentation of proof of insurance coverage for that service shall be deemed to be a payment.

§315.5 Prescriber verification.

(a) *Prescription requirement.* A seller may sell contact lenses only in accordance with a contact lens prescription for the patient that is:

(1) Presented to the seller by the patient or prescriber directly or by facsimile; or

(2) Verified by direct communication.

(b) *Information for verification.* When seeking verification of a contact lens prescription, a seller shall provide the prescriber with the following information through direct communication:

(1) The patient's full name and address;

(2) The contact lens power, manufacturer, base curve or appropriate designation, and diameter when appropriate;

(3) The quantity of lenses ordered;

(4) The date of patient request;

(5) The date and time of verification request;

(6) The name of a contact person at the seller's company, including facsimile and telephone numbers; and

(7) If the seller opts to include the prescriber's regular business hours on Saturdays as ''business hours'' for purposes of paragraph (c)(3) of this section, a clear statement of the prescriber's regular Saturday business hours.

(c) *Verification events.* A prescription is verified under paragraph (a)(2) of this section only if one of the following occurs:

(1) The prescriber confirms the prescription is accurate by direct communication with the seller;

(2) The prescriber informs the seller through direct communication that the prescription is inaccurate and provides the accurate prescription; or

(3) The prescriber fails to communicate with the seller within eight (8) business hours after receiving from the seller the information described in paragraph (b) of this section. During these eight (8) business hours, the seller shall provide a reasonable opportunity for the prescriber to communicate with the seller concerning the verification request.

(d) *Invalid prescription.* If a prescriber informs a seller before the deadline under paragraph (c)(3) of this section that the contact lens prescription is inaccurate, expired, or otherwise invalid, the seller shall not fill the prescription. The prescriber shall specify the basis for the inaccuracy or invalidity of the prescription. If the prescription communicated by the seller to the prescriber is inaccurate, the prescriber shall correct it, and the prescription shall then be deemed verified under paragraph (c)(2) of this section.

(e) *No alteration of prescription.* A seller may not alter a contact lens prescription. Notwithstanding the preceding sentence, a seller may substitute for private label contact lenses specified on a prescription identical contact lenses that the same company manufactures and sells under different labels.

(f) *Recordkeeping requirement—verification requests.* A seller shall maintain a record of all direct communications referred to in paragraph (a) of this section. Such record shall consist of the following:

(1) For prescriptions presented to the seller: the prescription itself, or the facsimile version thereof (including an email containing a digital image of the prescription), that was presented to the seller by the patient or prescriber.

(2) For verification requests by the seller:

(i) If the communication occurs via facsimile or e-mail, a copy of the verification request, including the information provided to the prescriber pursuant to paragraph (b) of this section, and confirmation of the completed transmission thereof, including a record of the date and time the request was made;

(ii) If the communication occurs via telephone, a log:

(A) Describing the information provided pursuant to paragraph (b) of this section,

(B) Setting forth the date and time the request was made,

(C) Indicating how the call was completed, and

(D) Listing the names of the individuals who participated in the call.

(3) For communications from the prescriber, including prescription verifications:

(i) If the communication occurs via facsimile or e-mail, a copy of the communication and a record of the time and date it was received;

(ii) If the communication occurs via telephone, a log describing the information communicated, the date and time that the information was received, and the names of the individuals who participated in the call.

(4) The records required to be maintained under this section shall be maintained for a period of not less than three years, and these records must be available for inspection by the Federal Trade Commission, its employees, and its representatives.

(g) *Recordkeeping requirement—Saturday business hours.* A seller that exercises its option to include a prescriber's regular Saturday business hours in the time period for verification specified in § 315.5(c)(3) shall maintain a record of the prescriber's regular Saturday business hours and the basis for the seller's actual knowledge thereof. Such records shall be maintained for a period of not less than three years, and these records must be available for inspection by the Federal Trade Commission, its employees, and its representatives.

§ 315.6 Expiration of contact lens prescriptions.

(a) *In general.* A contact lens prescription shall expire:

(1) On the date specified by the law of the State in which the prescription was written, if that date is one year or more after the issue date of the prescription;

(2) Not less than one year after the issue date of the prescription if such State law specifies no date or specifies a date that is less than one year after the issue date of the prescription; or

(3) Notwithstanding paragraphs (a)(1) and (a)(2) of this section, on the date specified by the prescriber, if that date is based on the medical judgment of the prescriber with respect to the ocular health of the patient.

(b) *Special rules for prescriptions of less than one year*. (1) If a prescription expires in less than one year, the specific reasons for the medical judgment referred to in paragraph (a)(3) of this section shall be documented in the patient's medical record with sufficient detail to allow for review by a qualified professional in the field.

(2) The documentation described in the paragraph above shall be maintained for a period of not less than three years, and it must be available for inspection by the Federal Trade Commission, its employees, and its representatives.

(3) No prescriber shall include an expiration date on a prescription that is less than the period of time that he or she recommends for a reexamination of the patient that is medically necessary.

§315.7 Content of advertisements and other representations.

Any person who engages in the manufacture, processing, assembly, sale, offering for sale, or distribution of contact lenses may not represent, by advertisement, sales presentation, or otherwise, that contact lenses may be obtained without a prescription.

§315.8 Prohibition of certain waivers.

A prescriber may not place on a prescription, or require the patient to sign, or deliver to the patient, a form or notice waiving or disclaiming the liability or responsibility of the prescriber for the accuracy of the eye examination. The preceding sentence does not impose liability on a prescriber for the ophthalmic goods and services dispensed by another seller pursuant to the prescriber's correctly verified prescription.

§315.9 Enforcement.

Any violation of this Rule shall be treated as a violation of a rule under section 18 of the Federal Trade Commission Act, 15 U.S.C. 57a, regarding unfair or deceptive acts or practices, and the Commission will enforce this Rule in the same manner, by the same means, and with the same jurisdiction, powers, and duties as are available to it pursuant to the Federal Trade Commission Act, 15 U.S.C. 41 *et seq*.

§315.10 Severability.

The provisions of this part are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

§315.11 Effect on state and local laws.

(a) State and local laws and regulations that establish a prescription expiration date of less than one year or that restrict prescription release or require active verification are preempted.

(b) Any other State or local laws or regulations that are inconsistent with the Act or this part are preempted to the extent of the inconsistency.

PART 316—RULES IMPLEMENTING THE CAN-SPAM ACT OF 2003

Sec.
316.1 Scope.
316.2 Definitions.
316.3 Primary purpose.
316.4 Requirement to place warning labels on commercial electronic mail that contains sexually oriented material.
316.5 Severability.

AUTHORITY: 15 U.S.C. 7701–7713.

SOURCE: At 70 FR 3127, Jan. 19, 2005, unless otherwise noted.

§316.1 Scope.

This part implements the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (''CAN-SPAM Act''), 15 U.S.C. 7701–7713.

§316.2 Definitions.

(a) The definition of the term ''affirmative consent'' is the same as the definition of that term in the CAN-SPAM Act, 15 U.S.C. 7702(1).

(b) ''Character'' means an element of the American Standard Code for Information Interchange (''ASCII'') character set.

(c) The definition of the term ''commercial electronic mail message'' is

the same as the definition of that term in the CAN-SPAM Act, 15 U.S.C. 7702(2).

(d) The definition of the term ''electronic mail address'' is the same as the definition of that term in the CAN-SPAM Act, 15 U.S.C. 7702(5).

(e) The definition of the term ''electronic mail message'' is the same as the definition of that term in the CAN-SPAM Act, 15 U.S.C. 7702(6).

(f) The definition of the term ''initiate'' is the same as the definition of that term in the CAN-SPAM Act, 15 U.S.C. 7702(9).

(g) The definition of the term ''Internet'' is the same as the definition of that term in the CAN-SPAM Act, 15 U.S.C. 7702(10).

(h) The definition of the term ''procure'' is the same as the definition of that term in the CAN-SPAM Act, 15 U.S.C. 7702(12).

(i) The definition of the term ''protected computer'' is the same as the definition of that term in the CAN-SPAM Act, 15 U.S.C. 7702(13).

(j) The definition of the term ''recipient'' is the same as the definition of that term in the CAN-SPAM Act, 15 U.S.C. 7702(14).

(k) The definition of the term ''routine conveyance'' is the same as the definition of that term in the CAN-SPAM Act, 15 U.S.C. 7702(15).

(l) The definition of the term ''sender'' is the same as the definition of that term in the CAN-SPAM Act, 15 U.S.C. 7702(16).

(m) The definition of the term ''sexually oriented material'' is the same as the definition of that term in the CAN-SPAM Act, 15 U.S.C. 7704(d)(4).

(n) The definition of the term ''transactional or relationship message'' is the same as the definition of that term in the CAN-SPAM Act, 15 U.S.C. 7702(17).

§ 316.3 Primary purpose.

(a) In applying the term ''commercial electronic mail message'' defined in the CAN-SPAM Act, 15 U.S.C. 7702(2), the ''primary purpose'' of an electronic mail message shall be deemed to be commercial based on the criteria in paragraphs (a)(1) through (a)(3) and (b) of this section:[1]

(1) If an electronic mail message consists exclusively of the commercial advertisement or promotion of a commercial product or service, then the ''primary purpose'' of the message shall be deemed to be commercial.

(2) If an electronic mail message contains both the commercial advertisement or promotion of a commercial product or service as well as transactional or relationship content as set forth in paragraph (c) of this section, then the ''primary purpose'' of the message shall be deemed to be commercial if:

(i) A recipient reasonably interpreting the subject line of the electronic mail message would likely conclude that the message contains the commercial advertisement or promotion of a commercial product or service; or

(ii) The electronic mail message's transactional or relationship content as set forth in paragraph (c) of this section does *not* appear, in whole or in substantial part, at the beginning of the body of the message.

(3) If an electronic mail message contains both the commercial advertisement or promotion of a commercial product or service as well as other content that is not transactional or relationship content as set forth in paragraph (c) of this section, then the ''primary purpose'' of the message shall be deemed to be commercial if:

(i) A recipient reasonably interpreting the subject line of the electronic mail message would likely conclude that the message contains the commercial advertisement or promotion of a commercial product or service; or

(ii) A recipient reasonably interpreting the body of the message would likely conclude that the primary purpose of the message is the commercial advertisement or promotion of a commercial product or service. Factors illustrative of those relevant to this interpretation include the placement of

[1] The Commission does not intend for these criteria to treat as a ''commercial electronic mail message'' anything that is not commercial speech.

content that is the commercial advertisement or promotion of a commercial product or service, in whole or in substantial part, at the beginning of the body of the message; the proportion of the message dedicated to such content; and how color, graphics, type size, and style are used to highlight commercial content.

(b) In applying the term ''transactional or relationship message'' defined in the CAN-SPAM Act, 15 U.S.C. 7702(17), the ''primary purpose'' of an electronic mail message shall be deemed to be transactional or relationship if the electronic mail message consists exclusively of transactional or relationship content as set forth in paragraph (c) of this section.

(c) Transactional or relationship content of e-mail messages under the CAN-SPAM Act is content:

(1) To facilitate, complete, or confirm a commercial transaction that the recipient has previously agreed to enter into with the sender;

(2) To provide warranty information, product recall information, or safety or security information with respect to a commercial product or service used or purchased by the recipient;

(3) With respect to a subscription, membership, account, loan, or comparable ongoing commercial relationship involving the ongoing purchase or use by the recipient of products or services offered by the sender, to provide—

(i) Notification concerning a change in the terms or features;

(ii) Notification of a change in the recipient's standing or status; or

(iii) At regular periodic intervals, account balance information or other type of account statement;

(4) To provide information directly related to an employment relationship or related benefit plan in which the recipient is currently involved, participating, or enrolled; or

(5) To deliver goods or services, including product updates or upgrades, that the recipient is entitled to receive under the terms of a transaction that the recipient has previously agreed to enter into with the sender.

§316.4 Requirement to place warning labels on commercial electronic mail that contains sexually oriented material.

(a) Any person who initiates, to a protected computer, the transmission of a commercial electronic mail message that includes sexually oriented material must:

(1) Exclude sexually oriented materials from the subject heading for the electronic mail message and include in the subject heading the phrase ''SEXUALLY-EXPLICIT:'' in capital letters as the first nineteen (19) characters at the beginning of the subject line;[2]

(2) Provide that the content of the message that is initially viewable by the recipient, when the message is opened by any recipient and absent any further actions by the recipient, include only the following information:

(i) The phrase ''SEXUALLY-EXPLICIT:'' in a clear and conspicuous manner;[3]

(ii) Clear and conspicuous identification that the message is an advertisement or solicitation;

(iii) Clear and conspicuous notice of the opportunity of a recipient to decline to receive further commercial electronic mail messages from the sender;

(iv) A functioning return electronic mail address or other Internet-based mechanism, clearly and conspicuously displayed, that—

(A) A recipient may use to submit, in a manner specified in the message, a reply electronic mail message or other form of Internet-based communication requesting not to receive future commercial electronic mail messages from that sender at the electronic mail address where the message was received; and

(B) Remains capable of receiving such messages or communications for no less than 30 days after the transmission of the original message;

[2]The phrase ''SEXUALLY-EXPLICIT'' comprises 17 characters, including the dash between the two words. The colon (:) and the space following the phrase are the 18th and 19th characters.

[3]This phrase consists of nineteen (19) characters and is identical to the phrase required in section 316.4(a)(1).

(v) Clear and conspicuous display of a valid physical postal address of the sender; and

(vi) Any needed instructions on how to access, or activate a mechanism to access, the sexually oriented material, preceded by a clear and conspicuous statement that to avoid viewing the sexually oriented material, a recipient should delete the e-mail message without following such instructions.

(b) *Prior affirmative consent.* Paragraph (a) of this section does not apply to the transmission of an electronic mail message if the recipient has given prior affirmative consent to receipt of the message.

§ 316.5 Severability.

The provisions of this part are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.