(D) A colored lamp as defined at 42 U.S.C. 6291(30);
(E) An infrared lamp;
(F) A left-hand thread lamp;
(G) A marine lamp;
(H) A marine signal service lamp;
(I) A mine service lamp;
(J) A plant light lamp;
(K) A rough service lamp as defined at 42 U.S.C. 6291(30);
(L) A shatter-resistant lamp (including a shatter-proof lamp and a shatter-protected lamp);
(M) A sign service lamp;
(N) A silver bowl lamp;
(O) A showcase lamp;
(P) A traffic signal lamp;
(Q) A vibration service lamp as defined at 42 U.S.C. 6291(30);
(R) A G shape lamp (as defined in ANSI C78.20–2003 and C79.1–2002) with a diameter of 5 inches or more;
(S) A T shape lamp (as defined in ANSI C78.20–2003 and C79.1–2002) and that uses not more than 40 watts or has a length of more than 10 inches; or
(T) A B, BA, CA, F, G16–1/2, G–25, G30, S, or M–14 lamp (as defined in ANSI C79.1–2002 and ANSI C78.20–2003) of 40 watts or less.
(4) Incandescent reflector lamp means a lamp described in paragraph (n)(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.
(o) Light-emitting diode (LED) means a p-n junction solid state device the radiated output of which is a function of the physical construction, material used, and exciting current of the device. The output of a light-emitting diode may be in—
(1) The infrared region;
(2) The visible region; or
(3) The ultraviolet region.
(p) Organic light-emitting diode (OLED) means a thin-film light-emitting device that typically consists of a series of organic layers between 2 electrical contacts (electrodes).
(q) General service light-emitting diode (LED or OLED) lamp means any light-emitting diode (LED or OLED) lamp that:
(1) Is a consumer product;
(2) Is intended for general service applications;
(3) Has a medium screw base;
(4) Has a lumen range of not less than 310 lumens and not more than 2,600 lumens; and
(5) Is capable of being operated at a voltage range at least partially within 110 and 130 volts.

§ 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 this part with a marking, label, 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.
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(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 §305.20 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 §305.19. 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 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.

(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.

(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.


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 the following covered products are those located in 10 CFR part 430, subpart B. For the following list of covered products, the requirements of this part apply only to products for which the Department of Energy has adopted and published test procedures for measuring energy usage or efficiency.

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