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§ 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

(b) It shall be unlawful for any person to sell or cause to be sold in interstate or foreign commerce any covered product to which the part applies, knowing such covered product to be: (1) Marked or labeled in violation of this part; (2) Noncompliant with the energy efficiency standards issued pursuant to 42 U.S.C. 6295.

(c) It shall be unlawful for any person to use or cause to be used, in interstate or foreign commerce, any covered product to which the part applies, knowing such covered product to be noncompliant with the energy efficiency standards issued pursuant to 42 U.S.C. 6295.

(1) Metal halide ballast means a ballast used to start and operate metal halide lamps.

(2) Metal halide lamp means a high intensity discharge lamp in which the major portion of the light is produced by radiation of metal halides and their products of dissociation, possibly in combination with metallic vapors.

(3) Showerhead means any showerhead (including a handheld showerhead), except a safety showerhead.

(4) Faucet means a lavatory faucet, kitchen faucet, metering faucet, or replacement aerator for a lavatory or kitchen faucet.

(5) Water closet means a plumbing fixture having a water-containing receptacle 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.

(6) 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.

(7) 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.

(8) 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.

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

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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 §305.29 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 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
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§ 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, estimated annual operating cost, and energy efficiency rating, and of water use rate, as well as of the cost of energy consumed or of water used, may be performed by any of the following methods:

(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.

(b) 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.