§ 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) 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.

(x) 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.

(y) 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.

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) Subject to enforcement penalties assessed per model per day of violation pursuant to 42 U.S.C. 6303 and adjusted for inflation by §1.98 of this chapter, it shall be unlawful 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 §305.20 of this part. This subsection shall also apply to distributors and retailers.

(6) Fail to make a label for a covered product available on a publicly accessible Web site in accordance with §305.6. This provision applies only to manufacturers.

(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
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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.

(c) 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.

(4) Televisions manufactured before May 10, 2011.

(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.

§ 305.5 Testing

§ 305.5 Determinations of estimated annual energy consumption, estimated annual operating cost, and energy efficiency rating, water use rate, and other required disclosure content.

(a) Unless otherwise stated in paragraphs (b), (c), (d), or (e) of this section, the content of any disclosures required by this part must be determined in accordance with the testing and sampling provisions required by the Department of Energy as set forth in subpart B to 10 CFR part 430, part 431, and 10 CFR 429.11.

(b) For any representations required by this part but not subject to Department of Energy requirements and not otherwise specified in this section, manufacturers and private labelers of any covered product must possess and rely upon a reasonable basis consisting of competent and reliable scientific tests and procedures substantiating the representation.

(c) For representations of the light output for general service light-emitting diode (LED or OLED) lamps, the Commission will accept as a reasonable basis scientific tests conducted according to IES LM79.

(d) Determinations of estimated annual energy consumption and estimated annual operating (energy) costs of televisions must be based on the procedures contained in the ENERGY STAR Version 4.2 test, which is comprised of the ENERGY STAR Program Requirements, Product Specification for Televisions, Eligibility Criteria Version 4.2 (Adopted April 30, 2010); the Test Method (Revised Aug-2010); and the CEA Procedure for DAM Testing: For TVs, Revision 0.3 (Sept. 8, 2010). Annual energy consumption and cost estimates must be derived assuming 5 hours in on mode and 19 hours in sleep (standby) mode per day. These ENERGY STAR requirements are incorporated by reference into this section. The Director of the Federal Register has approved these incorporations by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the test procedure may be inspected or obtained at the United States Environmental Protection Agency, ENERGY STAR Hotline (6202J), 1200 Pennsylvania Avenue NW., Washington, DC 20460, or at http://www.energystar.gov/a/partners/product_specs/program_reqs/Televisions_Program_Requirements.pdf [Telephone: ENERGY STAR Hotline: 1–866–782–7937]; at the Federal Trade Commission, Consumer Response Center, Room 130, 600 Pennsylvania Avenue NW., Washington, DC 20580 [Telephone: 1–202–326–2830]; and at the National Archives and Records Administration, at http://www.archives.gov/federal-register/cfr/ibr-locations.html [Telephone: 1–202–741–6030].

(e) Representations for ceiling fans under section 305.13 must be derived from procedures in 10 CFR 430.23.

[78 FR 2207, Jan. 10, 2013]

§ 305.6 Duty to provide labels on Web sites.

For each covered product that a manufacturer distributes in commerce after July 15, 2013, which is required by this part to bear an EnergyGuide or Lighting Facts label, the manufacturer must make a copy of the label available on a publicly accessible Web site in a manner that allows catalog sellers to hyperlink to the label or download it for use in Web sites or paper catalogs. The label for each specific model must remain on the Web site for six months after production of that model ceases.

[78 FR 2208, Jan. 10, 2013]

§ 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) and the adjusted total volume (AV) 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) and the adjusted total volume (AV) 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