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

AGENCY: Federal Trade Commission.

ACTION: Final rule.


DATES: The amendments published in this document will become effective on May 10, 2011, with the exception of the amendments to §305.20, which will become effective on July 11, 2011. The amendments to §305.20 will become effective on May 10, 2011, with the exception of the amendments pursuant to §305.20.

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


SUPPLEMENTARY INFORMATION:

I. Introduction

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

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

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

II. Background

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

Televi

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

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

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

7 The four products are personal computers, cable or satellite set-top boxes, stand-alone digital video recorder boxes, and personal computer monitors. 42 U.S.C. 6291(a)(2)(II).

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

9 Id. § 6294(a)(2)(II).

10 Id. § 6294(a)(2)(II).

11 Specifically, EPCA empowers the Commission to "prescribe labeling or other disclosure"
provide the Commission with authority to require labeling or other disclosures for any other consumer product not specifically listed in the statute if the FTC determines such labeling is likely to assist consumers in making purchasing decisions.\textsuperscript{12}

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

III. Notice of Proposed Rulemaking

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

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

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

IV. Public Comments and Final Rule

Twenty-three commenters responded to the NPRM, and the Commission received further public comment during an April 16, 2010, public meeting.\textsuperscript{15} The Commission’s responses to those comments are detailed below.

A. The Need for Television Disclosures

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

B. Test Procedure for Determining Energy Usage

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

Background: Where no “applicable” DOE test exists, EPCA authorizes the Commission to use “adequate non-Department of Energy test procedures” to obtain information for energy disclosures.\textsuperscript{18} DOE does not currently have a test procedure for televisions.\textsuperscript{19} Accordingly, the NPRM proposed using the EPA’s ENERGY STAR test procedure, which is based on the Fully Internally Technical Commission (IEC) procedure.\textsuperscript{20}

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

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

Sharp, Sony, and Mitsubishi also supported using CEA–2037. Sharp characterized CEA–2037 as the “clearest, requirements for the energy use of the covered consumer electronic products. Id. § 6294(a)(2)(II) (emphasis added). EPA also allows discretionary application of the label content required for other covered products (e.g., energy cost comparison ranges). Id. § 6294(c)(9).

\textsuperscript{15} Under EPCA, a “consumer product” means any article which consumes energy and is distributed in commerce for personal use or consumption by individuals. Id. § 6291(f).

\textsuperscript{16} See, e.g., Mitsubishi; CERC; Miles, Christopher; Rollins, Matthew; PG&E; Consumers Union; and Earthjustice.

\textsuperscript{17} 42 U.S.C. 6294(a)(2)(II).

\textsuperscript{18} 42 U.S.C. 6294(a)(2)(II).

\textsuperscript{19} 74 FR at 53641 (DOE notice repealing its obsolete standard and stating that “DOE will soon begin a rulemaking process to establish a new Federal test procedure”).

\textsuperscript{20} 74 FR at 11485 (“The ENERGY STAR test seeks to reflect the manner in which consumers are likely to use the product in their homes.”).

\textsuperscript{21} Id.

\textsuperscript{22} CEA submitted a copy of CEA–2037, which is copyright protected, as a confidential attachment to its comment. The full procedure is available for purchase on CEA’s Web site at http://www.ce.gov/standards/browse ByCommittee_7559.asp.
The ENERGY STAR procedure would provide uniformity across the U.S. government, allowing manufacturers to use a single test for ENERGY STAR and the EnergyGuide label. In light of the unchallenged adequacy of the ENERGY STAR test and the uniformity it would provide, the Commission sees no compelling reason to depart from its proposal.

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

C. Content

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

1. Product-Specific Estimated Annual Energy Cost

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

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

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

Comments: Multiple commenters supported the proposal to calculate annual energy cost and use based on the assumptions of 11 cents per kWh and a 5/19 duty cycle.32 Comments were also raised regarding the Commission’s proposal to calculate energy use and cost based on the 5/19 duty cycle, arguing that 5 hours underestimate total on-time.

With the exception of China, no commenter argued that the label’s energy use and cost calculations should include the energy consumed by integrated functions. Commenters had varying views, however, regarding whether the label should disclose that it does not include the energy use of those integrated functions. CEE recommended that the label state that integrated functions are not included. On the other hand, Consumers Union opposed such a disclosure, reasoning that integrated functions do not significantly add to energy consumption. It added, however, that the Commission should revisit this issue if new integrated functions increase energy usage.33 Mitsubishi took
no position on the disclosure, but asked that any such requirement only apply to models with an integrated function.

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

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

As some commenters noted, consumers may use their televisions for more or less than five hours per day, but the 5/19 duty cycle provides uniformity between the EnergyGuide and ENERGY STAR’s publicly available use estimates, reducing consumer confusion. Moreover, the uniform 5/19 duty cycle allows consumers to compare costs between products even if the estimate over or underestimates actual usage.

Finally, using different duty cycles based on screen size as suggested by EEI and Consumers Union would prevent consumers from easily comparing the energy use of larger televisions to smaller ones. The Commission, therefore, declines to use a different duty cycle.

The final amendments do not require the label’s annual energy calculations to include the energy consumed by integrated functions, nor do they require a disclosure that the integrated functions’ energy use is excluded is likely to assist consumers because the functions currently consume little additional electricity. Moreover, an additional disclosure about the exclusion of integrated functions’ energy use would crowd the label. If evidence indicates that integrated functions, especially Internet connectivity, implicate significant new retest their models to determine whether the energy information on the label remains accurate. Manufacturers are in the best position to determine when a design change could alter energy consumption, and therefore, when retesting is needed. Manufacturers whose labels do not contain accurate energy information because of design changes will violate 16 CFR 305.4.

2. Comparative Information

Background: Under EPAct, the Commission may require disclosure of comparative energy consumption information for similar products.37 The NPRM, therefore, proposed requiring a scale on the label comparing televisions of similar diagonal screen sizes in categories of 10” increments. The categories would not separate products by display technology (e.g., they would not compare plasma screens only to other plasma screens). The endpoints of each scale would represent the highest and lowest energy consumption of models on the market in that category, using ENERGY STAR energy data.38

This data appeared to cover most products on the market, providing ranges that reasonably reflect the energy use of currently available models.39 Comments: Commenters generally favored including comparative information on the label, and agreed that screen size, rather than display technology or other factors, should be the basis of comparison.40 However, many commenters (ACEEE, CEA, CEE, CERC, Consumers Union, Mitsubishi, NRDC, PG&E, Sharp, and Sony) noted that the NPRM’s proposed 10” increments were too large because each proposed category would include several common screen sizes.41 Mitsubishi and a Natural Resources Canada representative explained that consumers tend to shop by screen size, so the Commission’s categories would prevent them from easily comparing the products they were considering.42

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

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

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

35 42 U.S.C. 6294(c)(1), (c)(9).

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


38 See, e.g., ACEEE, CEA, CEE, CERC, Consumers Union, Mitsubishi, NRDC, PG&E, Sharp, and Sony.

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

40 Mitsubishi, Meeting Tr. at 67–68. The Canadian regulators also are engaged in a process to require energy labels for televisions.

41 The commenters offered slightly different proposals for each category size. The one significant difference among the proposals was to divide smaller televisions into separate categories, thereby keeping the commonly sold screen sizes of 19” and 15” in their own categories. Given the apparent paucity of smaller television models covered by the amended Rule, the 15” category covers models from 0–16”.

42 Mitsubishi, Meeting Tr. at 67–68. The Canadian regulators also are engaged in a process to require energy labels for televisions.
system by slightly increasing screen size in order to move up into the next category.

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

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

### D. Coverage

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

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

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

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

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

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

Accordingly, the Commission declines to cover battery-powered televisions at this time.

#### 2. Boxes Not Labeled

**Background and Comments:** The NPRM sought comment on whether manufacturers should be required to label product packaging, as well as the televisions themselves, because some retailers place boxes in showrooms. Five commenters (Consumers Union, Earthjustice, ACEEE, CEE, and NEEP) advocated labeling boxes, arguing that box labels provide a back-up source of information in case the label is not visible on the product itself.

Earthjustice argued that labeling boxes would help consumers ensure that the model they purchased matched the energy efficiency of the model displayed. It also suggested that retailers may display boxes in addition to or rather than unboxed display models. Similarly, ACEEE stated that retailers may display boxes in a different location from the display models.

Several commenters disagreed, asserting that labeling boxes would not provide useful information. CEA, Mitsubishi, and Sharp argued that the box label would be duplicative. They observed that retailers usually display a television out-of-the-box, and consumers would usually examine a labeled display model or online model before purchase. Sony, Mitsubishi, and Panasonic added that many consumers never see the box prior to purchase, or may never see the box at all if the television is delivered and assembled for them.

Additionally, five commenters (CEA, Mitsubishi, Panasonic, Sharp, and Sony) explained that manufacturers print boxes many months before obtaining final test results of the model’s energy consumption. Given this practice, a box labeling requirement, in their view, would likely force manufacturers to affix adhesive labels to the boxes after they are printed, rather than printing the disclosure on the box directly.

and 1.G.1. That test does not measure the energy required to recharge the battery itself, nor can it account for the use of disposable alkaline batteries. The commenters did not address whether other tests exist to measure these factors. In addition, any label for a battery-powered television would need to avoid the possibility of consumers misinterpreting cost disclosures as representations about battery life or the cost of disposable batteries.

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

44 Meeting Tr. at 126.

45 The ENERGY STAR television test covers battery-powered models, but it specifies that the unit must be “connected to a mains power source” during the test (i.e., plugged into the wall outlet, rather than using the battery). ENERGY STAR Program Requirements, Product Specification for Televisions, Eligibility Criteria Version 4.2 (April 30, 2010), supra note 26, ¶ 2.1.1

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

47 CERC commented that labeling both the television and the box may cause “inconsistent or erroneous messaging,” but did not elaborate on the nature of the problem.
According to commenters, this would be labor and cost intensive.

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

E. Label Format

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

1. Size of Comparison Scale and Color Scheme

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

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

![Figure 1: Proposed label (left); New label (right)](image)

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

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

52 The triangular label’s legs increase from 4.2” to 4.5”. The horizontal label’s width increases from 4.7” to 5.23”. The vertical label’s height increases from 4.7” to 5.5”.
labels better recognize and use the label’s information.

2. Uniform Label Size

Background and Comments: The NPRM proposed one size for the rectangular labels and one for the triangular label. The Commission requested comment on whether some models were too small for the proposed label. In response, the Commission received varying comments. Four commenters (NRDC, NEEP, CEA, and Sony) proposed scaling the label size to screen size. Specifically, NRDC proposed that screens larger than 32” (measured diagonally) should have larger labels than those proposed in the NPRM, and CEA stated that televisions smaller than 22” should have smaller labels than those proposed.

Additionally, the government of China recommended exempting televisions smaller than the label, and CERC stated that “[i]t would not be practical to require screen labels for televisions smaller than 6″. CERC noted that such units are usually sold in boxes carried by the consumer to the counter, and thus should be labeled on the box rather than the screen.

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

3. Label Format

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

Comments: Several commenters observed that many newer models, which have narrow bezels, would have to use the on-screen cling labels under the proposed Rule. Sony, Panasonic, Mitsubishi, and Bang & Olufsen, however, voiced concern that cling labels could damage television screens, especially newer technologies with delicate optical coatings, or that consumers would damage the screen trying to remove the labels. In contrast, ACEEE expressed support for the labels, stating that 3M, an adhesive manufacturer, concluded that labels could be made safe for use on television screens. Finally, CEA favored both the adhesive and cling label options, but noted manufacturers’ and retailers’ concerns about damage.

In light of these concerns, four commenters (Sony, Mitsubishi, Sharp, and CEA) urged the Commission to give manufacturers the flexibility to display the label in a way that does not require them to affix the label directly to the screen or bezel. At the public meeting, Sharp demonstrated a design currently used in Canada which attaches to the back of the television and folds over the screen, so that the information is visible from the front of the screen. Commenters largely supported prohibiting hang tags. CERC, NRDC, and Sony (in its capacity as a retailer) agreed that hang tags should not be permitted because they may become dislodged or twisted. However, CEA stated that the Commission had not presented any evidence about why hang tags are unacceptable, and Consumers Union suggested that hang tags could be used on televisions too small to be labeled.

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

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

4. Electronic Labeling Not Allowed To Satisfy the Amended Rule

Background and Comments: Sony, Panasonic and Sharp proposed an electronic or virtual label programmed to appear on the screen in the television’s “retail mode.” In their view, the electronic label would reduce the costs of printing and affixing physical labels. Sony added that an electronic label would also reduce the risk of mislabeling. ACEEE and NEEP, however, opposed the electronic label. They noted that Australian regulators rejected a similar proposal for several reasons. First, the regulators were concerned that continuously displaying the electronic

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

55 The NPRM did not propose an electronic label. Commenters first proposed the electronic label at the April 16, 2010 public meeting, followed by written comments in support.
disclosure could damage the screen, and therefore the label would only be intermittently displayed. Second, Australian regulators worried that retail staff would turn off the retail mode to display an unobstructed image to customers. Finally, they expressed concern that the electronic label would require retailers to operate showroom models continuously, which would waste energy. CEA suggested further study of the electronic label, but cautioned that too many technological issues (such as font, access, layout, and rendering) remain unexplored for a timely decision. CEA urged that consideration of the electronic label not delay the present rulemaking.

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

5. Location

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

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

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

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

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

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

F. Catalog Disclosures

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

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

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

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

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

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

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

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

Discussion: The final amendments require energy disclosures in catalogs that offer televisions for sale. Specifically, the amended Rule applies to all publications that contain “the terms of sale, retail price, and instructions for ordering, from which a retail consumer can order a covered product.”

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

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G. Retailer Responsibility

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

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

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

Earthjustice also argued that the Commission’s failure to impose retailer obligations would be arbitrary and capricious. Citing a 2007 Government Accountability Office (GAO) report finding that many covered products lacked a visible label in retail stores, Earthjustice argued that the Commission “cannot rationally find its rules require labels to be displayed ‘in a manner * * * likely to assist consumers’” In Earthjustice’s view, this can only be accomplished if retailers have an affirmative duty to ensure the televisions are properly labeled in stores.

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

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

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

The final amendments reasonably implement EPCA in conformance with the statutory provisions Earthjustice cites. They are applicable to all covered products and require that each covered product bear a label displayed in a manner likely to assist consumers.

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

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

H. Timing

Discussion: The final amendments provide two different effective dates: May 10, 2011 for physical labels; and July 11, 2011 for catalog disclosures. The six-month effective date balances the goals of providing manufacturers with the necessary time to comply with the new requirements and expeditiously providing consumers the benefit of the
The current Rule contains recordkeeping, disclosure, and testing requirements that constitute “information collection requirements” as defined by 5 CFR 1320.3(c) under the regulations that implement the Paperwork Reduction Act (PRA).83 OMB has approved the Rule’s existing information collection requirements through May 31, 2011 (OMB Control No. 3084–0069). The amendments require television manufacturers to test and label their products with energy information and to maintain records for two years after a model is discontinued. They also require paper and Internet catalog sellers of televisions to provide energy information. Accordingly, the Commission has submitted a related clearance request to OMB for review under the PRA.

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

Testing: Manufacturers need not test each basic model annually; they must test only if the product design changes in such a way as to affect energy consumption. Staff believes that the frequency with which models will be tested every year ranges roughly between 10% and 50%. It is likely that only a small portion of the tests conducted will be attributable to the Rule’s requirements and will apply to that assumption the high-end of the range noted above for frequency of testing. Staff estimates that there are approximately 2,000 basic models, that manufacturers will test two units per model, and that testing would require one hour per unit tested. Given these estimates and the above-noted assumption that 50% of these basic models would be tested annually, testing would require 2,000 hours per year. Assuming further that this testing will be implemented by electrical engineers, and applying an associated hourly wage rate of $39.72 per hour,84 labor costs for testing would total $79,440.

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

VII. Paperwork Reduction Act

The amendments require manufacturers to create and affix labels to televisions. The amendments specify the content, format, and specifications of the required labels. Manufacturers would add only the energy consumption figures derived from testing and other product-specific information. Consistent with past assumptions regarding appliances, FTC staff estimates that it will take approximately six seconds per unit to affix labels. Staff also estimates that there are 33,000,000 television units distributed in the U.S., per year.86 Accordingly, the total disclosure burden for televisions would be 55,000 hours (33,000,000 × 6 seconds). Assuming that product labels will be affixed by electronic equipment assemblers at an hourly wage of $13.66 per hour,87 the associated labor cost for recordkeeping would be approximately $450 per year.

Disclosures (Product Labeling): The final amendments required manufacturers to create and affix labels on televisions. The amendments specify the content, format, and specifications of the required labels. Manufacturers would add only the energy consumption figures derived from testing and other product-specific information. Consistent with past assumptions regarding appliances, FTC staff estimates that it will take approximately six seconds per unit to affix labels. Staff also estimates that there are 33,000,000 television units distributed in the U.S., per year.86 Accordingly, the total disclosure burden for televisions would be 55,000 hours (33,000,000 × 6 seconds). Assuming that product labels will be affixed by electronic equipment assemblers at an hourly wage of $13.66 per hour,87

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

83 42 U.S.C. 6294(d).


85 See id. at 3–24.

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

87 See National Compensation Survey, supra note 84 at 3–30.
cumulative associated labor cost would total $751,300 per year.

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

**VIII. Regulatory Flexibility Act**

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

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

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

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

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

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

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

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

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

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

**E. Duplicative, Overlapping, or Conflicting Federal Rules**

The Commission has not identified any other federal statutes, rules, or policies that would duplicate, overlap, or conflict with the final amendments.

**F. Alternatives**

The Commission sought comment and information on the need, if any, for alternative compliance methods that would reduce the economic impact of the Rule on such small entities. In particular, the Commission sought comments on whether it should delay the Rule’s effective date to provide additional time for small business compliance and whether to reduce the amount of information catalog sellers must provide. After considering the comments, the Commission has set the Rule’s effective date at six months after publication of this notice in the Federal Register, which should coincide with the beginning of the annual production cycle for televisions. This should reduce the impacts on manufacturers in response. In addition, the Commission...
has set the effective date for the catalog disclosure requirements two months after the labeling requirement for manufacturers. This will provide catalog sellers (which are likely to include small businesses) with additional time to ensure their compliance with the Rule. Finally, the amendments also require manufacturers to post label images online to make it easier for online retailers to post labels for the products they sell.

IX. Final Rule

List of Subjects in 16 CFR Part 305

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

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

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

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

Authority: 42 U.S.C. 6294.

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

§305.3 Description of covered products.

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

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

§305.4 Prohibited acts.

(e) * * * * *

(4) Televisions manufactured before May 10, 2011. * * * * *

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

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

(d) Determinations of estimated annual energy consumption and the estimated annual operating (energy) costs of televisions must be based on the procedures contained in the 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/ia/partners/product_specs/program_reqs/Televisions_Program_Requirements.pdf [Telephone: ENERGY STAR Hotline: 1–888–782–7937]; at the Federal Trade Commission, Consumer Response Center, Room 130, 600 Pennsylvania Avenue, NW., Washington, DC 20580 [Telephone: 1–202–326–2830]; and at the National Archives and Records Administration, at http://www.archives.gov/federal-register/cfr/ibr-locations.html [Telephone: 1–202–741–6030].
less than 110 pounds per 500 sheets (25 in.² x 30 in.²) or other material of equivalent durability.

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

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

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

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

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

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

(2) Name of manufacturer or private labeler. This requirement shall, in the case of a corporation, be satisfied only by the actual corporate name, which may be precised or followed by the name of a particular division of the corporation. In the case of an individual, partnership, or association, the name under which the business is conducted shall be used.

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

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

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

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

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

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

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

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

(ii) The manufacturer may include the ENERGY STAR logo on the label as illustrated in Sample Labels 10, 11, and 12 in Appendix L. When the television model falls outside the limits of the current range for that product, the manufacturer shall add the ENERGY STAR logo to those labels.

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

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

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

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

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

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

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

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

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

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

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

Appendix L to Part 305—Sample Labels

Prototype Label 8

Triangular Television Label

*Typeface is Arial Narrow and Arial or equivalent type style. Type sizes shown are minimum allowable. Use bold or heavy typeface where indicated. Type is black printed on process yellow or equivalent color background. Energy Star logo, if applicable, must be at least 0.36” wide.
Prototype Label 9

Horizontal Rectangular Television Label
Prototype Label 10

Vertical Rectangular Television Label
Sample Label 10

Triangular Television Labels
Sample Label 11

Vertical Television Labels
Sample Label 12

Horizontal Television Labels

Sample Icon 13

Website Link Icon
By direction of the Commission.

Donald S. Clark,
Secretary.

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