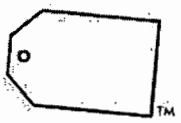


BEST BUY™

DOCKET	
09-AAER-1C	
DATE	NOV 02 2009
RECD	NOV 02 2009

November 2, 2009

The Honorable Karen Douglas, Chair
California Energy Commission
Docket #09-AAER-1C
Docket Office
1516 Ninth Street, MS-25
Sacramento, CA 95814-5512

RE: Best Buy Supplemental Comments on CEC's Proposed Rulemaking on Television Efficiency Standards (Docket # 09-AAER-1C)

Dear Chair Douglas:

Best Buy appreciates your continued interest in understanding the unique challenges the TV Efficiency Standards proposal presents for California retailers. In particular, we were very encouraged by your statements during the October 21 Assembly Utilities and Commerce oversight hearing in favor of a national standard.

Our principal concern with the proposed regulations remains the impact of a California-only energy efficiency standard on the documented trend toward increasing internet sales of televisions. Based on the data cited in our October 20, 2009, letter to the Docket, and the supplemental information attached to this letter, it is reasonable to expect that the proposed regulations would accelerate this trend, further eroding in-store sales and associated state and local tax revenues.

To address these concerns, Best Buy recommends that the Commission take the following course of action with respect to its current draft proposal:

1. Move the Tier 2 implementation date forward to allow a reasonable period of time for development and adoption of federal standards. Tier 2 requirements would take effect if the US Department of Energy (DOE) fails to act within this timeframe;

2. Require labeling at the point of manufacture and sunset state labeling requirements upon adoption of EnergyGuide requirements for TVs by the Federal Trade Commission (FTC).

The following supplemental comments provide additional data in support of these recommendations.

Support a federal energy efficiency standard for televisions

Attachment 1 documents that the US DOE has issued in the Federal Register its intent to move forward with rule-making for the Federal energy efficiency standard for televisions (Federal Register/Vol. 74, No. 21/Tuesday, October 20, 2009). We ask that the CEC and other stakeholders work with the US DOE to move forward on federal rule-making on energy efficiency and work to secure commitments from DOE on mutually acceptable timelines and energy savings targets.

Standards will be undermined by internet sales and place California bricks and mortar retailers at a competitive disadvantage due to availability of product and price.

The CEC publicly acknowledges that fewer than 350 models currently meet Tier 2 standards, and even if one assumes rapid technological innovation, it is reasonable to expect a significant number of models would not be available for sale in California after January 1, 2013. As we have discussed, a California consumer shopping on-line at BestBuy.com could see a different assortment of product than a consumer in another state. Discriminating internet shoppers seeking particular models or features that are not available from bricks and mortar California retailers will simply go elsewhere to make their purchases.

In addition, Best Buy tracks the average selling price for televisions we sell, including those models that are ENERGY STAR-qualified and models that are not. From July 2009 through September 2009, ENERGY STAR-qualified televisions sold had an average selling price that was 34% higher than non-ENERGY STAR-qualified televisions sold in the same period.

Contrary to allegations by NRDC and PG&E, this price differential is not simply a function of brand premium or bundled features. Rather, retail price is determined based on the bill of materials cost specific to the product including components such as energy-saving technologies.

As provided in legislative testimony on October 21, 2009, Best Buy concurred with statements made by Mr. Kenneth Lowe, Vice President and Co-Founder of Vizio, Inc. at the October 13, 2009, Commission hearing, that "Currently, the cost addition [attributable to compliance with the regulation] for the consumer is from tens to hundreds of dollars, depending on the screen size." Due to the sensitivity of trade secret data – including non-disclosure acts in place with our suppliers, pricing and margin information as well as fiduciary responsibilities, Best Buy cannot provide more detailed information to the CEC at this time. Best Buy has met with and talked with CEC Counsel about classifying the data as confidential and has not received adequate assurances that this data will not be disclosed under current statutes.

Even though the Tier 1 standards have been represented by CEC staff and others as a modest first step that will have little impact on product availability or cost, the reality for some technologies is that the cost to bring products to retail that meet the Tier 1 standards would exceed the energy savings anticipated over the life of the product.

With respect to representations about the current cost of technologies necessary to meet the proposed standards, NRDC, PG&E and some technology providers fail to acknowledge the fundamental market reality that increased demand tends to drive up price.

Any impact to price and availability will accelerate consumers toward buying a non-compliant model through unregulated channels and undermines the GHG goals of the Commission.

Product labeling requirements cannot be implemented as proposed and should be replaced with federal EnergyGuide standards for TVs.

As the Consumer Electronics Retailers Coalition (CERC) states in its ***October 19, 2009,*** comments to the FTC's pending rulemaking on energy efficiency labeling for TVs, "the *only* way to provide labeling information to consumers and to avoid inaccuracy, confusion and disappointment, is for the product manufacturer to perform the labeling at the time and place of manufacture." CERC's letter offers several real-world observations to substantiate this claim, including the following: retail stock in each store can vary depending on when the product was received and stored in inventory; retailers often have more than one supplier for a particular brand and model; the retail code for product tracking may be different from the manufacturer's model number; the process of affixing separately originated labels on dozens of products in thousands of stores will inevitably lead to errors in placement; and a label that did not originate with the product is more likely to be inadvertently separated from the product on the store shelf by customers or by store staff.

For the reasons articulated in the CERC letter ***(Attachment 2)***, CEC should require a manufacturer-applied label as an interim measure, allowing flexibility in placement by the manufacturer so it does not obstruct the display. CEC should also require that manufacturers post the California-specific label on their product detail page which can be easily linked by retailers for on-line sales. Finally, in order to avoid duplicative labeling requirements, unnecessary costs for manufacturers and retailers and confusion among consumers, the proposed regulations should be amended to sunset the California labeling requirements upon adoption of national labeling requirements for TVs by the of the Federal Trade Commission (FTC).

Product Cycle Clarification

The proposed Tier 1 and Tier 2 standards would take effect on January 1 of the corresponding year, despite the fact that new television products are typically brought to market during the second and third quarter of the calendar year. For example, for the 2011 model year, Best Buy is scheduled to launch its private label products from March through August of 2010 when the specifications for these products are determined. Should replenishment of these products occur in 2011, these specifications and products will need to be redesigned with significant additional costs to accommodate new energy efficiency standards and some of our product may not meet the proposed standards. Yet the proposed Tier 1 deadline effectively mandates that manufacturers bring CEC-compliant products to market in 2010. Absent industry-wide changes in production cycles, it is highly likely that many of our vendors will not be able to make the adjustments necessary to meet this timeline resulting in limited distribution of those models to our California stores. At a minimum, CEC should conform the proposed Tier effective dates to typical industry production cycles to allow sufficient lead time for manufacturers to meet the standards.

CEC should adopt the following proposal to achieve greater energy savings.

The only practical means of mitigating the above noted impacts is through a national television energy efficiency standard. Best Buy is sympathetic to your concern that DOE's statement in the October 20, 2009, Federal Register Notice does not establish a time table, and therefore does not by itself provide sufficient assurance that DOE will adopt comparable standards in a reasonable timeframe. Bearing this in mind, we recommend the following course of action:

1. Move the Tier 2 implementation date forward to allow a reasonable period of time for development and adoption of federal standards. Tier 2 requirements would take effect if the US Department of Energy (DOE) fails to act within this timeframe;

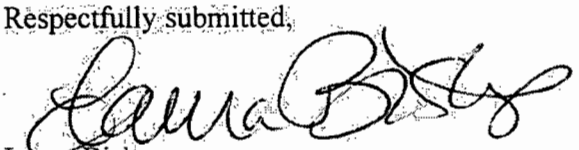
2. Require labeling at the point of manufacture and sunset state labeling requirements upon adoption of EnergyGuide requirements for TVs by the FTC.

This approach will achieve much greater savings than would occur under the CEC proposal alone, without disadvantaging in-state retailers.

Best Buy looks forward to working with you and other energy efficiency stakeholders to accomplish our mutual goals of reducing electricity demand and associated greenhouse gas emissions from televisions through a comprehensive national standard.

Thank you for the opportunity to submit these comments before the Commission. Should you have any questions I can be reached directly at 612-291-6127 or laura.bishop@bestbuy.com.

Respectfully submitted,



Laura Bishop
Senior Director, Government Relations

Attachments

cc: Commissioner Julia Levin
Commissioner Arthur Rosenfeld
Commissioner James Boyd
Commissioner Jeffrey Byron
Senator Alex Padilla
Assemblyman Felipe Fuentes
Assemblywoman Mary Hayashi
Dan Pellissier, Deputy Cabinet Secretary for Resources and Environment, Office of the Governor

Attachment #1

maintain, and test scales according to the requirements of the 2009 edition of NIST Handbook 44, and use scales that are in good condition and equipped with a printing device to record weight values. Since regulated entities are required under State law to comply with NIST Handbook 44, there are no new costs or burden to comply.

Executive Order 12866 and Regulatory Flexibility Act

The Office of Management and Budget (OMB) has designated this rule as not significant for the purposes of Executive Order 12866.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), GIPSA has considered the economic impact of this action on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

The Small Business Administration (SBA) defines small businesses by their North American Industry Classification System Codes (NAICS).[1] This final rule affects swine contractors, most of which are either slaughterers or processors of swine with more than 500 employees (NAICS code 311611), or are producers with more than $750,000 in annual sales (NAICS code 112210), and do not meet the applicable size standards for small entities under the Small Business Act (13 CFR 121.201). Therefore, we have determined that this final rule will not have a significant economic impact on a substantial number of small entities as defined in the RFA and are not providing an initial regulatory flexibility analysis.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. These actions are not intended to have retroactive effect. This final rule will not pre-empt state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this final rule.

Paperwork Reduction Act

This final rule does not contain new or amended information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). It does not involve collection of new or additional information by the federal government.

E-Government Act Compliance

GIPSA is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

List of Subjects in 9 CFR Part 201

Swine, Hogs, Livestock, Measurement standards, Incorporation by reference.

■ For the reasons set forth in the preamble, we amend 9 CFR part 201 to read as follows:

PART 201—REGULATIONS UNDER THE PACKERS AND STOCKYARDS ACT

■ 1. The authority citation for part 201 continues to read as follows:

Authority: 7 U.S.C. 181–229c.

■ 2. In § 201.71, paragraphs (a), (b) and (d) are revised to read as follows:

§ 201.71 Scales; accurate weights, repairs, adjustments or replacements after inspection.

(a) All scales used by stockyard owners, swine contractors, market agencies, dealers, packers, and live poultry dealers to weigh livestock, livestock carcasses, live poultry, or feed for the purposes of purchase, sale, acquisition, payment, or settlement shall be installed, maintained, and operated to ensure accurate weights. Such scales shall meet applicable requirements contained in the General Code, Scales Code, and Weights Code of the 2009 edition of the National Institute of Standards and Technology (NIST) Handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices," which is hereby incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they exist on the date of approval and a notice of any change in these materials will be published in the **Federal Register**. All approved material is available for inspection at the National Archives and Records Administration (NARA). For more information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*. Also, it is available for inspection at USDA, GIPSA, P&SP, 1400 Independence Ave., SW., Washington, DC 20250, (202) 720–7363. The handbook is for sale by the National Conference of Weights & Measures (NCWM), 1135 M Street, Suite-110, Lincoln, Nebraska, 68508. Information on these materials may be obtained from NCWM by calling 402–434–4880, by e-mailing *nfo@ncwm.net*, or on the Internet at *http://www.nist.gov/owm*.

(b) All scales used by stockyard owners, swine contractors, market agencies, dealers, packers, and live poultry dealers to weigh livestock, livestock carcasses, live poultry, or feed for the purpose of purchase, sale, acquisition, payment, or settlement of livestock or live poultry and all scales used for the purchase, sale acquisition, payment, or settlement of livestock on a carcass weight basis shall be equipped with a printing device which shall record weight values on a scale ticket or other document.

* * * * *

(d) No scales shall be operated or used by any stockyard owners, swine contractors, market agencies, dealers, packers, or live poultry dealers to weigh livestock, livestock carcasses, live poultry, or feed for the purposes of purchase, sale, acquisition, payment, or settlement of livestock, livestock carcasses or live poultry unless it has been found upon test and inspection, as specified in § 201.72, to be in a condition to give accurate weight. If a scale is inspected or tested and adjustments or replacements are made to a scale, it shall not be used until it has been inspected and tested and determined to meet all accuracy requirements specified in the regulations in this section.

Alan R. Christian,

Acting Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. E9–25040 Filed 10–19–09; 8:45 am]

BILLING CODE 3410–KD–P

[1] See: *http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf.*

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket No. EERE–2009–BT–TP–0020]

RIN 1904–AC09

Energy Conservation Program: Repeal of Test Procedures for Televisions

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule.

SUMMARY: The U.S. Department of Energy (DOE) repeals the regulatory

provisions establishing the test procedure for televisions under the Energy Policy and Conservation Act (EPCA). The test procedure has been made obsolete by the transition from analog to digital television in the United States, effective June 13, 2009.

DATES: *Effective Date:* This rule is effective October 20, 2009.

ADDRESSES: The public may review copies of all materials related to this rulemaking at the U.S. Department of Energy, Resource Room of the Building Technologies Program, 950 L'Enfant Plaza, SW., Suite 600, Washington, DC (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards at the above telephone number for additional information regarding visiting the Resource Room.

FOR FURTHER INFORMATION CONTACT: Ron Lewis, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 950 L'Enfant Plaza, SW., Room 6057, Washington, DC 20585–0121, (202) 586–8423, e-mail: *Ronald.Lewis@ee.doe.gov.*

Eric Stas, Esq., GC–72, U.S. Department of Energy, Office of General Counsel, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–5827, e-mail: *Eric.Stas@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Authority and Background

Title III of the Energy Policy and Conservation Act (42 U.S.C. 6291 *et seq.*; EPCA) sets forth a variety of provisions designed to improve energy efficiency. Part A.[1] of title III (42 U.S.C. 6291–6309) establishes the "Energy Conservation Program for Consumer Products Other Than Automobiles." The consumer products subject to this program (hereafter "covered products") include televisions. Under EPCA, the overall program consists essentially of testing, labeling, and Federal energy conservation standards.

Section 323 of EPCA (42 U.S.C. 6293) sets forth generally applicable criteria and procedures for DOE's adoption and amendment of test procedures. It states, for example, that "[a]ny test procedures prescribed or amended under this section shall be reasonably designed to produce test results which measure energy efficiency, energy use, * * * or estimated annual operating cost of a covered product during a representative average use cycle or period of use, as determined by the Secretary [of Energy], and shall not be unduly burdensome to conduct." (42 U.S.C. 6293(b)(3)) Manufacturers of covered products must use test procedures prescribed under EPCA as the basis for establishing and certifying to DOE that their products comply with energy conservation standards adopted under EPCA. (42 U.S.C. 6295(s))

EPCA also specifies that State law providing for the disclosure of information with respect to any measure of energy consumption is superseded to the extent that such law requires testing or the use of any measure of energy consumption or energy descriptor in any manner other than provided under section 323 of EPCA. (42 U.S.C. 6297(a)(1)(A); 42 U.S.C. 6297(f)(3)(G)) Therefore, in the absence of a Federal test procedure or accompanying conservation standard, States may prescribe their own test procedures and standards pursuant to applicable State law. *Id.*

II. Discussion

The existing test procedure to measure the energy efficiency of television sets is codified at 10 CFR 430.23(h) and 10 CFR Subpart B, Appendix H, and the sampling plan, that is, the specific requirements for the number of units to be tested, is set forth at 10 CFR 430.24(h).

The existing test procedure is appropriate for measuring the energy efficiency of only analog television sets. In the Digital Television Transition and Public Safety Act of 2005, 47 U.S.C. 309 note, as amended by the DTV Delay Act of 2009, 47 U.S.C. 609 note, Congress directed the Federal Communications Commission to terminate all licenses for full-power television stations in the analog television service, and to require the cessation of broadcasting by full-power stations in the analog television service, by June 13, 2009. Given that the June 2009 deadline set by Congress for the transition to digital television has passed, the existing test procedure and sampling plan are obsolete.

Regulatory definitions of "television set", "color television set", and "monochrome television set" are set forth at 10 CFR 430.2. "Television set" is defined simply as "a color television set or a monochrome television set". "Color television set" is defined as "an electrical device designed to convert incoming broadcast signals into color television pictures and associated sound", and "monochrome television set" is defined as "an electrical device designed to convert incoming broadcast signals into monochrome television pictures and associated sound". The definitions are not affected by the transition from analog to digital television in the United States because the broadcast signals they reference encompass both analog and digital signals.

The Department of Energy received petitions from the California Energy Commission (Commission or CEC) and the Consumer Electronics Association (CEA) related to the existing television test procedure. The Commission petitioned for repeal of the regulatory provisions establishing the test procedure and defining "television set". CEA petitioned for replacement of the existing test procedure with the test procedure adopted by the International Electrochemical Commission, IEC 62087–2008(E), published in September 2008.

In response to these petitions, and as a result of the transition to digital television discussed above, DOE is repealing the existing television test procedure and the regulatory provision specifying requirements for the number of units to be tested pursuant to the test procedure (*i.e.*, the sampling plan). DOE will maintain the regulatory definitions because they continue to be appropriate notwithstanding the transition to digital television, and because television sets are listed as a covered product in EPCA. (42 U.S.C. 6292(12))

DOE will soon begin a rulemaking process to establish a new Federal test procedure and a new Federal energy-efficiency standard for televisions. In establishing a new test procedure, DOE will give serious consideration to the suggestion made by CEA that DOE adopt IEC 62087–2008(E).

III. Procedural Requirements

A. Executive Order 12866

Today's regulatory action is not a "significant regulatory action" under section 3(f) of Executive Order 12866,

[1] This part was originally titled Part B; however, it was redesignated Part A after Part B was repealed by Public Law 109–58.

"Regulatory Planning and Review," 58 FR 51735 (October 4, 1993). Accordingly, this action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB).

B. Administrative Procedure Act

The Department of Energy finds good cause to waive notice and comment on these regulations pursuant to 5 U.S.C. 533(b)(B), and the 30-day delay in effective date pursuant to 5 U.S.C. 553(d). Notice and comment are unnecessary and contrary to the public interest because this final rule is repealing a test procedure that has been made obsolete by act of Congress. A delay in effective date is unnecessary and contrary to the public interest for these same reasons. Therefore, these regulations are being published as final regulations and are effective October 20, 2009.

C. National Environmental Policy Act

DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. This rule amends an existing rule without changing its environmental effect, and, therefore, is covered by the Categorical Exclusion A5 found in appendix A to subpart D, 10 CFR part 1021. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that must be proposed for public comment, unless the agency certifies that the rule will have no significant economic impact on a substantial number of small entities. As required by Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking," 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's Web site at *http://www.gc.doe.gov*. Because a notice of proposed rulemaking is not required under the Administrative Procedure Act or other applicable law, the Regulatory Flexibility Act does not require certification or the conduct of a regulatory flexibility analysis for this rule.

E. Paperwork Reduction Act

This rulemaking imposes no new information or recordkeeping requirements. Accordingly, OMB clearance is not required under the Paperwork Reduction Act. (44 U.S.C. 3501 *et seq.*)

F. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. For proposed regulatory actions likely to result in a rule that may cause expenditures by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish estimates of the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed "significant intergovernmental mandate." UMRA also requires an agency plan for giving notice and opportunity for timely input to small governments that may be affected before establishing a requirement that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA (62 FR 12820) (also available at *http://www.gc.doe.gov*). Today's final rule contains neither an intergovernmental mandate nor a mandate that may result in the expenditure of $100 million or more in any year, so these requirements do not apply.

G. Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. Today's rule would have no impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is unnecessary to prepare a Family Policymaking Assessment.

H. Executive Order 13132

Executive Order 13132, "Federalism," 64 FR 43255 (August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The executive order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. DOE has examined this final rule and determined that it would not preempt State law and would have no substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Executive Order 13132 requires no further action.

I. Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity, (2) write regulations to minimize litigation, (3) provide a clear legal standard for affected conduct rather than a general standard, and (4) promote simplification and burden reduction. Regarding the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this rule meets the relevant standards of Executive Order 12988.

J. Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's notice under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Executive Order 13211

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgated or is expected to lead to promulgation a final rule, and that (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Today's regulatory action is not a significant regulatory action under Executive Order 12866 or any successor order; would not have a significant adverse effect on the supply, distribution, or use of energy; and has not been designated by the Administrator of OIRA as a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

L. Executive Order 12630

Pursuant to Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights," 53 FR 8859 (March 15, 1988), DOE has determined that this rule would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

M. Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91), the Department of Energy must comply with section 32 of the Federal Energy Administration Act of 1974 (Pub. L. 93–275), as amended by the Federal Energy Administration Authorization Act of 1977 (Pub. L. 95–70). (15 U.S.C. 788) Section 32 provides that where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Department of Justice and the Federal Trade Commission concerning the impact of the commercial or industry standards on competition. This final rule to repeal the test procedure for determining the energy efficiency of television sets does not authorize or require the use of any commercial standards. Therefore, no consultation with either DOJ or FTC is required.

N. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of today's rule before its effective date. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 804(2).

IV. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final rule.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Intergovernmental relations, Small businesses.

Issued in Washington, DC, on October 2, 2009.

Henry Kelly,

Principal Deputy Assistant Secretary, Energy Efficiency and Renewable Energy.

■ For the reasons stated in the preamble, part 430 of chapter II of title 10, Code of Federal Regulations, is amended as set forth below:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 1. The authority citation for Part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

§ 430.23 [Amended]

■ 2. Section 430.23 is amended by removing and reserving paragraph (h).

§ 430.24 [Amended]

■ 3. Section 430.24 is amended by removing and reserving paragraph (h).

Appendix H [Removed and Reserved]

■ 4. Appendix H to subpart B of part 430 is removed and reserved.

[FR Doc. E9–25170 Filed 10–19–09; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 61, 91, and 141

[Docket No. FAA–2006–26661; Amendment Nos. 61–124A, 91–309A, and 141–12A]

RIN 2120–AI86

Pilot, Flight Instructor, and Pilot School Certification; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: The Federal Aviation Administration (FAA) is making several corrections to its "Pilot, Flight Instructor, and Pilot School Certification" final rule published in the **Federal Register** on August 21, 2009. The FAA corrections include standardizing certain part 61 time period durations from "60 days" to now read "2 calendar months." We are also correcting an omission and errors to the prerequisite eligibility requirements for use of flight simulators. Additionally, we are correcting the duration of a student pilot certificate to 60 calendar months for a student pilot seeking a sport pilot certificate. Finally, we are correcting a sentence in the preamble to conform with the final rule regarding the use of flight training devices.

DATES: These corrections are effective on October 20, 2009.

FOR FURTHER INFORMATION CONTACT: John D. Lynch, Certification and General Aviation Operations Branch, AFS–810, General Aviation and Commercial Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3844; e-mail to *john.d.lynch@faa.gov*.

For legal interpretative questions about this final rule, contact: Michael Chase, AGC–240, Office of Chief Counsel, Regulations Division, Federal

Attachment # 2

Before the
UNITED STATES FEDERAL TRADE COMMISSION
Washington, D.C. 20580

In the Matter of

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"]; Advance Notice of Proposed Rulemaking	)	16 CFR Part 305
Consumer Electronics Labeling Project No. P094201	)	

SUPPLEMENTAL COMMENTS OF THE
CONSUMER ELECTRONICS RETAILERS COALITION

The Consumer Electronics Retailers Coalition ("CERC") provides these supplemental comments to further meet the Commission's objective of understanding the role and experience of retailers in helping achieve the national goal of enhanced consumer choice and energy efficiency.

In its May Comments, CERC urged the FTC to proceed carefully so as to ensure that its actions do not frustrate already successful energy efficiency efforts. We also urged that full account be taken of concerns, of Members of Congress and others, that the FTC avoid imposing rules that are technologically or economically infeasible, or that would not be helpful to consumers in their own decision-making. CERC also urged the FTC to occupy the field to the extent that State efforts imposing competing disclosure obligations do not confuse the public.

CERC agrees with commenters that the FTC would benefit from public workshops or hearings which would give stakeholders and policymakers an opportunity to discuss the full range of issues surrounding energy labeling. CERC and its members welcome an opportunity to participate in such a forum.

Supplemental Comments As To Label Responsibility And Placement

Based on significant and detailed experience, CERC believes that the *only* way to provide labeling information to consumers and to avoid inaccuracy, confusion and disappointment, is for the product manufacturer to perform the labeling at the time and

place of manufacture. Anyone who advocates a different regime to be effective is simply unfamiliar with the realities of supply chains and the retail environment. The reasons are:

- Manufacturers often revise or update product specifications without necessarily changing the model number. Retail stock, in each of thousands of stores, for the same model number can vary depending on when the product was received and stored in warehouse and/or store inventory.

- Retailers often have more than one supplier for a particular brand and model.

- The retail "SKU" number via which the product is tracked may be different from the manufacturer's model number.

- The retail stock, in each of thousands of stores, may contain different manufacturers' models sold under the same SKU.

- Even if the retailer has some way of being confident that a shelf label that originated independently from the actual products on the shelf and in stock is accurate, the very process of affixing separately originated labels on dozens of products in thousands of stores will inevitably lead to errors in placement.

- Even if accurately placed, a label that did not originate with the product in question is more likely to be moved away from that product (by customers or by staff charged with tidying or re-arranging a display area), when on the shelf, than one that did originate with that product and its own packaging.

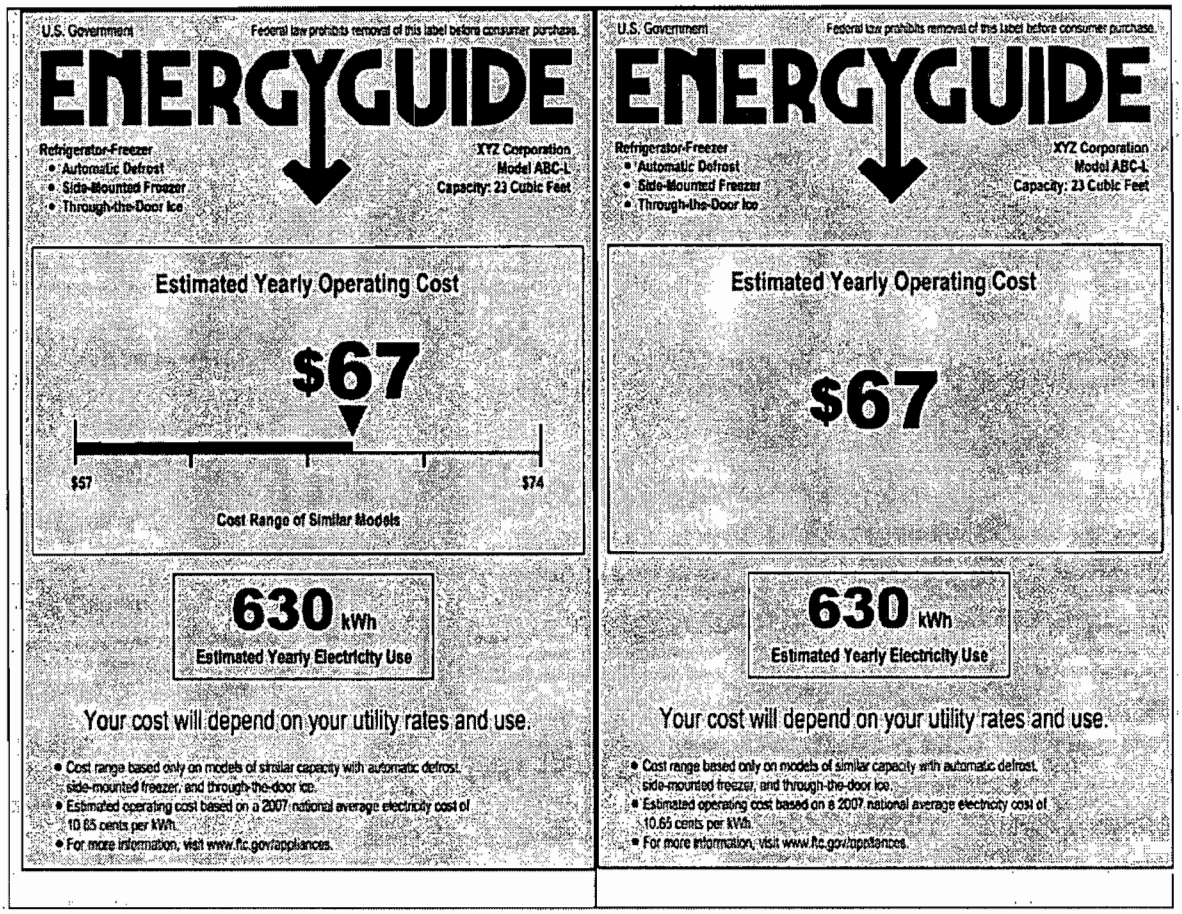
Affixing the label at place of manufacture will avoid or minimize each of these known problems and challenges. Accordingly, if the FTC does impose a labeling obligation, it should start with the product as it is packed for shipment at the factory. This obligation also avoids the problem of a regulation becoming effective while a product is in transit, which would also lead to inaccuracy, confusion, or the absence of any label at all. Accordingly, products that were accurately labeled at the factory will be compliant, and products that were packed and shipped prior to the date of the labeling obligation would not be covered. The obligation date should be set accordingly. This will avoid factual and legal uncertainty for all involved.

Supplemental Comments As To Label Disclosures

A number of CERC members also sell home appliances like refrigerators, dishwashers, washers and dryers. These products have been part of the EnergyGuide program for years. Consumers fully understand, accept and use the EnergyGuide disclosures to make informed purchasing decisions. The FTC should use a similar format, style and comparative data in TV and other consumer electronics labeling taking into account the size, safety and nature of the product and label.

From a consumer perspective, one of the more valuable pieces of information on an EnergyGuide label is how the product compares in energy use within a similar class of products. This gives both consumers (and retailers) an opportunity to understand the balance between purchase price, cost of use and features.

CERC is concerned that some commenters hinted at a stripped down disclosure which would not include comparative data. Simply telling the customer, "this unit uses $5.00 in energy every year" does not convey enough information to make a fully informed purchasing decision, without some indication as to how that television compares within a similar class of TVs. The illustrations below provide a compelling example of the usefulness of comparative data. CERC urges the FTC to consider which version, the comparative version used in household appliances or the stripped version provides consumers better information.



This comparative data is also very useful to retailers and our buyers who make assortment decisions. The above illustration should also remind policymakers how important it is, to the greatest extent practical, to keep the familiar EnergyGuide label format intact. Consumers have come to know and trust it.

While not our first choice, if the FTC were to adopt a new version of EnergyGuide and apply it to Consumer Electronics products, then the appliance version should also adjust to preserve continuity and brand identification across product lines. The groupings of TV classes are important as well. Screen size is highly relevant as are the features. A seven inch portable TV should not be grouped with a 51" flat panel TV. A TV with a built-in DVD player should be grouped with other TVs having that feature and similar screen size.

Supplemental Comments As To Label Disclosures

CERC's May submission discussed in detail label placement issues. Taking into account the size, nature, use and safety of TVs and other consumer electronics the FTC should as best possible adhere to practices now in use for household appliance disclosures.

CERC has advocated that the EnergyGuide label be "readily available at point of consumer decision, but not interfere with the display or safety of the product and associated services." For large appliances, the practice has been for the yellow EnergyGuide tag to hang inside, or be placed on a flat surface or on the back of the product. For televisions, an analogous requirement in which the label would be similarly available to the consumer would be for it to be affixed to the back of the product or in another way as to not obscure the viewing area of a product.

CERC's experience is that most shoppers have already done significant research, much of it on-line, when they shop for a new TV. The focus should be more, or at least as much, on the "point of decision" as on the "point of purchase." Accordingly, CERC recommends that energy disclosures be placed (1) safely on the product or product box, (2) in the owner's manual, (3) in a PDF version posted on the manufacturer's website 'product detail page', and (4) on the retailer's website "product detail page."

CERC welcomes the opportunity to work with the FTC and its staff to help the Commission understand the complexities and realities of the modern consumer electronics retail environment.

Respectfully submitted,

CONSUMER ELECTRONICS
RETAILERS COALITION

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