

# Proposed Rules

Federal Register

Vol. 71, No. 68

Monday, April 10, 2006

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## FEDERAL TRADE COMMISSION

### 16 CFR Part 305

RIN 3084-AB03

#### “Appliance Labeling Rule”; Energy Labeling; Public Workshop

**AGENCY:** Federal Trade Commission (FTC or Commission).

**ACTION:** Notice announcing public workshop; public comment and participation request.

**SUMMARY:** The FTC is planning to host a public workshop to discuss current energy labeling requirements for consumer products. This workshop is part of a rulemaking that the Commission initiated on November 2, 2005 (70 FR 66307). The workshop is open to the public, and there is no fee for attendance. For admittance to the conference center, all attendees will be required to show a valid photo identification, such as a driver's license.

**DATES:** The workshop will be held on Wednesday, May 3, 2006 from 9 a.m. to 4 p.m. at the Federal Trade Commission's Satellite Building Conference Center located at 601 New Jersey Avenue, NW., Washington, DC. Requests to participate as a panelist must be received by April 21, 2006. Any written comments related to the workshop must be received on or before May 17, 2006, two weeks after the conference takes place.

**ADDRESSES:** Registration information can be found in Section III of this Notice. Comments and requests to participate as a panelist should respectively refer to “Energy Labeling Workshop—Comment, Project No. P064201” or “Energy Labeling Workshop—Request to Participate, Project No. P064201”, to facilitate the organization of comments and requests to participate. A comment or request to participate as a panelist filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered, with two complete copies, to the following

address: Federal Trade Commission/ Office of the Secretary, Room H-135 (Annex O), 600 Pennsylvania Avenue, NW., Washington, DC 20580. Because U.S. mail in the Washington area and at the Agency is subject to delay, please consider submitting your comments in electronic form, as prescribed below. Comments and requests to participate as a panelist containing confidential material, however, must be filed in paper form, must be clearly labeled “Confidential,” and must comply with Commission Rule 4.9(c).<sup>1</sup>

Comments filed in electronic form should be submitted by clicking on: <https://secure.commentworks.com/ftc-energylabelingworkshop> and following the instructions on the Web-based form. To ensure that the Commission considers an electronic comment, you must file it on the Web-based form at <https://secure.commentworks.com/ftc-energylabelingworkshop>. Requests to participate filed in electronic form should be submitted by e-mail to [labelingworkshop@ftc.gov](mailto:labelingworkshop@ftc.gov).

The FTC Act and other laws the Commission administers permit the collection of public comments to use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at <http://www.ftc.gov>. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

**FOR FURTHER INFORMATION CONTACT:** Hampton Newsome, Attorney, 202-326-2889, Division of Enforcement, Federal Trade Commission.

#### SUPPLEMENTARY INFORMATION:

<sup>1</sup> The comment or request to participate as a panelist must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment or request to participate as a panelist to be withheld from the public record. The request for confidential treatment will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. See Commission Rule 4.9(c), 16 CFR 4.9(c).

## I. Background

Section 137 of the Energy Policy Act of 2005 (Pub. L. No. 109-58) amends the Energy Policy and Conservation Act of 1975 (EPCA) (42 U.S.C. 6291 *et seq.*) to require that the Commission initiate a rulemaking considering “the effectiveness of the consumer products labeling program in assisting consumers in making purchasing decisions and improving energy efficiency.” As part of this effort, the Act directs the Commission to consider “changes to the labeling rules (including categorical labeling) that would improve the effectiveness of consumer product labels.” The Act gives the FTC two years to complete the rulemaking. To initiate this effort, the Commission published an Advance Notice of Proposed Rulemaking (ANPR) on November 2, 2005 (70 FR 66307). That Notice sought comments on a series of questions about the effectiveness of the current label, possible alternatives, and other potential changes to the FTC's Appliance Labeling Rule (16 CFR part 305). The Commission received 27 comments in response to the ANPR. The comments can be viewed on the FTC Web site at <http://www.ftc.gov/os/comments/energylabeling/index.htm>.

The Commission has scheduled a public workshop to allow interested parties to discuss the comments and to provide information on additional questions generated by the comments.

## II. Issues for Discussion at the Workshop

The workshop will address issues related to the Commission's November 2005 ANPR on the effectiveness of the current energy labeling program. The Commission has identified four specific issues for discussion at the workshop. We request that participants review these issues so that they can provide their views during the workshop or in submitted comments. After completion of the discussion of the specific issues described in this Notice, there will be time available to discuss any other issues raised in the ANPR. The four specific issues involve label design, refrigerator categories, heating and cooling equipment labels, and television labels.

### A. Label Design

The ANPR sought comments on whether the Commission should change

the current design and format of the EnergyGuide label, which is required on most major household appliances. Many of the comments addressed this issue, focusing on whether label information should be presented in the form of a "continuous" bar graph similar to the current label (see Figure 1)<sup>2</sup> or in the form of discrete categories such as stars (*i.e.*, a "categorical" label) (see Figure 2). Some commenters favored the current continuous-style label while others urged the FTC to adopt a categorical label. The workshop will allow participants to discuss issues related to these two designs as well as a third possible approach discussed below.

### 1. Continuous Label

The bar graph on the current continuous label depicts the energy use (or efficiency) of the product as it relates to other products on the market and provides a range of energy use or efficiency ratings based on market data. One end of the scale depicts the energy use of the most efficient model on the market while the other end identifies the least efficient model. For example, the bar graph on a label for a typical refrigerator category may have 539 kWh/yr (kilowatt-hours per year) on one end and 698 kWh/yr on the other end. A key feature of the current label is that this range or scale is based on data for models available on the market.

### 2. Categorical Label

The ratings on a categorical label (*e.g.*, stars or letters) generally depict the model's energy efficiency rating as compared to the minimum government efficiency standards (*i.e.*, the lowest allowable efficiency levels) set by the Department of Energy (DOE). For example, a five-star dishwasher would have an efficiency rating that exceeded the minimum government standard by a certain percentage (*e.g.*, 20%). This approach is fundamentally different from that used for the continuous label designs based on market data because the range does not depict directly the energy use or efficiency of other products on the market. Instead, the categories (*e.g.*, stars) correspond to thresholds defined by the agency administering the labeling program.

### 3. Third Label Approach

A third approach to the EnergyGuide label would combine the graphical design of a continuous label with the energy efficiency comparison underlying the categorical label. Such a label would include a continuous style

bar graph that depicts the energy use or efficiency of a product in comparison to the DOE minimum efficiency (or conservation) standards (see Figure 3). The label would identify the percentage by which a model exceeds DOE's minimum efficiency standard. The range used on such a label would be roughly proportional to the efficiency of models on the market. For example, if the most efficient refrigerator exceeds the DOE standards by 35%, then the scale for those products would range from 0% to approximately 40%. This label design would provide a uniform system of conveying energy information in a continuous-style label format. As part of the overall label design discussion, the FTC will be seeking comment at the public workshop on whether it should consider such a label in addition to the other label design approaches discussed in the ANPR and submitted comments.

### B. Refrigerator Categories

The current labeling requirements designate separate comparability ranges for various refrigerator sub-categories (or styles) such as side-by-side door configurations or models with top-mounted freezers. The current range information on the label allows consumers to compare the energy use of similarly configured refrigerators but not the energy use of models across sub-categories (*e.g.*, a side-by-side model to a top-mounted freezer model). This framework is consistent with the style categories used by the DOE efficiency standards program and Energy Star.

Nevertheless, some refrigerator configurations are generally less efficient than others. For example, top-mounted freezer models generally use less electricity than comparably sized side-by-side models. As a result, the range information on a particular side-by-side refrigerator label may compare favorably to other side-by-sides but fail to show that the model uses significantly more energy than an average refrigerator with a top-mounted freezer.<sup>3</sup> Given this concern, Consumers Union recommended that refrigerator labels compare the energy used by the appliance to the maximum energy consumption allowed by law for any refrigerator of comparable internal volumes—*independent of style*.<sup>4</sup>

Consumers Union suggested that the Commission change its requirements to allow consumers to use range information to compare all styles of

refrigerator-freezers. To accomplish this, the FTC could amend the rule so that labels for all refrigerator-freezers feature the same range of comparability, regardless of style. Alternatively, if the labels were reconfigured to convey efficiency comparisons to the DOE efficiency standards (such as in Figures 2 and 3), the range could depict the model's energy use as compared to the maximum energy use allowed for any refrigerator, regardless of style.<sup>5</sup> The FTC will be seeking comment at the public workshop on whether the FTC should make Rule changes to address these concerns, and, if so, what changes would be appropriate.

### C. Labels for Heating and Cooling Equipment

The Appliance Labeling Rule requires EnergyGuide labels on central air conditioners, heat pumps, furnaces, boilers, and water heaters (16 CFR 305.11).<sup>6</sup> Both the Gas Appliance Manufacturers Association (GAMA) and the Air Conditioning and Refrigeration Institute (ARI), trade associations representing heating and cooling equipment manufacturers, suggested that labels for heating and cooling equipment do not aid consumers because these products are not sold through showrooms or by other means that allow consumers to examine the label before purchase.<sup>7</sup> GAMA urged that the FTC eliminate the labeling requirement for furnaces, boilers, and water heaters,<sup>8</sup> and ARI made the same suggestion for central air conditioners and heat pumps. Both organizations urged reliance on existing online databases (such as those available on the GAMA and ARI Web sites) to provide consumers with energy information about their products in lieu of labeling. In addition to GAMA and ARI comments, Natural Resources Canada described its voluntary program for heating and cooling products, which does not use labeling but instead urges

<sup>5</sup> DOE allows a higher energy use for side-by-side/ice service models that it does for other full-size refrigerators. Thus, the Rule could set the energy use allowed for such models as the benchmark on ranges for all full-size refrigerators.

<sup>6</sup> In 1979, the Commission required labeling for furnaces and water heaters. 44 FR 66466, 66470 (Nov. 19, 1979). The Commission required labels for central air conditioners and heat pumps in 1987 (52 FR 46888 (Dec. 10, 1987)).

<sup>7</sup> GAMA Comments in FTC Matter No. R511994 (Jan. 13, 2006); and ARI Comments on FTC Matter No. R511994 (Jan. 13, 2006).

<sup>8</sup> GAMA explained that consumers sometimes purchase replacement residential water heater from retail outlets, but, as often as not, they obtain them through contractors. GAMA also argued the recent DOE standards have significantly reduced the differences in energy use or efficiency or storage water heaters on the market.

<sup>2</sup> Figure 1 is a modified version of the current EnergyGuide label.

<sup>3</sup> The energy use and operating costs required on the label would allow such cross-category comparisons, but the range itself does not.

<sup>4</sup> Consumers Union Comments in FTC Matter No. R511994 (Jan. 13, 2006).

manufacturers to print efficiency ratings for their products on brochures.<sup>9</sup>

In contrast, the American Council for an Energy-Efficient Economy (ACEEE) raised some concerns about eliminating the EnergyGuide label from heating and cooling equipment.<sup>10</sup> It suggested that the labels provide useful information on installed equipment even though most consumers do not see the EnergyGuide at the time of purchase for these products. According to ACEEE, research indicates that the label provides useful verification of the product's efficiency upon installation. ACEEE also suggested that the label is also used by energy auditors and by consumers purchasing an existing home to determine the energy efficiency of equipment installed by previous owners. ACEEE suggested that the FTC investigate additional means for providing label information to consumers so it can better impact their purchase decisions.

Under EPCA, the Commission may exclude central air conditioners, heat pumps, and furnaces from the labeling requirements if it determines that labeling is not technically or economically feasible or, alternatively, that labels are not likely to assist consumers in making purchasing decisions. (42 U.S.C. 6294(a)(2)). For water heaters, the statute directs the FTC to require labels unless the Commission determines that labeling is not technically or economically feasible. (42 U.S.C. 6294(a)(1)). Section 6294(c) gives the Commission authority to require disclosures, in printed material displayed or distributed at the point of sale, of energy information that may be required on a label. In addition, the Commission may direct manufacturers to provide additional energy-related disclosures in information shipped with the product including instructions for the maintenance, use, or repair of the covered product. At the public workshop, the Commission seeks further comment on whether the Commission should retain labeling requirements for heating and cooling equipment and whether the Commission should require an alternative means of disclosure, consistent with its authority under the statute.

#### D. Television Labeling

Section 324(a) of EPCA requires labels for these products unless the Commission determines that labeling is

not technologically or economically feasible. (42 U.S.C. 6294(a)). The test procedures used for labeling televisions must be those prescribed by DOE pursuant to section 323 of EPCA. (See 42 U.S.C. 6294(c)). In 1979, the Commission determined that labeling for televisions was not economically feasible. The FTC found that there was little variation in the annual energy costs of competing television models and that this cost was a small fraction of the purchase price. The Commission believed it was unlikely that labels for televisions would promote industry efforts to increase energy efficiency, or provide benefits to consumers. (44 FR 66466, 66468 (Nov. 19, 1979)).

According to comments filed by the Natural Resources Defense Council (NRDC),<sup>11</sup> there are now many big screen digital televisions on the market that use 500 or more kilowatt-hours per year, which is as much energy as many new refrigerators. NRDC estimates that, in some cases, consumers will pay several hundred dollars in electricity costs for their televisions over the lifetime of the product. NRDC is concerned that reliable, model-specific, energy use information is virtually non-existent for new televisions. The Consortium for Energy Efficiency also urged the Commission to consider labeling for televisions stating that "new technologies and larger sizes of televisions that are currently offered on the market argue for their inclusion within the scope of the Appliance Labeling Rule."<sup>12</sup>

The FTC is seeking additional information about this issue at the public workshop. In particular, we request that participants address whether the Commission should revisit its decision to exclude televisions from the labeling requirements and whether the existing DOE test procedures are an appropriate basis for labeling.

### III. Public Participation Information

#### A. Registration Information

The public workshop will be conducted in a roundtable format. A court reporter will be present to record the proceedings so that a transcription can be made for the public record. The FTC will accept pre-registration for this workshop. Pre-registration is not necessary to attend, but is encouraged so that we may better plan this event. To pre-register, please e-mail your name and affiliation to [labelingworkshop@ftc.gov](mailto:labelingworkshop@ftc.gov). When you

pre-register, we will collect your name, affiliation, and your e-mail address. This information will be used to estimate how many people will attend and better understand the likely audience for the workshop. We may use your e-mail address to contact you with information about the workshop. Under the Freedom of Information Act (FOIA) or other laws, we may be required to disclose the information you provide to outside organizations. For additional information, including routine uses permitted by the Privacy Act, see the Commission's Privacy Policy at <http://www.ftc.gov/ftc/privacy.htm>. The FTC Act and other laws the Commission administers permit the collection of this contact information to consider and use for the above purposes.

#### B. Requests to Participate as a Panelist

This workshop will be conducted in a roundtable format with participation by panelists selected by the FTC staff. Other attendees will also have an opportunity to comment and ask questions. Requests to participate as a panelist must be received by April 21, 2006. Persons will be notified on or before April 26, 2006 if they have been selected.

Requests to participate as a panelist should be submitted electronically as part of the participants' pre-registration by e-mail to [labelingworkshop@ftc.gov](mailto:labelingworkshop@ftc.gov) or, if mailed, should be submitted in the manner detailed in the ADDRESSES section of this Notice, and should be captioned "Energy Labeling Workshop—Request to Participate, Project No. P064201." Parties are asked to include in their requests a brief statement setting forth their expertise in or knowledge of the issues on which the workshop will focus as well as their contact information, including a telephone number, facsimile number, and e-mail address (if available), to enable the FTC to notify them if they are selected. For requests filed in paper form, an original and two copies of each document should be submitted. The staff will select panelists for the workshop using the following criteria: (1) The party has expertise in or knowledge of the issues that are the focus of the workshop, (2) the party's participation would promote a balance of interests being represented at the workshop, and (3) the party has been designated by one or more interested parties (who timely file requests to participate) as a party who shares interests with the designator(s).

#### C. Written and Electronic Comments

The submission of comments is not required for participation in the

<sup>9</sup> Natural Resources Canada Comments in FTC Matter No. R511994 (Jan. 13, 2006).

<sup>10</sup> ACEEE Comments in FTC Matter No. R511994 (Jan. 13, 2006).

<sup>11</sup> Natural Resources Defense Council Comments in FTC Matter No. R511994 (Jan. 13, 2006).

<sup>12</sup> Consortium for Energy Efficiency Comments in FTC Matter No. R511994 (Jan. 13, 2006).

workshop. If a person wishes to submit written or electronic comments about the topics to be discussed at the workshop, such comments must be

received on or before May 17, 2006. For further instructions on submitting comments, please see the **ADDRESSES** section above. To read our policy on

how we handle the information you submit, please visit <http://www.ftc.gov/ftc/privacy.htm>.

**BILLING CODE 6750-01-P**

U.S. Government

# ENERGYGUIDE

Refrigerator-Freezer

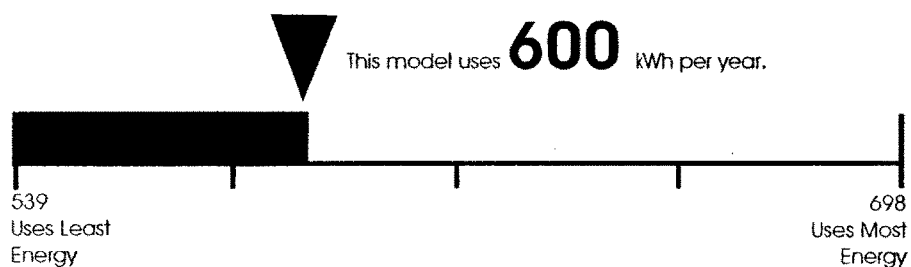
- Automatic Defrost
- Side-Mounted Freezer
- Through-the-Door Ice

XYZ Corporation

Model ABC-W

Capacity: 23 Cubic Feet

## Energy Use (kWh/year) Range of All Similar Models

Estimated Yearly  
Energy Use**600** kWhEstimated Yearly  
Operating Cost**\$ 54**

kWh (kilowatt-hours): a measure of electricity use.

The estimated **operating cost** is based on a 2005 U.S. Government national average cost of 9.06 cents per kWh for electricity. Your actual operating costs will vary depending on your local utility rates and your use of the product.

For more information, visit [www.ftc.gov/appliances](http://www.ftc.gov/appliances).

Federal law prohibits removal of this label before consumer purchase.

Figure 1

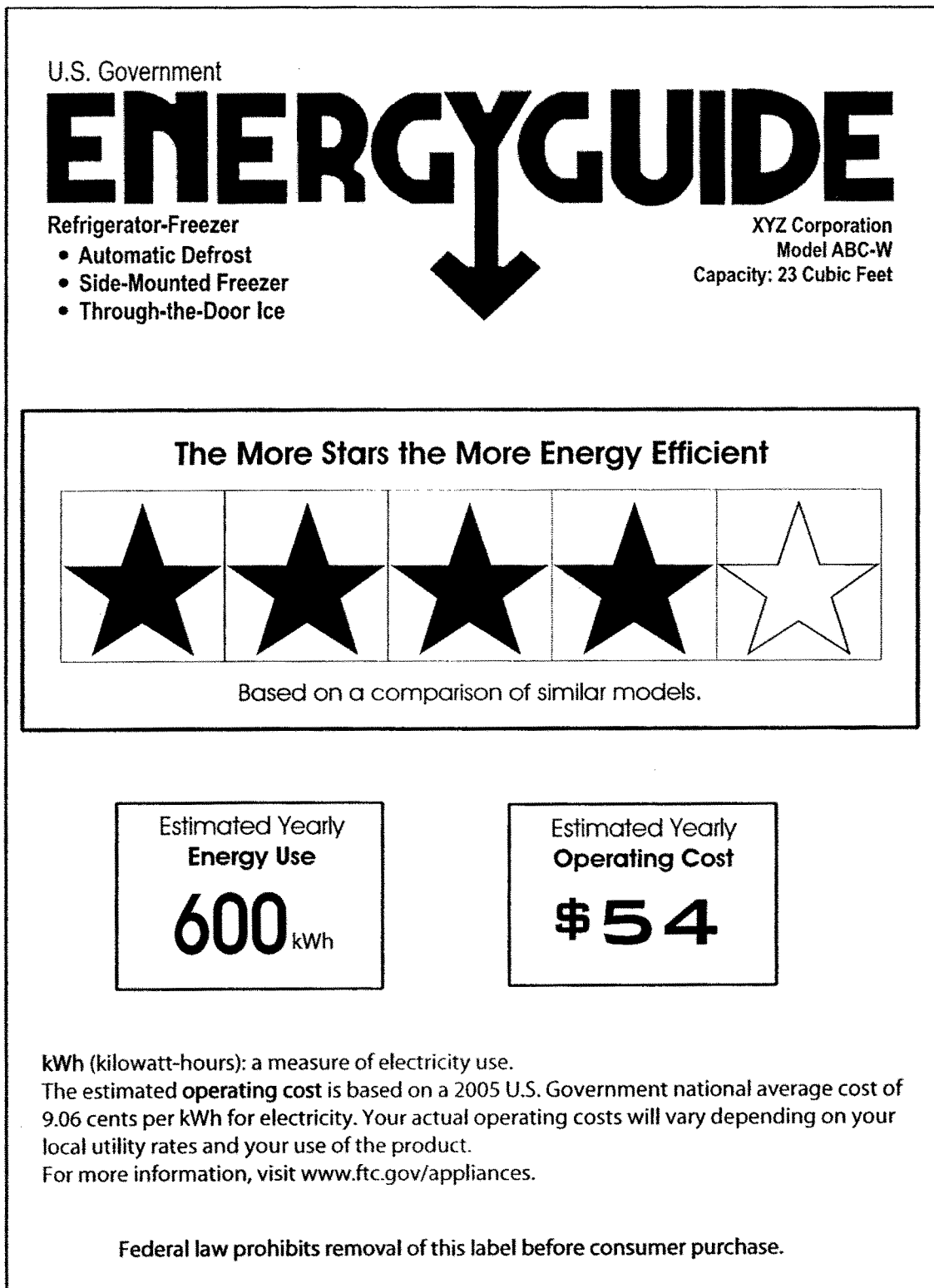


Figure 2

U.S. Government

# ENERGYGUIDE

Refrigerator-Freezer

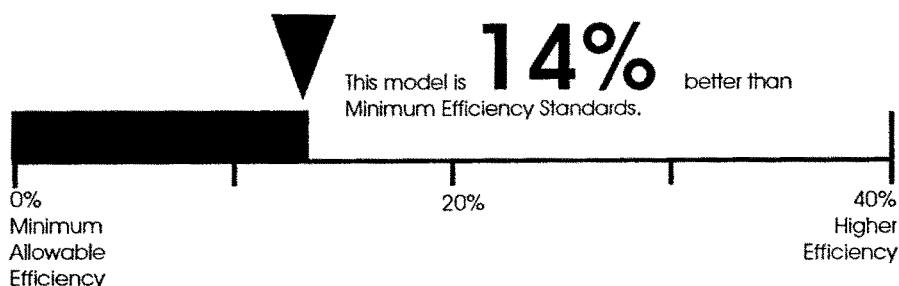
- Automatic Defrost
- Side-Mounted Freezer
- Through-the-Door Ice

XYZ Corporation

Model ABC-W

Capacity: 23 Cubic Feet

## Energy Efficiency Compared to Minimum U.S. Standards

Estimated Yearly  
Energy Use**600** kWhEstimated Yearly  
Operating Cost**\$ 54**

**kWh** (kilowatt-hours): a measure of electricity use.

The estimated operating cost is based on a 2005 U.S. Government national average cost of 9.06 cents per kWh for electricity. Your actual operating costs will vary depending on your local utility rates and your use of the product.

For more information, visit [www.ftc.gov/appliances](http://www.ftc.gov/appliances).

Federal law prohibits removal of this label before consumer purchase.

Figure 3

By direction of the Commission.

**Donald S. Clark,**  
Secretary.

[FR Doc. 06-3452 Filed 4-7-06; 8:45 am]

BILLING CODE 6750-01-C

## CONSUMER PRODUCT SAFETY COMMISSION

### 16 CFR Part 1214

#### Cigarette Lighters; Extension of Time To Issue Proposed Rule

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Extension of time to issue proposed rule.

**SUMMARY:** On April 11, 2005, the Consumer Product Safety Commission (CPSC or Commission) issued an advance notice of proposed rulemaking (ANPR) under the Consumer Product Safety Act (CPSA) that began a rulemaking proceeding addressing a possible unreasonable risk of injury and death associated with the mechanical malfunction of cigarette lighters. The CPSA provides that a proposed standard under that act must be issued within 12 months of publication of the ANPR, unless the 12-month period is extended by the Commission for good cause. In this notice, the Commission extends the period for issuing any proposed CPSA rule until December 31, 2007.

**ADDRESSES:** Mail requests for documents concerning this rulemaking should be e-mailed to the Office of the Secretary at [cpsc-os@cpsc.gov](mailto:cpsc-os@cpsc.gov). Requests may also be sent by facsimile to (301) 504-0127, by telephone at (301) 504-7923, or by mail to the Office of the Secretary, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, Maryland 20814.

#### FOR FURTHER INFORMATION CONTACT:

Rohit Khanna, Directorate for Engineering Sciences, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814; telephone 301-504-7546 or e-mail: [rkhanha@cpsc.gov](mailto:rkhanha@cpsc.gov).

**SUPPLEMENTARY INFORMATION:** Under section 9(c) of the CPSA, 15 U.S.C. 2058(c), the Commission must issue a proposed consumer product safety rule within 12 months of the publication of an ANPR, unless the Commission extends that period for good cause. Since the ANPR for cigarette lighters was published in the **Federal Register** on April 11, 2005, 70 FR 18339, the 12-month period for proposal of any CPSA rule in that proceeding expires on April 10, 2006.

After publication of the ANPR, the public was given until June 10, 2005, to file written comments with the CPSC. In addition to evaluating the comments, before determining whether to proceed with a rule for cigarette lighters, the Commission needs additional information about the number of lighters currently conforming to the lighter voluntary standard (ASTM F-400, Standard Consumer Safety Specification for Lighters). Since the publication of the ANPR, the staff has collected lighters from across the country in order to obtain a representative sample for conformance testing. In September 2005, the Commission issued a contract for the testing of a representative sample of lighters sold in the United States to the requirements of the voluntary standard. The period of performance for the contract is about eight months. The lighter testing is currently underway and when completed will be used by staff to determine the conformance of lighters currently sold in the U.S. market. Following completion of this work, the staff plans to send a briefing package to the Commission in August 2006. The Commission will then evaluate the need for continuing the rulemaking proceeding. If the Commission does decide to go forward with the rulemaking, a notice of proposed rulemaking (NPR) could be issued in late 2007. If an NPR is published, a final rule could be issued during Fiscal Year 2008. Accordingly, the Commission extends the date for publishing a notice of proposed rulemaking for cigarette lighters to December 31, 2007.

Dated: April 5, 2006.

**Todd A. Stevenson,**

Secretary, Consumer Product Safety Commission.

[FR Doc. E6-5212 Filed 4-7-06; 8:45 am]

BILLING CODE 6355-01-P

## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Part 41

RIN 3038 AB86

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Part 240

[Release No. 34-53560; File No. S7-07-06]

RIN 3235-AJ54

#### Joint Proposed Rules: Application of the Definition of Narrow-Based Security Index to Debt Securities Indexes and Security Futures on Debt Securities

**AGENCIES:** Commodity Futures Trading Commission and Securities and Exchange Commission.

**ACTION:** Joint proposed rules.

**SUMMARY:** The Commodity Futures Trading Commission ("CFTC") and the Securities and Exchange Commission ("SEC") (together, the "Commissions") are proposing to adopt a new rule and to amend an existing rule under the Commodity Exchange Act ("CEA") and to adopt two new rules under the Securities Exchange Act of 1934 ("Exchange Act"). These proposed rules and rule amendments would exclude from the definition of "narrow-based security index" debt securities indexes that satisfy specified criteria. A future on a debt securities index that is excluded from the definition of "narrow-based security index" would not be a security future and could trade subject to the exclusive jurisdiction of the CFTC. In addition, the proposed rules would expand the statutory listing standards requirements to permit security futures to be based on debt securities, including narrow-based security indexes composed of debt securities.

**DATES:** Comments must be received on or before May 10, 2006.

**ADDRESSES:** Comments should be sent to both agencies at the addresses listed below.

**CFTC:** Comments may be submitted, identified by RIN 3038 AB86, by any of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.
- **E-mail:** [secretary@cftc.gov](mailto:secretary@cftc.gov). Include "Application of the Definition of Narrow-Based Security Index to Debt Securities Indexes" in the subject line of the message.