

## SUPPLEMENTARY

INFORMATION section below.

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SUPPLEMENTARY INFORMATION:

I. Introduction

<sup>1</sup> EISA amends the Energy Policy and Conservation Act (42 U.S.C. 6291 et seq).

<sup>2</sup> 74 FR 11045 (Mar. 16, 2009).

<sup>3</sup> The Commission's Rule requires manufacturers of most covered products to file reports with the FTC. These reports must contain the estimated annual energy consumption or energy efficiency ratings for the appliances derived from tests performed pursuant to DOE test procedures. 16 CFR 305.8(b).

<sup>4</sup> ENERGY STAR is a voluntary government labeling program that identifies high-efficiency products. The Environmental Protection Agency (EPA) and DOE administer the ENERGY STAR program. See (<http://www.energystar.gov>).

<sup>5</sup> 44 FR 66466, 66468 (Nov. 19, 1979).

<sup>6</sup> 72 FR 6836, 6857 (Feb. 13, 2007).

<sup>7</sup> According to the Natural Resources Defense Council (NRDC) comments during the 2007 proceeding, there are many "large-screen" digital televisions on the market that use 500 or more kilowatt-hours per year, as much energy as many new refrigerators. NRDC (#519870-00025). At an FTC public workshop held during the 2007 proceeding, one participant suggested that the average 42-inch plasma television draws 334 watts, with models ranging from 201 watts to 520 watts. Workshop Tr. at 198 (<http://www.ftc.gov/os/comments/energylabeling-workshop/060503wrkshoptnscript.pdf>).

<sup>8</sup> 72 FR 49948, 49962 (Aug. 29, 2007). See also 72 FR at 6858 (Feb. 13, 2007). Until recently, 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. Since the publication of the ANPR, DOE has repealed its television test procedure. 74 FR 53640 (Oct. 20, 2009).

disclosures for these products. After reviewing the comments received, the Commission is proposing to require EnergyGuide labels on televisions to help consumers with their purchasing decisions. As part of this effort, the Commission has scheduled a public meeting on April 16, 2010, from 9:00



such information is difficult to calculate.

Third, consumers will likely use energy information in making purchasing decisions because, as explained below, they have an interest in saving energy and, therefore, would likely compare energy efficiency between models. CEA noted data demonstrating widespread consumer concern over rising energy costs and, as a result, greater consumer interest in energy efficient products. According to a CEA study, "89 percent of consumers surveyed ranked energy efficiency as a top consideration for their next television purchase, although price and features remain most influential in actual purchasing decisions." In addition, several commenters suggested that consumers would have even more interest in energy use if they understood how much these products used. For example, NRDC explained that, at present, most consumers are not aware that one television may use two or three times as much energy as a similar model. Moreover, as NRDC noted, retailers often display a variety of models side-by-side to allow consumers to judge picture quality. Thus, because consumers are likely to compare several models while shopping, they are likely to use energy information when they are making their purchasing decision.

Finally, in addition to the consumer benefits, the commenters stated that television labeling is technologically and economically feasible.<sup>18</sup> For example, Mitsubishi wrote that energy testing is inexpensive, nonintrusive, does not involve destruction of or damage to units, and is performed generally in any case for other reasons (such as ENERGY STAR). Similarly, CEA indicated that it "was not aware of any such evidence that argues against providing energy use disclosures for televisions."<sup>19</sup> Indeed, no commenters suggested that energy disclosures would raise economic or technological feasibility questions.

## B. Determining Energy Usage

In recent years, the lack of DOE test procedures for modern televisions has

served as a barrier to energy disclosures. However, EPCA now authorizes the Commission to use "adequate non-Department of Energy test procedures," and such procedures now exist for televisions. Specifically, EPA's ENERGY STAR program recently adopted criteria for televisions based on specific international procedures (Section 11 of "IEC 62087, Ed. 2.0: Methods of Measurement for the Power Consumption of Audio, Video and Related Equipment" and "IEC 62301, Ed. 1.0: Household Electrical Appliances – Measurement of Standby Power").<sup>20</sup> The procedures require manufacturers to measure the power consumed by televisions when the products are on, and in standby mode (i.e., when the product is switched off).

In the ANPR, the Commission sought comments on these test procedures. Several commenters recommended that the Commission require the IEC procedures as currently adopted by the ENERGY STAR program.<sup>21</sup> These commenters stated that this would ensure uniformity across the U.S. government.<sup>22</sup> Furthermore, no other commenter raised significant concerns with the IEC test or proposed alternative procedures.

Consistent with commenter suggestions, the Commission proposes to require manufacturers to use the IEC procedures as adopted by the ENERGY STAR program. Indeed, the ENERGY STAR criteria offer advantages over the IEC test alone because ENERGY STAR makes mandatory several procedures which the IEC test leaves optional. For instance, the IEC procedure allows the use of either a dynamic or static video signal for testing (i.e., either moving or static images), while ENERGY STAR specifies the use of dynamic images only.<sup>23</sup> In addition, the ENERGY STAR criteria provide more detail regarding the brightness setting under which televisions must be tested because brightness levels can affect a model's energy use. Specifically, ENERGY STAR requires testing at the brightness setting in which the model is shipped. If a model requires consumers to select a brightness mode upon installation (i.e., a forced menu), the manufacturer must test that model at the "home" or

"standard" mode. If the model has an automatic brightness control feature which adjusts brightness to ambient light levels, then the ENERGY STAR criteria require testing at a combination of room light levels.<sup>24</sup> Using these various criteria, the ENERGY STAR tests seek to reflect the manner in which consumers are likely to use the product in their homes. Lastly, as noted by the commenters, adopting the ENERGY STAR program requirements will avoid imposing two separate Federal government tests for measuring television energy use.<sup>25</sup>

Finally, the Commission notes two additional issues related to test procedures. First, in a recent notice repealing the existing test procedure, DOE announced that it soon will develop a Federal test procedure and energy efficiency standards for televisions.<sup>26</sup> In doing so, DOE indicated that it "will give serious consideration to the suggestion made by CEA that DOE adopt IEC 62087–2008(E)." Second, CEA stated that it is developing its own version of the test procedure that consolidates ENERGY STAR's requirements into a more detailed protocol ("CEA-2037, Determination of Television Average Power Consumption"). However, to the Commission's knowledge, CEA has not published the protocol. The Commission seeks comments on whether it should wait to finalize disclosure rules until CEA, DOE, or both complete their work.

## C. Location, Format, and Content of Energy Disclosures

The Commission proposes specific requirements for television energy labels, including the location, format, and content of the labels. In addition, the Commission proposes requirements for Internet and catalog disclosures.

### 1. Location

For most products currently covered under the Appliance Labeling Rule, the energy disclosures appear on yellow EnergyGuide labels attached to the products themselves. In its ANPR, the Commission sought comments on the location of television disclosures. Several commenters recommended labeling televisions with an

<sup>18</sup> The Commission cannot require disclosures if it determines they would be technologically or economically infeasible. 42 U.S.C. 6294(a)(2)(I)(iv).

<sup>19</sup> Although the commenters generally supported disclosure requirements, CEA argued that "there should be evidence to show that the buying judgements of a substantial majority of consumers would be affected by the availability of energy use information on products" prior to imposing any disclosure requirements. However, the law does not contain such a "substantial majority" test but, instead, allows disclosure requirements if the Commission finds such disclosures "are likely to assist consumers in making purchasing decisions." 42 U.S.C. 6294(a)(2)(I).

<sup>20</sup> See International Electrotechnical Commission (<http://www.iec.ch>); and "ENERGY STAR Program Requirements for Televisions Eligibility Criteria (Version 4.0 and 5.0)" ([http://www.energystar.gov/ia/partners/prod\\_development/revisions/downloads/television/Final\\_Version%204\\_5\\_TV\\_Program\\_Requirements.pdf](http://www.energystar.gov/ia/partners/prod_development/revisions/downloads/television/Final_Version%204_5_TV_Program_Requirements.pdf)).

<sup>21</sup> See, e.g., CEA, CERC, Mitsubishi, and NRDC comments.

<sup>22</sup> CEA and CERC comments.

<sup>23</sup> NRDC urged the Commission to require use of dynamic images.

<sup>24</sup> NRDC suggested that the FTC provide guidance on brightness, including whether to test models in a certain mode or at a certain percentage of full brightness. NRDC asked the FTC to provide standardized guidance on measuring the energy use of models with an automatic brightness feature. The ENERGY STAR criteria offer such a standard.

<sup>25</sup> The Proposed Rule also contains a definition of the term "television" that is consistent with the coverage of ENERGY STAR criteria for televisions.

<sup>26</sup> 74 FR 53640 (Oct. 20, 2009).

EnergyGuide label on the product itself at the point of purchase.<sup>27</sup> For example, Mitsubishi indicated that labels “should substantially follow the existing EnergyGuide format, content, and placement requirements.” According to NRDC, consumers continue to make the majority of their individual purchases in stores, despite the fact that some “pre-shop” on the Internet. Similarly, CEE stated that the most effective energy disclosures are displayed while a consumer views televisions for purchase.

Some commenters urged the Commission to avoid imposing undue burdens. For example, CEE emphasized that disclosures should be easy for industry to manage. In addition, CEA urged that the “FTC should carefully consider cost impacts while determining how to best serve consumers and minimize the economic impacts on government, manufacturers, retailers, and distributors.” CERC raised particular concerns about the impact of potential requirements on retailers, cautioning in particular against a disclosure regime that required retailers

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<sup>27</sup> See, e.g., CEE, Mitsubishi, NRDC, and Sweeney comments.

<sup>28</sup> CERC and Paul comments.

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<sup>29</sup> “Spending on Consumer Technology Products Increased in 2006 but at a Slower Rate, According to The NPD Group,” Feb. 22, 2007 ([http://www.npd.com/press/releases/press\\_070222.html](http://www.npd.com/press/releases/press_070222.html)).

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<sup>30</sup> The Proposed Rule does not contain a hang tag option because such labels on the exterior of products could become easily dislodged.

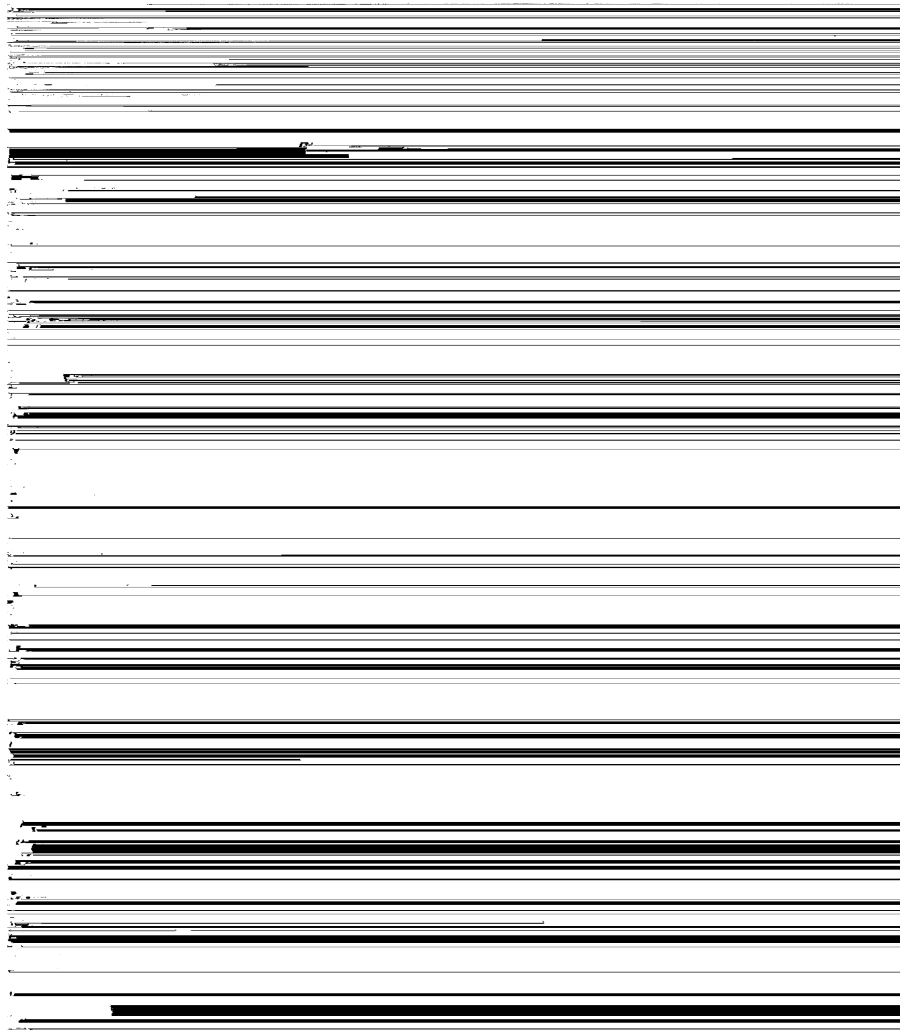


Figure 1  
Proposed Television Label  
(horizontal version)

The Commission seeks comment on this proposal including whether the proposed labels are appropriate and whether it should consider other point-of-purchase alternatives. In particular, the Commission requests that commenters address whether the rectangular label must appear in 954 wd

<sup>31</sup> See CEE, CEA, NRDC, and Sweeney comments.

<sup>32</sup> See e.g., NRDC, Sweeney, and CEE comments.  
<sup>33</sup> 72 FR at 49959.



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procedure and no such procedure exists for

efforts to provide consumers with accurate information.

Given the issues raised by Motorola and CEA, the Commission does not propose requiring energy labeling or disclosures for set-top boxes at this time. The Commission, however, seeks further comment on this issue. Although consumers do not purchase set-top boxes at retail, they may comparison shop for different cable or satellite service providers. If these providers were to disclose the energy use of the boxes they lease as part of their service, consumers could theoretically use this information in deciding which service provider to choose. The Commission, therefore, requests comment on whether such disclosures would, in fact, be likely to assist consumers in their purchasing decisions. If so, the Commission also seeks comment on how energy use information should be disclosed to consumers ( e.g., on service providers' websites). Disclosures for these products are challenging because consumers are unlikely to see labels on set-top boxes and the record contains no information about how consumers shop for cable or satellite service providers (e.g., online, by telephone, etc.). The Commission also seeks comment on whether the range of energy use among models is significant, whether disclosure of comparability ranges would be useful to consumers, whether there should be one range for all set-top boxes, and whether there is comprehensive industry data on which to base such ranges. Finally, the Commission seeks comment on whether the ENERGY STAR test procedure for set-top boxes is an appropriate method of calculating energy consumption.

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<sup>56</sup> Id.

<sup>57</sup> See ([http://downloads.energystar.gov/bi/qplist/computers\\_prod\\_list.pdf](http://downloads.energystar.gov/bi/qplist/computers_prod_list.pdf) ).

<sup>58</sup> See ([http://www.energystar.gov/ia/partners/product\\_development/visions/downloads/computer/Version5.0\\_Computer\\_Spec.pdf](http://www.energystar.gov/ia/partners/product_development/visions/downloads/computer/Version5.0_Computer_Spec.pdf) ).

<sup>59</sup> See CEA comments.

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<sup>54</sup> CEA Report at 26.

<sup>55</sup> See CEA comments.

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<sup>60</sup> CEA Study at 26.

<sup>61</sup> See ([http://www.energystar.gov/ia/partners/product\\_specs/qpi/displays\\_prod\\_list.pdf](http://www.energystar.gov/ia/partners/product_specs/qpi/displays_prod_list.pdf) ).

<sup>62</sup> See ([http://www.energystar.gov/ia/partners/product\\_specs/program\\_reqs/displays\\_spec.pdf](http://www.energystar.gov/ia/partners/product_specs/program_reqs/displays_spec.pdf) ).



ENERGY STAR test procedure that measures consumption based on a fixed screen image, whether the IEC test for televisions is appropriate for measuring energy consumption of computer monitors, or whether other, appropriate industry test procedures exist. The Commission also requests information about what use estimates it should rely upon to calculate the annual energy consumption of computer monitors. Additionally, the Commission seeks comment on whether the range of energy use among models is significant, whether to require disclosure of comparability ranges, whether there should be one range for all models, and whether there is comprehensive industry data on which to base such ranges. Finally, the Commission requests comment on how consumers shop for computer monitors and how energy use disclosures should be presented to consumers (e.g., a label on a display model, a label on the box, online, etc.).

Game Consoles: Although the CEA's 2007 study indicates that game consoles use approximately 36 kWh per year, NRDC's more recent analysis indicates that they can use as much as 1000 kWh per year.<sup>63</sup> NRDC's study 11/19/09. 3.8862 0 TD ((8007 study ind1 TD (m that g1327T\* (wTD (D1.1286 TD (ascurrenals, ortainthe es co

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<sup>63</sup> CEA Study at 26; "Lowering the Cost of Play: Improving the Energy Efficiency of Video Game Consoles," NRDC (Nov. 2008) (<http://www.nrdc.org/energy/consoles/files/consoles.pdf>) (NRDC Study).

<sup>64</sup> NRDC Study at 25.

<sup>65</sup> See ([http://www.energystar.gov/ia/partners/prod\\_development/visions/downloads/computer/Version5.0\\_Computer\\_Spec.pdf](http://www.energystar.gov/ia/partners/prod_development/visions/downloads/computer/Version5.0_Computer_Spec.pdf)).

<sup>66</sup> The ENERGY STAR program defines an MFD as a product that performs two or more of the core functions of copying, printing, scanning, or faxing. See ([http://www.energystar.gov/ia/partners/product\\_specs/program\\_reqs/Imaging%20Equipment%20Specifications.pdf](http://www.energystar.gov/ia/partners/product_specs/program_reqs/Imaging%20Equipment%20Specifications.pdf)).

<sup>67</sup> See ([http://downloads.energystar.gov/bi/qplst/image equip\\_prod\\_list.pdf](http://downloads.energystar.gov/bi/qplst/image equip_prod_list.pdf)).

<sup>68</sup> See ([http://www.energystar.gov/ia/partners/product\\_specs/program\\_reqs/Imaging%20Equipment%20Specifications.pdf](http://www.energystar.gov/ia/partners/product_specs/program_reqs/Imaging%20Equipment%20Specifications.pdf)).

<sup>69</sup> 42 U.S.C. 6291(1).

<sup>70</sup> See ([http://www.energystar.gov/ia/partners/product\\_specs/program\\_reqs/AV\\_V2\\_Specification.pdf](http://www.energystar.gov/ia/partners/product_specs/program_reqs/AV_V2_Specification.pdf)).

<sup>71</sup> For example, DVD players and DVD/VCR combos use 36 kWh per year, while a home theater in a box uses 89 kWh per year. CEA Study at 26.



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and \$.03 per label, is \$990,000 (33,000,000 x \$.03).

The Commission invites comments that will enable it to: (1) evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) evaluate the accuracy of the Commission's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collections of information on those who must comply, including through the use of appropriate automated, electronic, mechanical, or other technological techniques or other forms of information technology.

Comments on any proposed filing, recordkeeping, or disclosure requirements that are subject to OMB review under the PRA should additionally be submitted to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Federal Trade Commission. Comments should be submitted via facsimile to (202) 395-5167 because U.S. postal mail at the OMB is subject to lengthy delays due to heightened security precautions.

#### XI. 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), if any, 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.<sup>81</sup>

The Commission does not anticipate that the Proposed Rule will have a significant economic impact on a substantial number of small entities. The Commission recognizes that some 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 manufacturers with ample time to implement the requirements. The Commission estimates that these new requirements will apply to about 30 product manufacturers and an additional 50 online and paper catalog sellers of

covered products. Out of these companies, the Commission expects that approximately 40 catalog sellers qualify as small businesses. In addition, the Commission does not expect that the requirements specified in the Proposed Rule will have a significant impact on these entities.

Accordingly, this document serves as notice to the Small Business Administration of the FTC's certification of no effect. To ensure the accuracy of this certification, however, the Commission requests comment on whether the Proposed Rule will have a significant impact on a substantial number of small entities, including specific information on the number of entities that would be covered by the Proposed Rule, the number of these companies that are "small entities," and the average annual burden for each entity. Although the Commission certifies under the RFA that the Rule proposed in this Notice 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 IRFA in order to inquire into the impact of the Proposed Rule on small entities. Therefore, the Commission has prepared the following analysis:

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

Section 321(b) of the Energy Independence and Security Act of 2007 (Pub. L. 110-140) authorizes the Commission to conduct a rulemaking to consider the effectiveness of the television labeling and to consider alternative labeling approaches.

#### B. Statement of the Objectives of, and Legal Basis for, the Proposed Rule

The objective of the Proposed Rule is to provide television energy use information to consumers. EISA provides the Commission with authority to require energy disclosures for televisions and other consumer electronics.

#### C. Small Entities to Which the Proposed Rule 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 40 entities (all retailers) subject to the

Proposed Rule qualify as small businesses. The Commission seeks comment and information with regard to the estimated number or nature of small business entities for which the Proposed Rule would have a significant economic impact.

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

The Commission recognizes that the proposed labeling rule will involve some increased costs related to testing, drafting labels, affixing labels to products, and maintaining test records. The Proposed Rule does not impose any reporting requirements. 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 only about 40 catalog sellers under the Proposed Rule that would qualify as such entities. The Commission invites comment and information on these issues.

#### 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 Proposed Rule. The Commission invites comment and information on this issue.

#### F. Significant Alternatives to the Proposed Rule

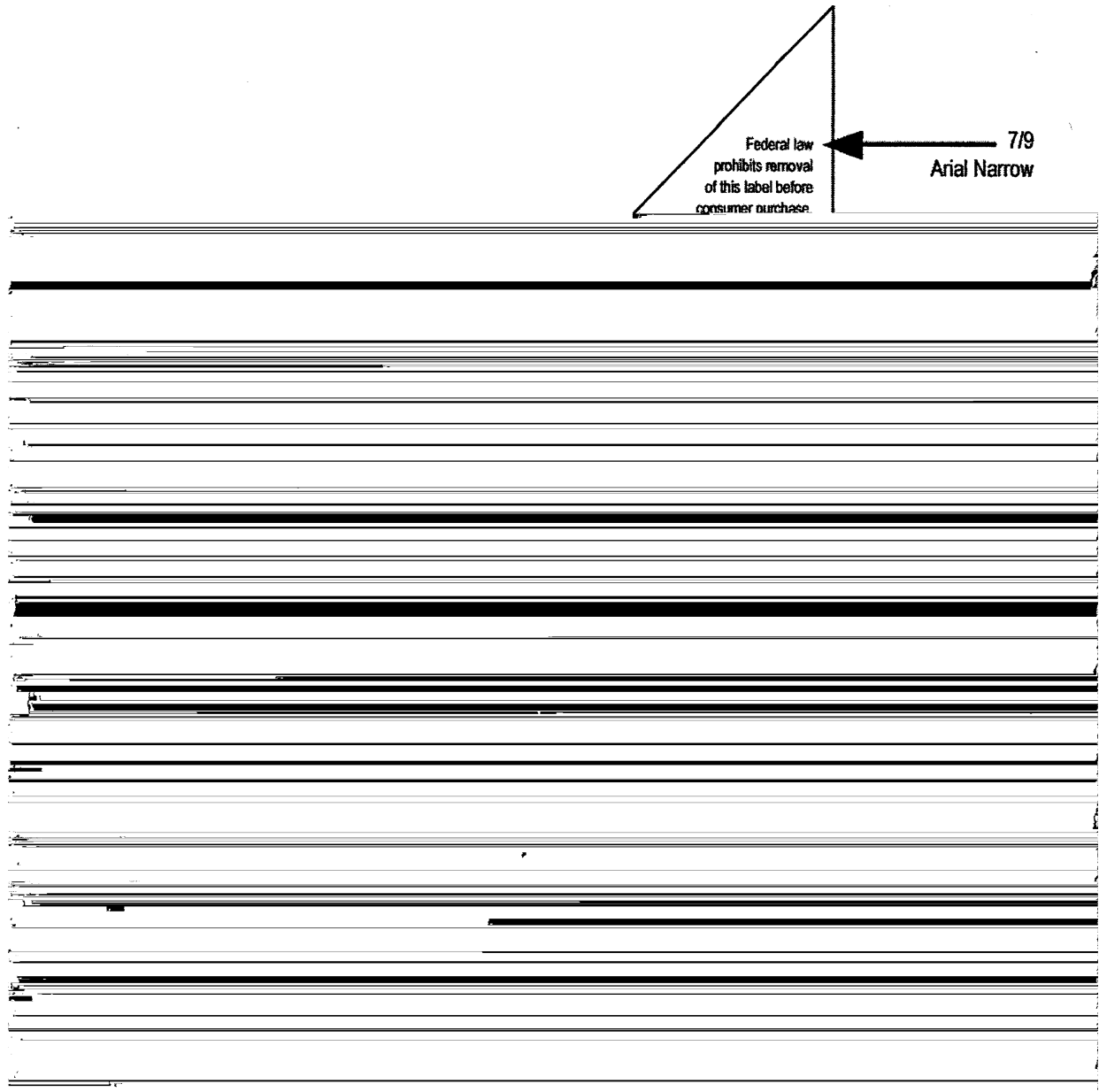
The Commission seeks comment and information on the need, if any, for alternative compliance methods that would reduce the economic impact of the Rule on such small entities. As one alternative to reduce burden, the Commission could delay the Rule's effective date to provide additional time for small business compliance. The Commission could also consider further reductions in the amount of information catalog sellers must provide. Finally, the Commission has considered requiring disclosures through the Internet instead of through product labels. However, as discussed earlier, such an approach would not provide information to consumers in the store, where most consumers compare televisions performance. If the comments filed in response to this Notice identify small entities that would be affected by the Rule, as well as alternative methods of compliance that would reduce the economic impact of the Rule on such entities, the Commission will consider the feasibility of such alternatives and

<sup>81</sup> 5 U.S.C. 603-605.

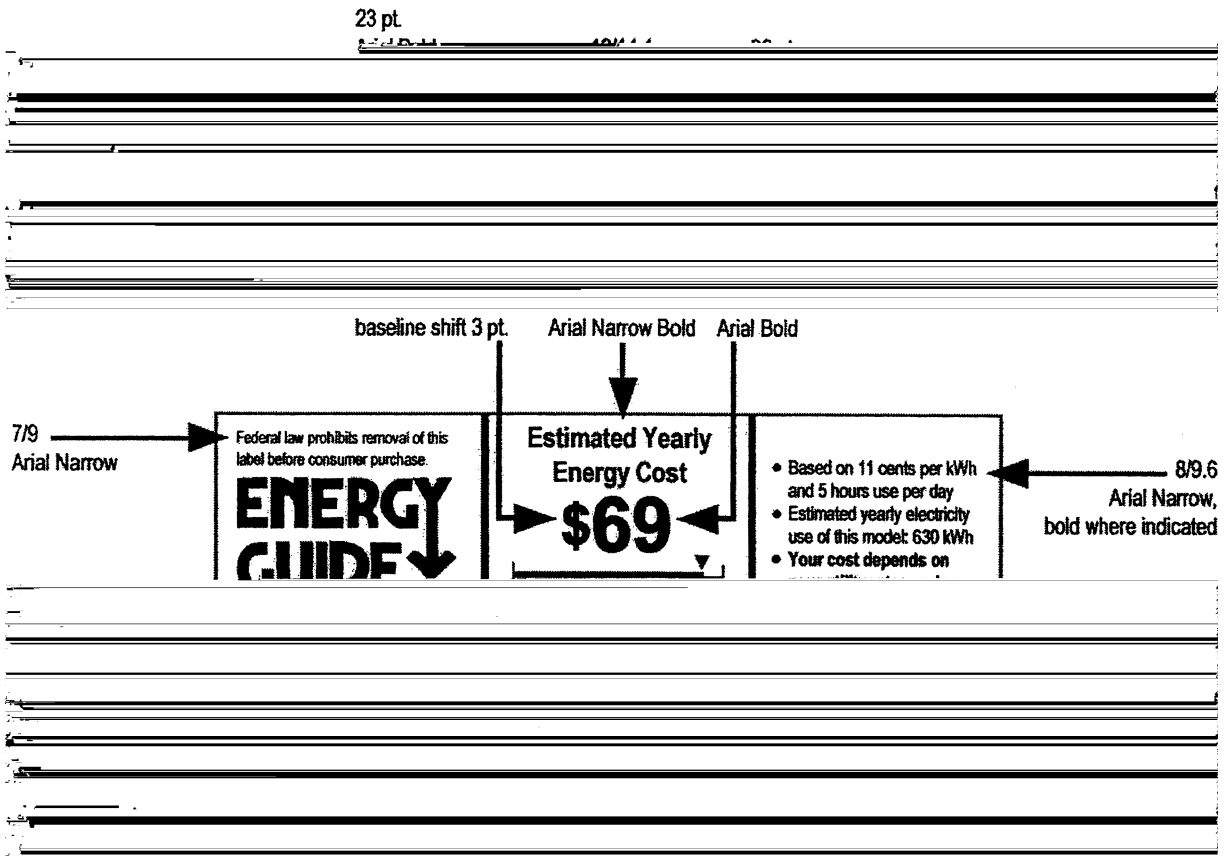


Annual Energy Cost  
Ranges for Televisions

Screen Size



Prototype Label 5  
Triangular Television Label

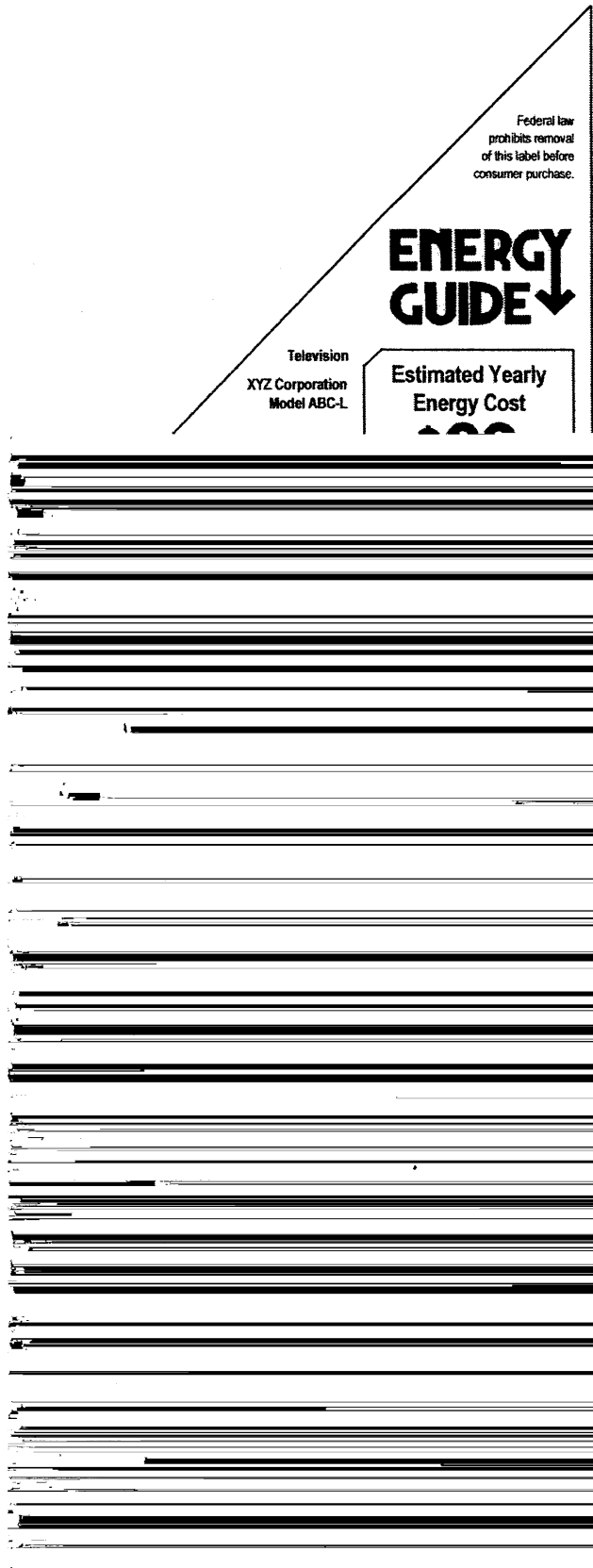


Prototype Label 6

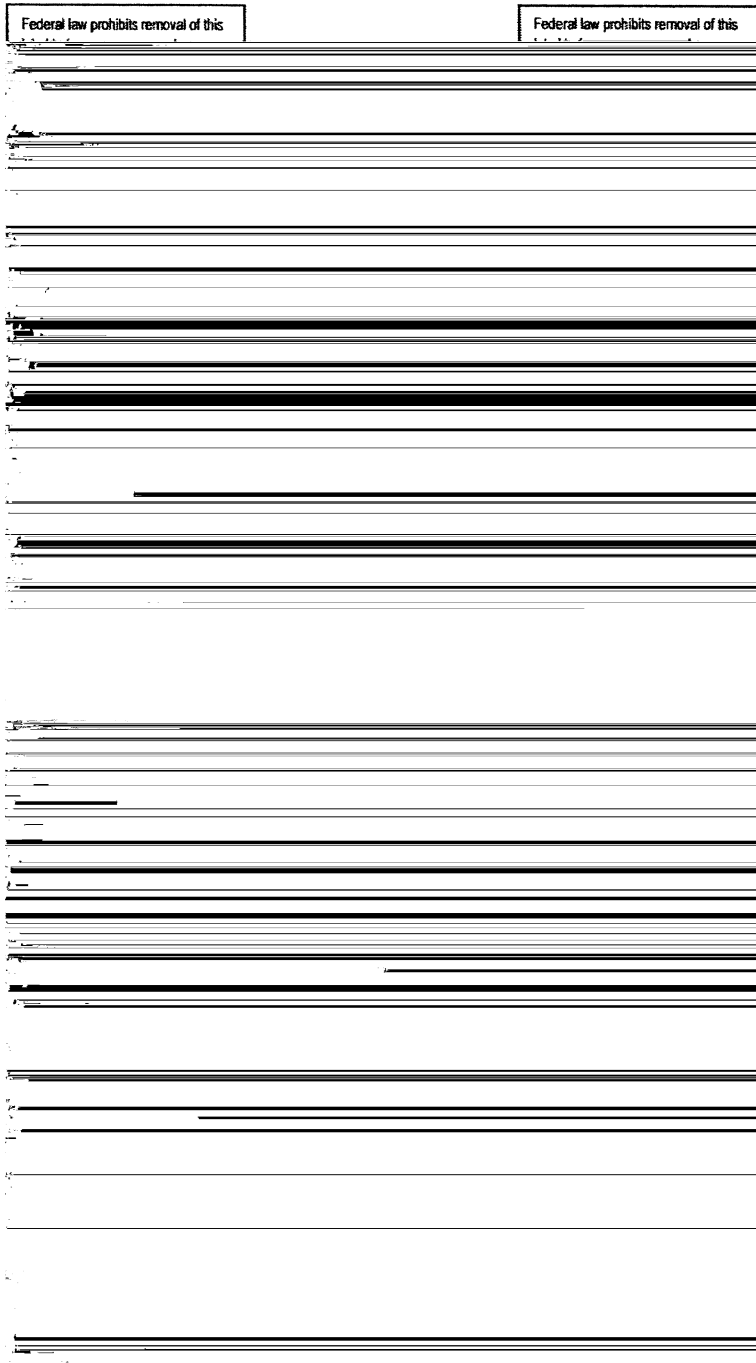
Horizontal Rectangular Television Label



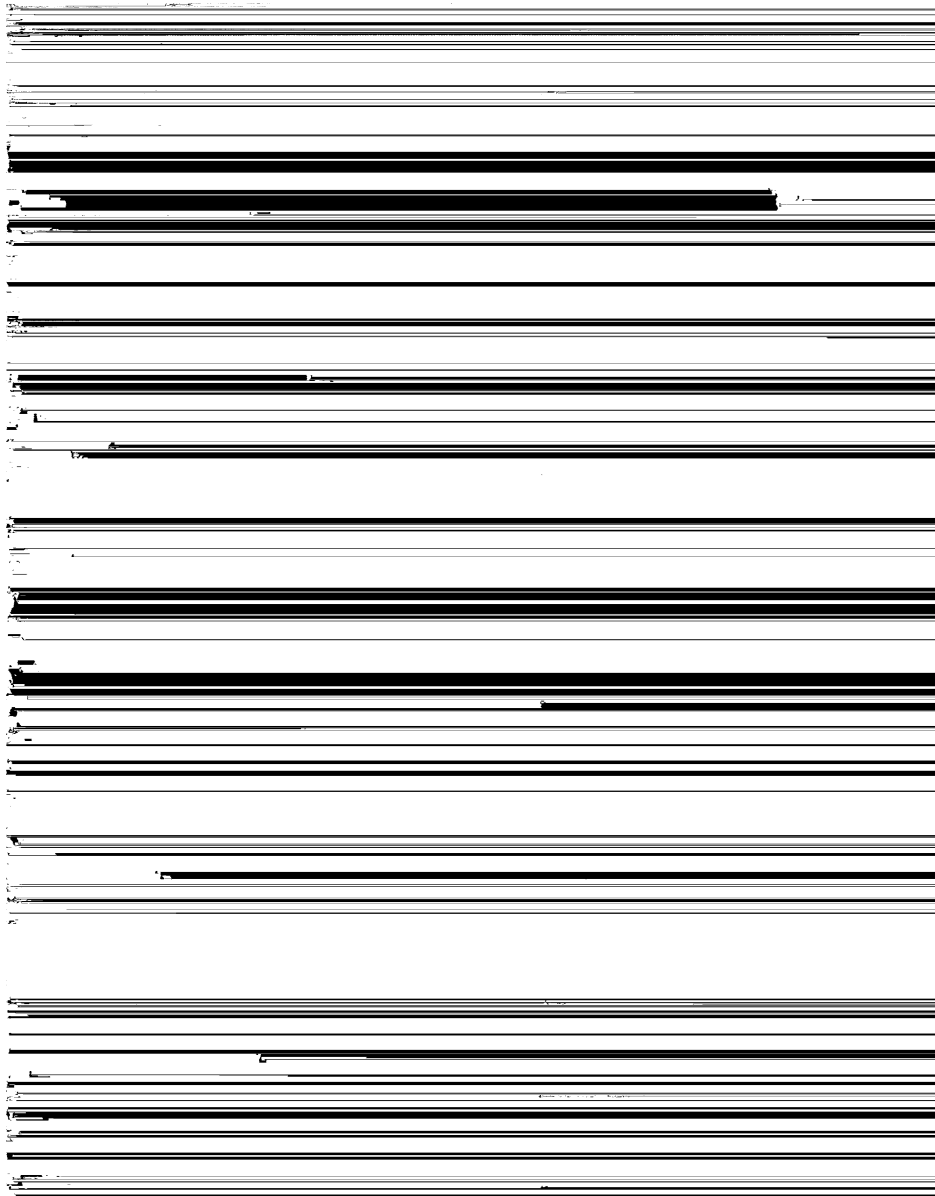




Sample Label 10  
Triangular Television Label



Sample Label 11  
Vertical Television Label



Sample Label 12

SUMMARY: This document corrects the

Horizontal Television Label

By direction of the Commission.

Donald S. Clark,  
Secretary.

[FR Doc. 2010-5152 Filed 3-10-10; 8:45 am]

BILLING CODE 6750-01-C

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DELAWARE RIVER BASIN  
COMMISSION

18 CFR Part 410

Schedule of Water Charges; Correction

AGENCY: Delaware River Basin  
Commission.

ACTION: Proposed rule; correction.

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