

department, or institution to ensure that steps have been taken to prevent repetition of the research misconduct.

(3) Group III Actions.

(i) Immediately suspend or terminate an active award.

(ii) Debar or suspend an individual, department, or institution from participation in NASA programs for a specified period of time.

(iii) Prohibit participation of an individual as a NASA reviewer, advisor, or consultant for a specified period of time.

(b) In deciding what actions are appropriate when research misconduct is found, NASA officials should consider the seriousness of the misconduct, including, but not limited to:

(i) The degree to which the misconduct was knowing, intentional, or reckless;

(ii) Whether the misconduct was an isolated event or part of a pattern;

(iii) Whether the misconduct had a significant impact on the research record, research subjects, or other researchers, institutions, or the public welfare.

**§ 1275.107 Adjudication.**

(a) The NASA Adjudication Official must review and evaluate the investigation report and the evidentiary record required to be transmitted pursuant to § 1275.102(d) and (e). The NASA Adjudication Official may initiate further investigations, which may include affording the Respondent another opportunity for comment, before issuing a decision regarding the case. The NASA Adjudication Official may also return the investigation report to the OIG with a request for further fact-finding or analysis.

(b) Based on a preponderance of the evidence, the NASA Adjudication Official shall issue a decision setting forth the Agency's findings as to whether research misconduct has occurred and recommending appropriate administrative actions that may be undertaken by NASA in response to research misconduct determined to have occurred. The NASA Adjudication Official shall render a decision within 30 days after receiving the investigation report and evidentiary record, or after completion of any further proceedings. The NASA Adjudication Official may extend this period of time for good cause.

(c) The decision shall be sent to the Respondent, to the Respondent's institution, and, if appropriate, to the Complainant. If the decision confirms the alleged research misconduct, it must include instructions on how to pursue

an appeal to the NASA Appeals Official. The decision shall also be transmitted to the NASA Office of the Chief Scientist and the OIG.

**§ 1275.108 Appeals.**

(a) The Respondent may appeal the decision of the NASA Adjudication Official by notifying the NASA Appeals Official in writing of the grounds for appeal within 30 days after Respondent's receipt of the decision. If the decision is not appealed within the 30-day period, the decision becomes the final Agency action insofar as the findings are concerned.

(b) The NASA Appeals Official shall inform the Respondent of a final determination within 30 days after receiving the appeal. The NASA Appeals Official may extend this period of time for good cause. The final determination may affirm, overturn, or modify the decision of the NASA Adjudication Official and shall constitute the final Agency action insofar as the findings are concerned. The final determination shall also be transmitted to the NASA Office of the Chief Scientist and the OIG.

(c) Once final Agency action has been taken pursuant to paragraphs (a) or (b) of this section, the recommendations for administrative action shall be sent to the relevant NASA components for further proceedings in accordance with applicable laws and regulations.

**Appendix to Part 1275**

**NASA Research Disciplines and Respective Associated Enterprises**

1. Aeronautics Research—Aeronautics Enterprise
2. Space Science Research—Space Science Enterprise
3. Earth Science Research and Applications—Earth Science Enterprise
4. Biomedical Research—Biological and Physical Research Enterprise
5. Fundamental Biology—Biological and Physical Research Enterprise
6. Fundamental Physics—Biological and Physical Research Enterprise
7. Research for Exploration Systems not covered by the disciplines above—Exploration Systems Enterprise
8. Other engineering research not covered by disciplines above—NASA Chief Engineer
9. Other technology research not covered by disciplines above—NASA Chief Technologist

Dated: June 8, 2004.

**Sean O'Keefe,**  
*Administrator.*

[FR Doc. 04-15432 Filed 7-13-04; 8:45 am]

**BILLING CODE 7510-01-P**

**FEDERAL TRADE COMMISSION**

**16 CFR Part 305**

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

**AGENCY:** Federal Trade Commission.

**ACTION:** Final rule.

**SUMMARY:** The Federal Trade Commission (Commission) announces new ranges of comparability for storage-type water heaters, gas-fired instantaneous water heaters, and heat pump water heaters. The Commission also announces that the current ranges of comparability required by the Appliance Labeling Rule (Rule) for room air conditioners, furnaces, boilers, and pool heaters will remain in effect until further notice.

**DATES:** *Effective Date:* October 12, 2004.

**FOR FURTHER INFORMATION CONTACT:** Hampton Newsome, Attorney, Division of Enforcement, Federal Trade Commission, Washington, DC 20580 (202-326-2889).

**SUPPLEMENTARY INFORMATION:** The Rule was issued by the Commission in 1979, 44 FR 66466 (Nov. 19, 1979), in response to a directive in the Energy Policy and Conservation Act of 1975.<sup>1</sup> The Rule covers several categories of major household appliances and other consumer products including water heaters (this category includes storage-type water heaters, gas-fired instantaneous water heaters, and heat pump water heaters), room air conditioners, furnaces (this category includes boilers), and central air conditioners (this category includes heat pumps).

The Rule requires manufacturers of all covered appliances to disclose specific energy consumption or efficiency information (derived from the DOE test procedures) at the point of sale in the form of an "EnergyGuide" label and in catalogs. It also requires manufacturers of furnaces, central air conditioners, and heat pumps either to provide fact sheets showing additional cost information, or to be listed in an industry directory showing the cost information for their products. The Rule requires manufacturers to include, on labels and fact sheets, an energy consumption or

<sup>1</sup> 42 U.S.C. 6294. The statute also requires the Department of Energy (DOE) to develop test procedures that measure how much energy the appliances use, and to determine the representative average cost a consumer pays for the different types of energy available.

efficiency figure and a “range of comparability.” This range shows the highest and lowest energy consumption or efficiencies for all comparable appliance models so consumers can compare the energy consumption or efficiency of other models (perhaps competing brands) similar to the labeled model. The Rule also requires manufacturers to include, on labels for some products, a secondary energy usage disclosure in the form of an estimated annual operating cost based on a specified DOE national average cost for the fuel the appliance uses.

Section 305.8(b) of the Rule requires manufacturers, after filing an initial report, to report certain information annually to the Commission by specified dates for each product type.<sup>2</sup> These reports, which are to assist the Commission in preparing the ranges of comparability, contain the estimated annual energy consumption or energy efficiency ratings for the appliances derived from tests performed pursuant to the DOE test procedures. Because manufacturers regularly add new models to their lines, improve existing models, and drop others, the data base from which the ranges of comparability are calculated is constantly changing. To keep the required information consistent with these changes, under Section 305.10 of the Rule, the Commission will publish new ranges if an analysis of the new information indicates that the upper or lower limits of the ranges have changed by more than 15%. Otherwise, the Commission

will publish a statement that the prior ranges remain in effect for the next year.

**Analysis of 2004 Data Submissions**

Manufacturers have submitted data for room air conditioners, water heaters (including storage-type, gas-fired instantaneous, and heat pump water heaters), furnaces, boilers, and pool heaters. The ranges of comparability for water heaters have changed significantly this year. Accordingly, the Commission is amending the ranges in Appendices D1 through D5 of the Rule which cover storage-type water heaters (natural gas, propane, electric, and oil), gas-fired instantaneous water heaters, and heat pump water heaters. Water heater manufacturers should now base the disclosures of estimated annual operating costs required at the bottom of the EnergyGuides for these products on the 2004 Representative Average Unit Costs of Energy for electricity (8.60 cents per kiloWatt-hour), natural gas (91.0 cents per therm), propane (\$1.23 per gallon), and/or heating oil (\$1.28 per gallon) that were published by the Commission on April 30, 2004 (69 FR 23650).

The ranges of comparability for room air conditioners, furnaces, boilers, and pool heaters have not changed significantly enough to warrant a change to the current ranges. Therefore, the current ranges for these products will remain in effect until further notice. Manufacturers of room air conditioners must continue to use the corrected ranges for room air conditioners that were published on November 13, 1995

(60 FR 56945, at 56949). Manufacturers of room air conditioners must continue to base the disclosures of estimated annual operating cost required at the bottom of EnergyGuides for these products on the 1995 Representative Average Unit Costs of Energy for electricity (8.67 cents per kiloWatt-hour) that was published by the Commission on February 17, 1995 (60 FR 9295).

For up-to-date tables showing current range and cost information for all covered appliances, see the Commission’s Appliance Labeling Rule Web page at <http://www.ftc.gov/appliances>.

**List of Subjects in 16 CFR Part 305**

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

■ For the reasons set forth in the preamble, FTC is amending 16 CFR part 305 as follows:

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

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

Authority: 42 U.S.C. 6294.

■ 2. Appendices D1 through D5 to Part 305 are revised to read as follows:

**APPENDIX D1 TO PART 305—WATER HEATERS—GAS**

[Range information]

Capacity  First hour rating	Range of estimated annual energy consumption (therms/yr. and gallons/yr.)			
	Natural gas therms/yr.		Propane gallons/yr.	
	Low	High	Low	High
Less than 21 .....	(*)	(*)	(*)	(*)
21 to 24 .....	(*)	(*)	(*)	(*)
25 to 29 .....	(*)	(*)	(*)	(*)
30 to 34 .....	(*)	(*)	(*)	(*)
35 to 40 .....	(*)	(*)	(*)	(*)
41 to 47 .....	(*)	(*)	(*)	(*)
48 to 55 .....	234	254	256	278
56 to 64 .....	246	254	269	278
65 to 74 .....	234	258	256	283
75 to 86 .....	230	272	256	288
87 to 99 .....	242	272	265	288
100 to 114 .....	230	283	252	298
115 to 131 .....	242	312	265	309
Over 131 .....	254	312	278	342

\* No data submitted.

<sup>2</sup> Annual reports for room air conditioners, heat pump water heaters, storage-type water heaters, gas-

fired instantaneous water heaters, furnaces, boilers, and pool heaters are due May 1.

APPENDIX D2 TO PART 305—WATER HEATERS—ELECTRIC  
[Range information]

Capacity First hour rating	Range of estimated annual energy consumption (KWh/yr.)	
	Low	High
Less than 21 .....	(*)	(*)
21 to 24 .....	(*)	(*)
25 to 29 .....	4721	4721
30 to 34 .....	4721	4773
35 to 40 .....	4671	4934
41 to 47 .....	4671	4990
48 to 55 .....	4622	4879
56 to 64 .....	4622	4879
65 to 74 .....	4671	4934
75 to 86 .....	4622	5106
87 to 99 .....	4773	5166
100 to 114 .....	4825	5421
115 to 131 .....	5106	5355
Over 131 .....	(*)	(*)

\* No data submitted.

APPENDIX D3 TO PART 305—WATER HEATERS—OIL  
[Range information]

Capacity First hour rating	Range of estimated annual energy consumption (gallons/yr.)	
	Low	High
Less than 65 .....	(*)	(*)
65 to 74 .....	(*)	(*)
75 to 86 .....	(*)	(*)
87 to 99 .....	(*)	(*)
100 to 114 .....	174	200
115 to 131 .....	159	200
Over 131 .....	164	212

\* No data submitted.

APPENDIX D4 TO PART 305—WATER HEATERS—INSTANTANEOUS-GAS  
[Range information]

Capacity First hour rating	Range of estimated annual energy consumption (therms/yr. and gallons/ yr.)			
	Natural Gas therms/yr.		Propane gallons/yr.	
	Low	High	Low	High
Under 1.00 .....	235	235	256	256
1.00 to 2.00 .....	230	230	252	252
2.01 to 3.00 .....	185	220	196	239
Over 3.00 .....	177	238	187	260

\* No data submitted.

APPENDIX D5 TO PART 305—WATER HEATERS—HEAT PUMP  
[Range information]

Capacity First hour rating	Range of estimated annual energy consumption (KWh/Yr.)	
	Low	High
Less than 21 .....	(*)	(*)
21 to 24 .....	(*)	(*)
25 to 29 .....	(*)	(*)
30 to 34 .....	(*)	(*)
35 to 40 .....	(*)	(*)
41 to 47 .....	(*)	(*)

APPENDIX D5 TO PART 305—WATER HEATERS—HEAT PUMP—Continued  
 [Range information]

Capacity  First hour rating	Range of estimated annual energy consumption (KWh/Yr.)	
	Low	High
48 to 55 .....	(*)	(*)
56 to 64 .....	1830	1830
65 to 74 .....	(*)	(*)
75 to 86 .....	(*)	(*)
87 to 99 .....	(*)	(*)
100 to 114 .....	(*)	(*)
115 to 131 .....	(*)	(*)
Over 131 .....	(*)	(*)

\* No data submitted.

**Cost Information**

When the above ranges of comparability in Appendices D1 through D5 are used on EnergyGuide labels for water heaters, the estimated annual operating cost disclosure appearing in the box at the bottom of the labels must be derived using the 2004 Representative Average Unit Costs for electricity (8.60¢ per kiloWatt-hour), natural gas (91.0¢ per therm), propane (\$1.23 per

gallon, and heating oil (\$1.28 per gallon) and the text below the box must identify the costs as such.

■ 3. Appendix L is amended by revising Prototype Label 3 and Sample Label 5 of part 305 to read as follows:

\* \* \* \* \*  
**BILLING CODE 6750-01-P**  
 \* \* \* \* \*

By direction of the Commission.  
**Donald S. Clark,**  
*Secretary.*

All copy Arial Narrow Regular or Bold as below.  
Helvetica Condensed series typeface or other equivalent also acceptable.

All copy x 28 pt.

10/12  
Arial  
Narrow

Based on standard U.S. Government tests

# ENERGYGUIDE

12/14  
Arial  
Narrow  
Bold

Water Heater — Natural Gas  
Capacity (first hour rating):  
60 gallons

XYZ Corporation  
Model(s) RP23  
RP38

12/14  
Arial  
Narrow  
Bold

Compare the Energy Use of this Water Heater  
with Others Before You Buy.

20/22  
Arial  
Narrow  
Bold

14/14  
Arial  
Narrow

This Model Uses  
240 Therms/year

10 Arial  
Narrow

24 pt. rule

**Energy use (Therms/year) range of all similar models**

1 pt. rule

Uses Least  
Energy  
246

Uses Most  
Energy  
254

16 Arial  
Narrow  
Bold

The Estimated Annual Energy Consumption of this model was not  
available at the time the range was published.

14/14  
Arial  
Narrow  
Bold

10/12  
Arial Narrow  
Use bold  
where indicated

Therms/year is a measure of energy use. Your utility company uses it to  
compute your bill. Only models with first hour ratings of 56 to 64 gallons are used in  
this scale.

1 pt. rule

Natural gas water heaters that use fewer therms/year cost less to  
operate. This model's estimated yearly operating cost is:

14/14  
Arial  
Narrow  
Bold

18 Arial  
Narrow  
Bold

**\$218**

Box,  
24 pt. tall

10/12  
Arial  
Narrow

Based on a 2004 U.S. Government national average cost of .91.0¢ per therm for natural gas.  
Your actual operating cost will vary depending on your local utility rates and your use of  
the product.

6/8  
Arial  
Narrow

Important: Read this label before consumer purchase. violates the Federal Trade Commission's Appliance Labeling Rule (16 C.F.R. Part 305).

Based on standard U.S. Government tests

# ENERGYGUIDE

Water Heater — Natural Gas  
Capacity (first hour rating):  
60 gallons



XYZ Corporation  
Model(s) RP23  
RP38

**Compare the Energy Use of this Water Heater  
with Others Before You Buy.**

**This Model Uses**  
240 Therms/year

**Energy use (Therms/year) range of all similar models**

**Uses Least  
Energy**  
246

**Uses Most  
Energy**  
254

The Estimated Annual Energy Consumption of this model was not available at the time the range was published.

Therms/year is a measure of energy use. Your utility company uses it to compute your bill. Only models with first hour ratings of 56 to 64 gallons are used in this scale.

**Natural gas water heaters that use fewer therms/year cost less to operate. This model's estimated yearly operating cost is:**

**\$218**

Based on a 2004 U.S. Government national average cost of 91.0¢ per therm for natural gas. Your actual operating cost will vary depending on your local utility rates and your use of the product.

Important: Removal of this label before consumer purchase violates the Federal Trade Commission's Appliance Labeling Rule (16 C.F.R. Part 305).

Sample Label 5