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FEDERAL TRADE COMMISSION

16 CFR Part 305

RIN 3084-AA74

Appliance Labeling Rule

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

ACTION: Final rule.

SUMMARY: The Energy Policy Act of 2005 directs the Commission to issue labeling requirements for the electricity used by ceiling fans to circulate air. The Commission is publishing amendments to the Appliance Labeling Rule that establish energy labeling requirements for these products.

DATES: The amendments published in this final rule will become effective on January 1, 2009.

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

FOR FURTHER INFORMATION CONTACT: Hampton Newsome, (202) 326-2889, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Background

Section 324 of the Energy Policy and Conservation Act of 1975 ("EPCA") (42 U.S.C. 6291-6309), as amended, requires the FTC to prescribe labeling rules for the disclosure of estimated annual energy cost, or alternative energy consumption information, for a variety of products covered by the statute, including home appliance, lighting, and plumbing products.¹ The Commission's Appliance Labeling Rule ("the Rule") (16 CFR part 305) implements the requirements of EPCA by directing manufacturers to disclose energy information about major household appliances. This information enables consumers to compare the energy use or efficiency of competing models.² When initially published in 1979,³ the Rule

applied to eight appliance categories: refrigerators, refrigerator-freezers, freezers, dishwashers, water heaters, clothes washers, room air conditioners, and furnaces. The Commission subsequently expanded the Rule's coverage to include central air conditioners, heat pumps, fluorescent lamp ballasts, plumbing products, lighting products, pool heaters, and some other types of water heaters.⁴

Congress enacted the Energy Policy Act of 2005 ("EPACT 2005") directing the Commission to require energy labeling for ceiling fans.⁵ Pursuant to this directive, on June 21, 2006, the Commission published a notice of proposed rulemaking ("NPRM") seeking public comment on proposed fan labeling requirements (71 FR 35584). Before discussing the comments received in response to the NPRM and the Commission's final requirements for ceiling fan labeling, this Notice describes the provisions of EPACT 2005, ceiling fan uses, ENERGY STAR specifications, and existing state labeling programs.

A. Energy Policy Act of 2005

Section 137 of EPACT 2005 (Pub. L. No. 109-58 (2005)) amends EPCA to include new requirements related to ceiling fans. Section 324(a)(2)(G)(i) of EPCA (42 U.S.C. 6294(a)(2)(G)(i)) requires the Commission to "issue, by rule, in accordance with this section, labeling requirements for the electricity used by ceiling fans to circulate air in a room." The statute also directs the Department of Energy ("DOE") to prescribe test procedures and energy conservation standards for ceiling fans.⁶ (See 42 U.S.C. 6293(b)(16) and 42 U.S.C. 6295(v)). According to EPACT 2005, the test procedure for ceiling fans must be based on the "ENERGY STAR Testing Facility Guidance Manual: Building a Testing Facility and Performing the Solid State Test Method for ENERGY STAR Qualified Ceiling Fans, Version 1.1" ("ENERGY STAR Guidance Manual") published by the Environmental Protection Agency (EPA). (42 U.S.C. 6293(b)(16)). However,

in issuing testing and conservation standards, DOE may exempt or set different standards for certain product classes if the primary standards are not technically feasible or economically justified. DOE may also establish separate or exempted product classes for highly decorative fans for which air movement performance is a secondary design feature. (42 U.S.C. 6295(v)). DOE published a final test procedure for ceiling fans on December 8, 2006 (71 FR 71430) based on the ENERGY STAR Guidance Manual.

In developing labeling rules for products covered by EPCA (such as ceiling fans), the Commission must follow the requirements set out in section 324(c) (42 U.S.C. 6294(c)).⁷ Under section 324(c), labels must disclose the estimated annual operating cost determined in accordance with DOE test procedures unless otherwise indicated in the law. The Commission, however, may require a different measure of energy consumption if DOE determines that the cost disclosure is not technologically feasible or the Commission determines such a disclosure is not likely to assist consumers in making purchasing decisions or is not economically feasible. (42 U.S.C. 6294(c)(1)(A)). In addition, labels must disclose information about the range of operating costs (or a different measure of energy consumption if required by the Commission). (42 U.S.C. 6294(c)(1)(B)). The Commission's labeling rules also must include a description of the applicable type or class of covered product, information about the range of operating costs (or energy use), a description of applicable test procedures, a prototype label, and directions for displaying the label. (42 U.S.C. 6294(c)(2)).

Additionally, EPCA authorizes the Commission to require the disclosure of energy information found on the label in any printed material displayed or distributed at the point of sale. (42 U.S.C. 6293(c)(4)). The Commission also may direct manufacturers to provide additional energy-related disclosures on the label (or information shipped with the product), including instructions for the maintenance, use, or repair of the

⁴ See 52 FR 46888 (Dec. 10, 1987) (central air conditioners); 59 FR 49556 (Sept. 28, 1994) (pool heaters); 54 FR 28031 (July 5, 1989) (fluorescent lamp ballasts); 58 FR 54955 (Oct. 25, 1993) (certain plumbing products); and 59 FR 25176 (May 13, 1994) (lighting products).

⁵ Section 137 of EPACT 2005 (Pub. L. 109-58 (2005)).

⁶ EPACT 2005 (42 U.S.C. 6295(ff)) further directs DOE to require that all ceiling fans manufactured after January 1, 2007 have fan speed controls separate from any lighting controls, adjustable speed controls (either more than one speed or variable speed), and reversible fan action capability (except for some exempted categories).

⁷ EPACT 2005 did not amend the list of covered products in EPCA section 322 (42 U.S.C. 6292) to include the new products added by the legislation such as ceiling fans, exit signs, and torchieres. Nevertheless, language elsewhere in EPACT 2005 (e.g., section 137(b)) makes it clear that Congress intended to treat these items as covered products. Accordingly, the Commission believes that ceiling fans are subject to EPCA requirements for covered products, such as energy range disclosures on labels required by section 324(c) and the reporting requirements of section 326(b).

¹ 42 U.S.C. 6294.

² More information about the Rule can be found at <http://www.ftc.gov/appliances>.

³ 44 FR 66466 (Nov. 19, 1979).

covered product. (42 U.S.C. 6293(c)(5)). Finally, section 326(b) of EPCA contains certain reporting requirements for covered products. (42 U.S.C. 6296).

B. Ceiling Fan Uses

According to DOE, 69.6 million U.S. households (or 65.1%) had ceiling fans in 2001.⁸ Ceiling fans can improve the comfort of a home by circulating air to create a draft throughout a room. For homes using air conditioning, a ceiling fan allows consumers to raise the thermostat setting about 4°F with no reduction in comfort. In temperate climates, or during moderately hot weather, ceiling fans may allow consumers to avoid using air conditioning altogether. A larger fan blade provides comparable cooling at a lower velocity than a smaller blade. DOE recommends a 36- or 44-inch diameter fan to cool a room of up to 225 square feet, while fans that are 52 inches or more should be used in larger rooms.⁹ In the winter, by reversing the blade direction and operating at low speed, ceiling fans can provide a gentle updraft, which forces warm air near the ceiling down into the occupied space.¹⁰

C. ENERGY STAR Specifications

As mentioned above, the statute requires manufacturers to derive the energy information on ceiling fan labels from DOE tests, which must be based on the ENERGY STAR Guidance Manual. The ENERGY STAR program, administered by EPA and DOE, is a voluntary government labeling program that identifies high efficiency products. Ceiling fans that move air at least 20% more efficiently, on average, than standard models qualify for the ENERGY STAR label. The program also has minimum airflow and airflow efficiency requirements for qualifying models.¹¹

ENERGY STAR requires participating manufacturers to conduct tests and self-certify those product models that meet the ENERGY STAR guidelines. Manufacturers must derive airflow and airflow efficiency measurements using the Solid State Test Method as defined

in the ENERGY STAR Guidance Manual.¹² Under this method, testing personnel place the fan above a large diameter tube in a standard temperature and humidity-controlled room. The air delivered by the fan passes through the tunnel where velocity sensors mounted on a rotating arm measure the airflow at various points. ENERGY STAR directs manufacturers to measure efficiency at each of three fan speeds (low, medium, and high). For example, to meet ENERGY STAR standards, at low speed, fans must have a minimum airflow of 1,250 CFM and an efficiency of 155 CFM/Watt and, at high speed, fans must have a minimum airflow of 5,000 CFM and an efficiency of 75 CFM/Watt. ENERGY STAR also requires manufacturers to label the packages of qualifying products with airflow, fan power, consumption, and airflow efficiency at three operating speeds.

D. California Energy Commission

In addition to the ENERGY STAR specifications and test method, the State of California has requirements for ceiling fans. Under the California regulations, each ceiling fan package must display, in characters no less than 1/4 inch high, the unit's airflow (in CFM) and airflow efficiency (in CFM/Watt) at low, medium, and high speeds. The requirements only apply to fans with diameters of 50 inches or greater. (Cal. Code Regs. tit. 20, § 1607(d)(7)). California regulations do not specify the necessary test procedures.

II. Summary of Final Rule Requirements

Consistent with the Commission's June 21, 2006 NPRM, the Final Rule requires ceiling fan manufacturers to label their product packages with: (1) The fan's airflow at high speed in CFM; (2) the fan's power consumption in watts at high speed; (3) the fan's airflow efficiency in CFM/Watt at high speed; and (4) a range of airflow efficiencies at high speed for standard-sized fans on the market as published by the Commission. To obtain this information, manufacturers will have to test their fans pursuant to the procedures required by DOE Appendix U to Subpart B of 10 CFR part 430. The Final Rule requires manufacturers to provide this information on a label affixed to the product packaging as well as in paper and online catalogs. The Rule also requires manufacturers to submit reports to the Commission with high speed airflow, power consumption, and airflow efficiency information for the

applicable models pursuant to EPCA's reporting requirements. (42 U.S.C. 6296). By statute, the Rule does not apply to fans produced before January 1, 2009.

III. Final Rule Issues and Comments Received on Proposed Rule

The Commission received four comments in response to its June 21, 2006 NPRM.¹³ Generally, the comments supported the FTC's proposed requirements. The Commission has made a few minor changes to the proposed rule based on comments and additional information. In general, however, the Final Rule is substantially similar to that proposed in the NPRM. The following sections describe the changes made to the proposed rule, concerns raised by the comments, and other issues related to the final requirements.

A. Changes to Proposed Rule

The Commission has made six minor changes to the proposed language. First, we added a sentence to the reporting requirements in § 305.8(a)(1) to clarify that efficiency ratings, electricity consumption, and capacity for ceiling fans must be provided at high speed and that manufacturers must report fan size (measured by diameter in inches). Second, we have added a sentence to the description of the term "ceiling fan" in section 305.5 to clarify that the Rule does not apply to products for which DOE has no test procedure. Third, we included efficiency range information in § 305.11(g)(1)(E)&(F). Fourth, in response to comments, we clarified § 305.11(g)(2) to indicate that the label's text shall be black with a white background and clarified that the term "placement" refers to placement of text within the label. Fifth, § 305.11(g) in the Final Rule indicates that the label's text size and content, and the order of the required disclosures shall be consistent with Ceiling Fan Label Illustration of Appendix L of Part 305. Sixth, we have changed the language in the catalog requirement in § 305.14 to clarify that the required information must be disclosed clearly and conspicuously.

B. Test Procedures

Under EPCA (42 U.S.C. 6294(c)), manufacturers must determine the energy performance of their products pursuant to standard DOE test

⁸ See Energy Information Administration, Office of Energy Markets and End Use, 2001 Residential Energy Consumption Survey, http://www.eia.doe.gov/emeu/recs/ceilingfans/ceiling_fan.html.

⁹ See http://www.eere.energy.gov/consumer/your_home/space_heating_cooling/index.cfm/mytopic=12355.

¹⁰ See http://www.energystar.gov/index.cfm?c=ceiling_fans.pr_ceiling_fans_usage.

¹¹ Airflow is the rate of air movement at a specific fan setting expressed in cubic feet per minute ("CFM"). Airflow efficiency is the ratio of airflow divided by power consumed by the motor and controls at a specific ceiling fan setting expressed in CFM per watt ("CFM/Watt").

¹² ENERGY STAR Testing Facility Guidance Manual, Version 1.1 (Dec. 9, 2002).

¹³ American Lighting Association ("ALA") (09/08/2006) #523596-00003; People's Republic of China ("PRC") (09/08/2006) #523596-00001; Hunter Fan Company ("Hunter Fan") (09/11/2006) #523596-00002; and The Home Depot (10/23/06) (late-filed) #523596-00005.

procedures.¹⁴ As mentioned earlier in this Notice, DOE published final test procedures for ceiling fans on December 8, 2006. (71 FR 71340). EPCACT 2005 directs the Commission to issue a labeling rule within 18 months after the Act's passage and also indicates that such labeling rules cannot be applied to products manufactured before January 1, 2009. (42 U.S.C. 6294(a)(2)(G)). Accordingly, in compliance with EPCACT 2005, the Commission is issuing the Rule now with an effective date of January 1, 2009.

C. Operating Costs

Section 324(c) of EPCA (42 U.S.C. 6294(c)) requires that labels for covered products contain operating-cost information unless the Commission determines that such a disclosure is not likely to assist consumers in making purchasing decisions or is not economically feasible. As discussed in the NPRM, the Commission believes that annual operating costs are not likely to assist consumers because ceiling fan use is likely to vary significantly depending on factors such as climate, household heating and cooling systems, and individual use. We also note that the DOE test procedure does not contain sufficient information to allow manufacturers to calculate annual operating costs. No comments raised objections to the Commission's proposal in this regard. Accordingly, the Final Rule does not require operating costs on ceiling fans.

D. Content of Label

In the NPRM, the Commission proposed using three descriptors, each of which provides different information about the fan. Electricity use (in watts) provides information about the power drawn by the fan and allows consumers to compare the fan's energy use to other household items such as light bulbs. Electricity use information also provides an idea of how much the fan will cost to operate because the higher the wattage, the higher the operating costs. Electricity use does not, however, provide information about the amount of air the fan can move. For example, a fan that uses very little electricity may not create air movement adequate for a consumer's needs.

The Commission's NPRM, therefore, also proposed requiring that each label

contain airflow and airflow efficiency information. The airflow rating describes the fan's capacity, that is, the amount of air the fan will move in CFM—the greater the CFM, the more air the model will move. The airflow efficiency, expressed in CFM/Watt indicates the amount of air the product will move for each watt of electricity used. This efficiency information describes the relationship between the product's energy use and its output, not necessarily the electricity used by the product. In its comments, Hunter Fan agreed that the three proposed descriptors are required to provide “consumers with the necessary information to make an informed purchase.” It noted that CFM information is necessary because it provides consumers with information about whether a particular model will move sufficient air for large rooms. No comments opposed these disclosures.

Based on the comments and the reasoning detailed above, the Commission continues to believe that all three disclosures should be included on the label. As discussed in the NPRM, the use of a single descriptor does not appear to be adequate because each single descriptor fails, by itself, to convey sufficient information to explain fully the product's energy performance. As discussed above, electricity use does not provide information about fan output. Similarly, the efficiency rating is not necessarily an accurate predictor of the fan's electricity consumption or its operating cost. Where there is significant variation in the airflow of competing models, the label should not suggest that high efficiency necessarily equates with cost savings.¹⁵ Accordingly, the Commission is requiring the inclusion of all three pieces of information on the label.

The Final Rule also limits the disclosures to high-speed settings in order to simplify the information on the label.¹⁶ The Commission expects that the information at high speed will be adequate to allow consumers to compare the efficiency rating and power consumed by competing models. The

inclusion of information for other speed settings would clutter the label with few additional benefits. In its comments, Hunter Fan Company indicated that “showing total wattage used on high speed is a good general comparison tool for consumers to understand the electricity used relative to other devices in the home.” It also observed “that as long as the ceiling fan has a high CFM/Watt rating, then the fan will be more efficient on whichever speed is used.” The ALA explained that high speed is “the true unregulated performance of the fan” and that capacitors, inserted by manufacturers to control medium and low speeds, are set at values determined by each individual manufacturer. In addition, as proposed in the NPRM, the label must contain a money-saving tip reminding consumers to turn off their fans when they leave a room.¹⁷ No comments opposed the content of the proposed label disclosures.

E. Additional Performance Information (Including ENERGY STAR Information)

Under the Final Rule, manufacturers have the discretion to provide additional energy information elsewhere on the package or in marketing information. This information could include airflow efficiencies, power consumption in watts, and airflow at other speeds as long as such information is adequately substantiated and fairly represents the results of the applicable test procedure. To ensure that all fan packages feature a uniform energy label, however, the Rule limits the information allowed on the required label. A uniform label on every ceiling fan package should make it easier for consumers to locate and compare information for different models as they shop.

Both Hunter Fan and ALA supported the proposal to require a consistent, uniform label. ALA, however, noted that ENERGY STAR-qualified fans are currently marked with an energy performance label required by the ENERGY STAR program. ALA urged that manufacturers be able to use the ENERGY STAR label on qualified products, in lieu of the FTC label. An exception for such a large portion of the market, however, would dilute the benefits of a uniform label. It may also imply to some consumers that fans bearing the FTC label are lower in efficiency, which may not be the case given the voluntary nature of the ENERGY STAR program. In addition, the absence of the FTC-required label on

¹⁴ In its comments, the PRC suggested that the required test method should be international standard IEC 60879–1986 and raised additional questions about the test procedure. EPCA charges DOE with the responsibility for setting test procedures. In the case of ceiling fans, Congress has mandated that DOE base its test on the existing ENERGY STAR procedure.

¹⁵ Because airflow efficiency is the ratio of airflow (i.e., fan strength) to power consumption, a less efficient model may deliver less air but, at the same time, use less electricity and thus cost less to operate. For example, a model with an efficiency rating of 100 CFM/Watt, 6,000 CFM airflow, and 60 watts power consumption will use more electricity and thus cost more to operate than a fan with a lower efficiency rating of 91 CFM/Watt, 5,000 CFM airflow, and power consumption of 55 watts.

¹⁶ We have added a sentence to the reporting requirements in § 305.8(a)(1) to clarify that efficiency ratings, electricity consumption, and capacity for ceiling fans must be provided at high speed.

¹⁷ This is intended to help consumers understand that fans provide no cooling benefit in an unoccupied room.

ENERGY STAR fans could create general confusion because some models would have the FTC label and others would not. Accordingly, the Final Rule does not exempt ENERGY STAR models. Manufacturers who choose to participate in ENERGY STAR can continue to provide the ENERGY STAR performance data elsewhere on the product package in accord with the ENERGY STAR guidelines.

F. Efficiency Ranges

In its NPRM, the Commission sought comment on the range of efficiency numbers that should be used in the statement proposed on the label (e.g., "Compare: 49" to 60" ceiling fans have airflow efficiencies ranging from approximately ___ to ___ cubic feet per minute per watt at high speed."). The Commission proposed to include two separate ranges in the Rule, one for fans with blade sizes between 36" to 48" and another for 49" to 60." Unfortunately, the comments did not provide data that could be used to develop such ranges. The Commission staff, therefore, has reviewed data from several sources, including online information from the California Energy Commission (<http://www.energy.ca.gov/appliances/appliance/index.html>), EPA's ENERGYSTAR program (http://www.energystar.gov/index.cfm?c=ceiling_fans.pr_ceiling_fans), and various manufacturer and retail websites. Based on this data, the Commission is publishing the following ranges for placement on the label: 71 to 86 CFM/Watt at high speed for fans with blade sizes between 36" to 48" and 51 to 176 CFM/Watt at high speed for fans with blade sizes between 49" to 60" ceiling fans. (See §§ 305.11(g)(1)(E)&(F)). The Commission will revisit these ranges if data submissions in the future indicate that the required ranges are substantially different than the ranges of efficiency used by fans in the marketplace.

In its comments, the PRC suggested that the energy efficiency range should be dynamic and published periodically. As stated in the NPRM, the Commission did not propose a detailed system of range information because it is unclear whether such information would provide consumer benefits commensurate with the costs associated with the necessary label changes. The Commission has not reviewed evidence that would change this view. As discussed above, however, the Commission will consider changes in the future if the actual efficiency ranges of products in the market place diverge substantially from the published ranges.

G. Location of Label

Under the Final Rule, manufacturers must place the ceiling fan label on product packages rather than on the products themselves. This requirement should assist consumers shopping in retail stores. Both Hunter Fan and ALA agreed. Hunter Fan explained that consumers would have a difficult time reading labels affixed to the products themselves because floor models are typically positioned in the store eight to nine feet off the floor. The PRC suggested that the money-saving tip on the label be placed on the ceiling fan's switch box. This suggestion raises cost, feasibility, and consistency questions that have not been explored in this proceeding. Accordingly, we are not requiring such marking in the Final Rule. We note, however, that nothing prohibits manufacturers from marking their products with this information voluntarily.

H. Size and Format Requirements

The NPRM proposed certain size and format requirements for the label. As with the proposed rule, the Final Rule requires that the label must be at least four inches wide and three inches high. Under the Final Rule, the text font shall be Arial or another equivalent font, and the label's text size and content, and the order of the required disclosures shall be consistent with Ceiling Fan Label Illustration of Appendix L of Part 305.¹⁸ The proposed rule did not specify the background color for the label. ALA suggested that, "for labels integrated into the carton's printing plate, the nomenclature shall be black on a contrasting background." While we understand manufacturers' desire to incorporate background package colors on the label, we believe that this may detract from providing a consistent, recognizable label across all competing models to facilitate comparison shopping. Therefore, we have clarified the Final Rule language to indicate that label must be in black text with a white background.

I. Request for Exemptions

ALA suggested that the Commission grant an exemption for high speed axial ceiling fans with contoured blades and ceiling fans with multiple fan assemblies because the current ENERGY STAR test procedure (which serves as the basis for DOE's procedure) is not a suitable test for these types of products.

¹⁸ The proposed rule indicated that the sample illustration in the Appendix provided "suggested" font sizes. The language in the Final Rule provides more definitive instructions for preparing the label and should help ensure that the label is consistent in appearance from product to product.

Similarly, the PRC urged the Commission to exempt highly decorative fans for which air movement is the secondary design feature.

EPACT 2005 provides a definition of "ceiling fan" and directs the Commission to issue a labeling rule for products fitting that definition. The statute defines "ceiling fan" as "a nonportable device that is suspended from a ceiling for circulating air via the rotation of fan blades." (42 U.S.C. 6291(49)). We have identified no basis for determining that the model types identified by commenters fall outside of this definition, and the law does not provide the Commission with explicit authority to make wholesale exemptions from the labeling requirement for different types or models of fans that otherwise fall within the statute's definition. Accordingly, the basis for exempting these whole product categories from the labeling rule is at best unclear.

At the same time, the FTC's Rule requires that manufacturers test their products using the DOE-approved procedure. In some cases, that procedure may not be appropriate because it may not be possible to test certain fan types under the required test apparatus or required conditions. In other cases, the test may yield energy information that is not a valid source of comparison across fan types. Labeling in these circumstances could yield confusing or misleading results for consumers or could simply be impossible. Therefore, if DOE determines that its test procedure does not apply to certain types or models of ceiling fans, then the Commission will not expect manufacturers to label those products.¹⁹ The final definition of "ceiling fan" indicates that the requirements of the rule are limited to those ceiling fans for which the Department of Energy has adopted and published test procedures for measuring energy usage. The Commission itself, however, is not issuing labeling exemptions for any ceiling fan types or models at this time.

J. Catalog Disclosures

Section 305.14 of the Rule currently requires that any manufacturer, distributor, retailer, or private labeler who advertises a covered product in a catalog, including a website, must provide the information required by

¹⁹ We note that the statute authorizes DOE to issue exemptions for certain product classes if the primary standards are not technically feasible or economically justified and to establish separate or exempted product classes for highly decorative fans for which air movement performance is a secondary design feature. (42 U.S.C. 6295(v)).

section 305.11(g)(1) (*i.e.*, airflow, electricity usage, airflow efficiency, and range information) on the website and in the catalogs. Because ceiling fans are covered products, the Final Rule amends these catalog requirements to include ceiling fans. Pursuant to the Final Rule, the required information should appear on each page that lists the covered product (see § 305.14(e)).²⁰

K. Reporting Requirements

Consistent with EPCA (42 U.S.C. 6296), the NPRM contained certain reporting requirements for ceiling fans consistent with those applicable to other products covered by the Rule. For example, the statute requires manufacturers to submit annual reports to the FTC listing energy data for each model under current production (42 U.S.C. 6296(b)(4)).

Consistent with the proposed rule, the Final Rule will require manufacturers to submit: Information on the energy efficiency of ceiling fans, the model numbers for each basic model, the total energy consumed, the number of tests performed, and the capacity (*i.e.*, cubic feet per minute). The Rule also requires the submission of an annual report for all models under production on March 1st of each year (beginning in 2009). In addition, pursuant to section 305.8(c) of the Rule, manufacturers must submit data for new models prior to their distribution. The Final Rule contains an additional sentence in 305.8(a)(1) clarifying that manufacturers must report the diameter of models in inches and efficiency ratings, electricity consumption, and capacity at high speed. The diameter information (*i.e.*, fan-blade size) will allow the FTC to group the fan data into the range of comparability categories established by the Rule (*e.g.*, 49 to 60 inch fans).

The PRC asked several questions related to the process for the submission of data to the FTC. The FTC staff provides guidance regarding the submission of data at <http://www.ftc.gov/bcp/conline/edcams/eande/faq.htm>. The FTC accepts data submissions in a variety of formats, including paper and email. Most manufacturers submit data via email using the spreadsheet files provided by the staff at the website. In addition, under the FTC's Rule, it is not necessary to obtain third-party accreditation.

L. Miscellaneous Issues

ALA urged that the Commission exempt ceiling fans intended for export.

We note that EPCA's consumer labeling requirements (and thus the Rule's requirements) do not apply to covered products manufactured for export and identified as such (see 42 U.S.C. 6300). ALA also mentioned that some models may have different motors because many manufacturers have multiple sources of supply for a given model. ALA asked whether the multiple sources of information should be disclosed to the consumer. Under the Rule, manufacturers must test and label each model following DOE standard test procedures. As a general matter, the energy performance of models sold on the market should be consistent with the results of the models tested. Section 305.6 of the Commission's Rule requires that any representation with respect to energy consumption measures derived from the DOE test must be based upon DOE's sampling procedures set forth in 10 CFR 430.24, subpart B.

IV. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act ("PRA"), as amended, 44 U.S.C. 3501, *et seq.*, the Commission submitted the proposed Rule to the Office of Management and Budget ("OMB") for review. OMB approved the Rule's information collection requirements through August 31, 2009 (OMB Control No. 3084-0069). Changes made to the Rule subsequent to publication of the NPRM have not affected the Commission's previous burden estimate. Nonetheless, as discussed below, the Commission has revised its previous burden estimate based on data available from the California Energy Commission and the ENERGY STAR program, as well as, a comment received from ALA. As required by the PRA, the Commission has submitted its revised burden estimate to OMB for review.

As set forth in the NPRM, the Rule contains disclosure and reporting requirements that constitute "information collection requirements" as defined by 5 CFR 1320.7(c), the regulation that implements the Paperwork Reduction Act ("PRA").²¹ Specifically, the Rule expands the scope of pre-existing recordkeeping, labeling, and reporting requirements to include manufacturers for a product not previously covered, ceiling fans.

The Commission's burden estimates are based on census data, Department of Energy figures and estimates, general knowledge of manufacturing practices, and trade association advice and figures. Because the burden of compliance falls almost entirely on manufacturers and

importers (with a *de minimis* burden relating to retailers), the Commission has calculated the burden estimates based on the number of ceiling fan units shipped domestically.

Annual Hours Burden

The Commission estimates that there are 2,500 basic models (*i.e.*, units with essentially identical functional physical and electrical characteristics) of ceiling fans sold in the U.S.²² Consistent with reporting estimates for other products covered by the Rule, the Commission estimates that the average reporting burden for manufacturers will be approximately two minutes per basic model. Accordingly, the estimated annual reporting burden for ceiling fans is approximately 83 hours (2 minutes × 2,500 models ÷ 60 minutes per hour).

With regard to labeling burdens, manufacturers will require approximately four minutes to create a label for each basic model. Thus, the approximate annual drafting burden involved in labeling is 167 hours per year [2,500 basic models × four minutes (average drafting time per basic model) ÷ 60 minutes per hour]. In addition, the Commission estimates that it will take, on average, six seconds to place labels on the packaging of each unit. Based on 2004 U.S. census data, the Commission estimates that there are approximately 6,000,000 ceiling fan units shipped each year in the U.S. Thus, the annual burden for affixing labels to ceiling fans is approximately 10,000 hours [six (seconds) × 6,000,000 (the total products shipped in 2004) divided by 3,600 (seconds per hour)]. Accordingly, the total annual labeling burden would be approximately 10,167 hours.

With regard to testing burdens, manufacturers will require approximately three hours to test each new basic model. The FTC estimates that, on average, 50% of the total basic models are tested each year. Accordingly, the estimated annual testing burden would be approximately 3,750 hours [1 hour × 3 (average number of tests run per model) × 1,250 (50% of 2,500 basic models)].²³

The Rule also requires ceiling fan manufacturers to keep records of test data generated in performing the tests to derive information included on labels. The Commission estimates that it will take ceiling fan manufacturers one

²² The Commission's previous estimate of basic models as stated in the NPRM (1,500) has been modified to reflect ceiling fan data available from the California Energy Commission and the ENERGY STAR program.

²³ The Commission's previous estimate of two fan tests per model has been increased to three tests per model based on comments provided by ALA.

²⁰ We have also changed the language in the catalog requirement in § 305.14 to clarify that the required information must be disclosed clearly and conspicuously.

²¹ 44 U.S.C. 3501-3520.

minute per record (*i.e.*, per model) to store the data. Accordingly, the estimated annual recordkeeping burden would be approximately 42 hours (1 minute \times 2,500 basic models \div 60 minutes per hour).

In addition, the Rule requires sellers offering ceiling fan products through retail sales catalogs (*i.e.*, those publications from which a consumer can actually order merchandise) to disclose energy information for each fan model in the catalog. Because this information is supplied by the product manufacturers, the burden on the retailer consists of incorporating the information into the catalog presentation.

Based upon staff research concerning the number of manufacturers and online retailers of ceiling fans, the Commission estimates that there are an additional 200 catalog sellers of ceiling fans (paper catalogs and online sellers) who are subject to the Rule's catalog disclosure requirements. The Commission estimates that these sellers each require approximately 17 hours per year to incorporate the data into their catalogs. This estimate is based on the assumption that entry of the required information takes on average one minute per covered product and an assumption that the average online catalog contains approximately 1,000 covered products. Given that there is great variety among sellers in the volume of products that they offer online, it is very difficult to estimate such numbers with precision. In addition, this analysis assumes that information for all 1,000 products is entered into the catalog each year. This is a conservative assumption because the number of incremental additions to the catalog from year to year is likely to be much lower after initial start-up efforts have been completed. Thus, the total annual disclosure burden for all catalog sellers of ceiling fans covered by the Rule is 3,400 hours (200 sellers \times 17 hours annually).

Thus, the Commission now estimates that the total annual burden due to the inclusion of ceiling fans under the scope of the Rule will be 17,000 hours (83 hours for reporting + 167 hours for drafting labels + 10,000 hours for affixing labels + 3,750 hours for testing + 42 hours for recordkeeping + 3,400 disclosure hours for catalog sellers), rounded to the nearest thousand.²⁴

²⁴ This is a 2,000 hour increase from the Commission's previous burden estimate as stated in the NPRM.

Annual Labor Costs

The Commission has derived labor costs by applying appropriate estimated hourly cost figures to the burden hours described above. In calculating the cost figures, the FTC assumes that test procedures, recordkeeping and reporting, marking, and preparation of fact sheets are conducted by electrical engineers at an hourly rate of \$40.59.²⁵ In addition, we assume labeling will be conducted by skilled clerical personnel at an hourly rate of \$14.21.

Based on the above estimates and assumptions, the total annual labor cost for the five different categories of burden under the Rule, applied to ceiling fans, is derived as follows: (1) annual testing labor cost is approximately \$152,213 (3,750 hours \times \$40.59 (electrical engineer wage category)); and (2) annual labor costs for recordkeeping, reporting, and catalog disclosures are approximately \$149,858 (3,692 hours \times \$40.59 (electrical engineer wage category)); and (3) annual labor cost for labeling will be \$142,100 (10,000 hours \times \$14.21 (skilled clerical wage category)).²⁶ Thus, the total annual labor cost is approximately \$444,000 rounded to the nearest thousand.

Annual Non-labor Costs

In its previous submission to OMB, Commission staff examined the five distinct burdens imposed by the proposed Rule—testing, reporting, recordkeeping, labeling, and retail catalog disclosures—as they affect non-labor costs incurred by manufacturers and catalog sellers of ceiling fans. The manufacturers and retailers who make the required disclosures in catalogs already are producing catalogs in the ordinary course of business; accordingly, capital costs associated with such disclosures would be *de minimis*. Nonetheless, ceiling fan manufacturers that submit required reports to the Commission directly (rather than through trade associations) incur some nominal costs for paper and

²⁵ The ALA comment indicated that all recordkeeping, reporting, and fact sheet preparation will be conducted by engineering personnel at a rate of \$40.59 per hour. The hourly rate of \$40.59 is based on data recently released by the U.S. Department of Labor's Bureau of Labor Statistics. See <http://www.bls.gov/ncs/ocs/sp/ncbl0757.pdf>. Accordingly, the Commission has modified its previous assumption that such work would be conducted by skilled technical personnel at an hourly rate of \$29.40.

²⁶ In response to the NPRM, ALA further commented that a cost estimate for testing from one of the three certified facilities is \$1,785 per fan. The Commission assumes that labor costs make up only a portion of this estimate. Accordingly, the additional cost for testing proposed by ALA is addressed in the non-labor costs section of this document.

postage. Ceiling fan manufacturers must also incur the cost of procuring labels. The Commission retains staff's previous estimate that ceiling fan manufacturers will incur approximately \$420,500 for such costs.²⁷ However, as discussed below, the Commission has decided to revise staff's previous non-labor cost estimate to take into account additional costs associated with testing.

The ALA comment indicated ceiling-fan manufacturers will contract with third-party labs to test their products. According to ALA, manufacturers incur a testing cost of \$1,785 per ceiling fan at such labs. The Commission believes this calculation overestimates the cost because it does not account for price adjustments based on high-volume testing orders, and it assumes that all manufacturers will use third-party labs.²⁸ Therefore, the Commission estimates that manufacturers will incur testing costs of \$1,000 per ceiling fan. The Commission further estimates that approximately \$120 of that cost is attributed to labor.²⁹ Accordingly, the Commission estimates that the average annual non-labor cost associated with testing will be \$1,100,000 [(\$880 (non-labor test cost per fan) \times 1,250 (number of basic models tested per year))].

ALA's comment also indicated that manufacturers must dispose of tested units. Assuming that, on average, 50% of the basic models are tested each year, the Commission estimates that the annual capital cost of disposal to be \$750,000 (\$200 disposal cost per fan \times 3 tests per fan \times 1,250 basic models tested each year). ALA also indicated that manufacturers incur costs for shipping fans to third party test labs at an average of \$9 per model. Although such costs are not incurred by manufacturers which do their own testing, the Commission conservatively estimates that the cost for shipping fans to third-party test labs will be \$11,250 (\$9 per fan \times 1,250 models).

Accordingly, the total annual non-labor cost imposed by the Rule, as applied to ceiling fans, will be approximately \$2,282,000, rounded to

²⁷ This estimate is comprised of an estimated 6 million ceiling fan units shipped in the U.S. each year (based on 2004 U.S. census data) at an average cost of seven cents per label plus approximately \$500 in nominal paper and postage costs.

²⁸ At least one large ceiling fan manufacturer has its own testing facility. See http://www.energystar.gov/ia/partners/manuf_res/cflabs.pdf.

²⁹ As discussed above, the Commission estimates manufacturers will require approximately three hours to test each new basic model. Assuming an electrical engineer performs the test at an hourly wage rate of \$40.59, the Commission estimates that approximately \$120 of the total testing cost incurred by ceiling fan manufacturers is appropriately categorized as a labor cost.

the nearest thousand (\$420,000 for procuring labels + \$500 for nominal paper and postage costs + \$1,100,000 for testing + \$750,000 for disposal costs + \$11,250 for shipping to third-party test labs).

V. 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. See 5 U.S.C. 603–605.

The Commission believes it likely that the amendments will not have a significant economic impact on a substantial number of small entities. The Commission estimates that these requirements will apply to about 95 ceiling-fan manufacturers and an additional 200 online and paper catalog sellers of ceiling fans. We expect that about two-thirds of these entities will qualify as small businesses under the relevant thresholds (i.e., 750 or fewer employees). As detailed in the previous section of this notice, the requirements will impose testing, recordkeeping, and labeling requirements on affected entities. The Commission expects that, in some cases, the Rule will have significant impact on individual small businesses, particularly those that manufacture a large number of different fan models. The actual number of small businesses experiencing such impacts, however, is not likely to be substantial.

Accordingly, this document serves as notice to the Small Business Administration of the FTC's certification of no effect. 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. Need For and Objectives of the Rule

The Federal Trade Commission is charged with enforcing the requirements of 42 U.S.C. 6294, which require the agency to issue this Rule. The objective of the proposed Rule is to establish energy labeling requirements for the movement of air by ceiling fans. Section

137 of EPACT 2005 amends section 324 of EPCA to require the Commission to "issue, by rule, in accordance with this section, labeling requirements for the electricity used by ceiling fans to circulate air in a room."

B. Significant Issues Raised By Public Comment

No significant issues were raised by public comment related to small business impacts.

C. Small Entities To Which the Final Rule Will Apply

Under the Small Business Size Standards issued by the Small Business Administration, household fan manufacturers qualify as small businesses if they have fewer than 750 employees. The Commission estimates that fewer than 200 entities subject to the proposed Rule's requirements qualify as small businesses.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The Commission recognizes that the labeling rule will involve some increased costs for affected parties. Most of these costs will be in the form of product testing and drafting costs for the label. These costs are detailed in the Paperwork Reduction Act section of this notice. The entities affected will include ceiling fan manufacturers and catalog retailers (including online sellers). The Commission does not expect that there will be any significant legal, professional, or training costs to comply with the Rule. The Commission does not expect that the labeling requirements will impose significant incremental costs for Web sites or other advertising.

E. Alternatives Considered

The provisions of the Rule directly reflect the requirements of the statute, and thus leave little room for significant alternatives to decrease the burden on regulated entities. One commenter, ALA, urged the Commission to accept data from models already tested under the ENERGY STAR program without requiring additional 95% confidence level testing as generally required by DOE. Under the enabling statute, the energy information disclosed on the label must be based on the test procedures in DOE's regulations. If DOE determines that such additional testing is not required or necessary for ENERGY STAR ceiling fans, the Commission will defer to DOE.

VI. Final Rule Language

List of Subjects in 16 CFR Part 305

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

■ For the reasons set out above, the Commission amends 16 CFR Part 305 as follows:

PART 305—[AMENDED]

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

Authority: 42 U.S.C. 6294.

■ 2. Amend § 305.2 by revising paragraph (i), revising paragraph (o)(21), and adding paragraph (o)(22) to read as follows:

§ 305.2 Definitions.

* * * * *

(i) *Energy efficiency rating* means the following product-specific energy usage descriptors: *annual fuel utilization efficiency (AFUE)* for furnaces; *energy efficiency ratio (EER)* for room air conditioners; *seasonal energy efficiency ratio (SEER)* for the cooling function of central air conditioners and heat pumps; *heating seasonal performance factor (HSPF)* for the heating function of heat pumps; *airflow efficiency for ceiling fans*; and, *thermal efficiency (TE)* for pool heaters, as these descriptors are determined in accordance with tests prescribed under section 323 of the Act (42 U.S.C. 6293). These product-specific energy usage descriptors shall be used in satisfying all the requirements of this part.

* * * * *

(o) * * *

(21) Ceiling fans.

(22) Any other type of consumer product which the Department of Energy classifies as a covered product under section 322(b) of the Act (42 U.S.C. 6292).

* * * * *

■ 3. Amend § 305.3 by adding paragraph (s) to read as follows:

§ 305.3 Description of covered products.

* * * * *

(s) *Ceiling fan* means a nonportable device that is suspended from a ceiling for circulating air via the rotation of fan blades. The requirements of this part are limited to those ceiling fans for which the Department of Energy has adopted and published test procedures for measuring energy usage.

■ 4. Add § 305.5(a)(11) to read as follows:

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

(a) * * *

(11) Ceiling Fans—§ 430.23.

* * * * *

■ 5. Add § 305.7(l) to read as follows:

§ 305.7 Determinations of capacity.

* * * * *

(l) *Ceiling fans.* The capacity shall be the airflow in cubic feet per minute as determined according to appendix U of 10 CFR part 430, subpart B.

■ 6. Amend § 305.8 to revise paragraphs (a)(1) and (b)(1) to read as follows:

§ 305.8 Submission of data.

(a)(1) Each manufacturer of a covered product (except manufacturers of fluorescent lamp ballasts, showerheads, faucets, water closets, urinals, general service fluorescent lamps, medium base

compact fluorescent lamps, or general service incandescent lamps including incandescent reflector lamps) shall submit annually to the Commission a report listing the estimated annual energy consumption (for refrigerators, refrigerator-freezers, freezers, clothes washers, dishwashers and water heaters) or the energy efficiency rating (for room air conditioners, central air conditioners, heat pumps, furnaces, ceiling fans, and pool heaters) for each basic model in current production, determined according to § 305.5 and statistically verified according to § 305.6. The report must also list, for each basic model in current production: the model numbers for each basic model; the total energy consumption, determined in accordance with § 305.5, used to calculate the estimated annual energy consumption or energy efficiency rating; the number of tests performed; and, its capacity, determined

in accordance with § 305.7. For those models that use more than one energy source or more than one cycle, each separate amount of energy consumption or energy cost, measured in accordance with § 305.5, shall be listed in the report. Appendix K illustrates a suggested reporting format. Starting serial numbers or other numbers identifying the date of manufacture of covered products shall be submitted whenever a new basic model is introduced on the market. For ceiling fans, the report shall contain the fan diameter in inches and also shall contain efficiency ratings, energy consumption, and capacity at high speed.

* * * * *

(b)(1) All data required by § 305.8(a) except serial numbers shall be submitted to the Commission annually, on or before the following dates:

Product category	Deadline for data submission
Refrigerators	Aug. 1.
Refrigerator-freezers	Aug. 1.
Freezers	Aug. 1.
Central air conditioners	July 1.
Heat pumps	July 1.
Dishwashers	June 1.
Water heaters	May 1.
Room air conditioners	May 1.
Furnaces	May 1.
Pool heaters	May 1.
Clothes washers	Oct. 1.
Fluorescent lamp ballasts	Mar. 1.
Showerheads	Mar. 1.
Faucets	Mar. 1.
Water closets	Mar. 1.
Urinals	Mar. 1.
Ceiling fans	Mar. 1.
Fluorescent lamps	Mar. 1 [Stayed].
Medium Base Compact Fluorescent Lamps	Mar. 1 [Stayed].
Incandescent Lamps, incl. Reflector Lamps	Mar. 1 [Stayed].

* * * * *

■ 7. Revise § 305.10(a) to read as follows:

§ 305.10 Ranges of estimated annual energy consumption and energy efficiency ratings.

(a) The range of estimated annual energy consumption or energy efficiency ratings for each covered product (except fluorescent lamp ballasts, showerheads, faucets, water closets, urinals, or ceiling fans) shall be taken from the appropriate appendix to this rule in effect at the time the labels are affixed to the product. The Commission shall publish revised ranges annually in the **Federal Register**, if appropriate, or a statement that the specific prior ranges are still applicable for the new year. Ranges will be

changed if the estimated annual energy consumption or energy efficiency ratings of the products within the range change in a way that would alter the upper or lower estimated annual energy consumption or energy efficiency rating limits of the range by 15% or more from that previously published. When a range is revised, all information disseminated after 90 days following the publication of the revision shall conform to the revised range. Products that have been labeled prior to the effective date of a modification under this section need not be relabeled.

* * * * *

■ 8. Amend § 305.11 by revising paragraph (a)(1) and adding paragraph (g) to read as follows:

§ 305.11 Labeling for covered products.

(a) *Labels for covered products other than fluorescent lamp ballasts, general service fluorescent lamps, medium base compact fluorescent lamps, general service incandescent lamps (including incandescent reflector lamps), showerheads, faucets, water closets, urinals, and ceiling fans—*(1) *Layout.* All energy labels for each category of covered product shall use one size, similar colors and typefaces with consistent positioning of headline, copy and charts to maintain uniformity for immediate consumer recognition and readability. Trim size dimensions for all labels shall be as follows: width must be between 5 ¼ inches and 5 ½ inches (13.34 cm. and 13.97 cm.); length must be 7 ⅜ inches (18.73 cm.). Copy is to

be set between 27 picas and 29 picas and copy page should be centered (right to left and top to bottom). Depth is variable but should follow closely the prototype labels appearing at the end of this part illustrating the basic layout. All positioning, spacing, type sizes and line widths should be similar to and consistent with the prototype labels.

* * * * *

(g) *Ceiling Fans*—(1) *Content*. Any covered product that is a ceiling fan shall be labeled clearly and conspicuously on the principal display panel with the following information in order from top to bottom on the label:

(i) The words “ENERGY INFORMATION” shall appear at the top of the label with the words “at High Speed” directly underneath;

(ii) The product’s airflow at high speed expressed in cubic feet per minute and determined pursuant to § 305.5 of this part;

(iii) The product’s electricity usage at high speed expressed in watts and determined pursuant to § 305.5 of this part, including the phrase “excludes lights” as indicated in Ceiling Fan Label Illustration of Appendix L of this part;

(iv) The product’s airflow efficiency rating at high speed expressed in cubic feet per minute per watt and determined pursuant to § 305.5 of this part;

(v) The following statement shall appear on the label for fans fewer than 49 inches in diameter: “Compare: 36” to 48” ceiling fans have airflow efficiencies ranging from approximately 71 to 86 cubic feet per minute per watt at high speed.”;

(vi) The following statement shall appear on the label for fans 49 inches or more in diameter: “Compare: 49” to 60” ceiling fans have airflow efficiencies ranging from approximately 51 to 176 cubic feet per minute per watt at high speed.”; and

(vii) The following statements shall appear at the bottom of the label as indicated in Ceiling Fan Label Illustration of Appendix L of this part: “Money-Saving Tip: Turn off fan when leaving room.”

(2) *Label Size and Text Font*. The label shall be four inches wide and three inches high. The text font shall be Arial or another equivalent font. The text on the label shall be black with a white background. The label’s text size and content, and the order of the required

disclosures shall be consistent with Ceiling Fan Label Illustration of Appendix L of this part.

(3) *Placement*. The ceiling fan label shall be printed on the principal display panel of the product’s packaging.

(4) *Additional Information*: No marks or information other than that specified in this part shall appear on this label, except a model name, number, or similar identifying information.

■ 9. Add § 305.14(e) to read as follows:

§ 305.14 Catalogs.

* * * * *

(e) Any manufacturer, distributor, retailer, or private labeler who advertises a covered product that is a ceiling fan in a catalog, from which it may be purchased, shall disclose clearly and conspicuously in such catalog, on each page that lists the covered product, all the information concerning the product required by § 305.11(g)(1).

■ 10. Amend part 305, Appendix L by adding Ceiling Fan Label Illustration at the end of the appendix to read as follows:

Appendix L to Part 305—Sample Labels

* * * * *

ENERGY INFORMATION at High Speed		
Airflow 5,609 Cubic Feet Per Minute	Electricity Use 63 Watts (excludes lights)	Airflow Efficiency 80 Cubic Feet Per Minute Per Watt
Compare: 49" to 60" ceiling fans have airflow efficiencies ranging from approximately 51 to 176 cubic feet per minute per watt at high speed.		
<div style="border: 1px solid black; padding: 5px; display: inline-block;"> Money-Saving Tip: Turn off fan when leaving room. </div>		

Ceiling Fan Label Illustration

* * * * *

By direction of the Commission.

C. Landis Plummer,

Acting Secretary.

[FR Doc. 06–9901 Filed 12–27–06; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9307]

RIN 1545–BC18

Changes in Computing Depreciation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains regulations relating to a change in computing depreciation or amortization as well as a change from a nondepreciable or nonamortizable asset to a depreciable or amortizable asset (or vice versa). Specifically, these regulations provide guidance to any taxpayer that makes a change in depreciation or amortization on whether such a change is a change in method of accounting under section 446(e) of the Internal Revenue Code and on the application of section 1016(a)(2) in determining whether the change is a change in method of accounting.

DATES: *Effective Date.* These regulations are effective December 28, 2006.

Applicability Dates. For dates of applicability, see §§ 1.167(e)–1(e), 1.446–1(e)(4), and 1.1016–3(j).

FOR FURTHER INFORMATION CONTACT: Douglas H. Kim, (202) 622–3110 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to 26 CFR part 1. On January 2, 2004, the IRS and Treasury Department published temporary regulations (TD 9105) in the **Federal Register** (69 FR 5) relating to the application of section 446(e) of the Internal Revenue Code (Code) and § 1.167(e)–1 to a change in depreciation or amortization and the application of section 1016(a)(2) in determining whether a change in depreciation or amortization is a change in method of accounting. On the same date, the IRS published a notice of proposed rulemaking (REG–126459–03) cross-referencing the temporary regulations in the **Federal Register** (69

FR 42). No public hearing was requested or held. Several comments responding to the notice of proposed rulemaking were received. After consideration of all the comments, the proposed regulations are adopted as amended by this Treasury decision, and the corresponding temporary regulations are removed. The revisions are discussed here in this preamble.

Section 1400N(d), which was added to the Code by section 101(a) of the Gulf Opportunity Zone Act of 2005, Public Law 109–135 (119 Stat. 2577), generally allows a 50-percent additional first year depreciation deduction for qualified Gulf Opportunity Zone property. The final regulations reflect the enactment of section 1400N(d).

Explanation of Provisions

Scope

The final regulations provide the changes in depreciation or amortization (depreciation) for property for which depreciation is determined under section 167, 168, 197, 1400I, 1400L(b), 1400L(c), or 1400N(d), or former section 168, of the Code that are, and those changes that are not, changes in method of accounting under section 446(e). The final regulations also clarify that the rules in § 1.167(e)–1 with respect to a change in the depreciation method made without the consent of the Commissioner apply only to property for which depreciation is determined under section 167 (other than under section 168, 1400I, 1400L, or 1400N(d), or former section 168). Additionally, the final regulations provide that section 1016(a)(2) does not permanently affect a taxpayer's lifetime income for purposes of determining whether a change in depreciation is a change in method of accounting under section 446(e) and § 1.446–1(e).

I. Changes in Depreciation Method Under Section 167

The final regulations retain the rules contained in the temporary regulations providing that the rules in § 1.167(e)–1 with respect to a change in depreciation method under § 1.167(e)–1(b), (c), and (d) made without the consent of the Commissioner apply only to property for which depreciation is determined under section 167 (other than under section 168, 1400I, 1400L, or 1400N(d), or former section 168). No comments were received suggesting changes to these rules.

II. Changes in Depreciation That Are, and Are Not, a Change in Method of Accounting Under Section 446(e)

The final regulations provide rules on the changes in depreciation that are, and are not, a change in method of accounting under section 446(e).

A. Changes in Depreciation That Are Changes in Method of Accounting

The final regulations retain the rules contained in the temporary regulations providing the changes in depreciation that are a change in method of accounting under section 446(e). These changes are a change in the treatment of an asset from nondepreciable or nonamortizable to depreciable or amortizable, or vice versa. Additionally, a correction to require depreciation in lieu of a deduction for the cost of depreciable or amortizable assets that had been consistently treated as an expense in the year of purchase, or vice versa, is a change in method of accounting. Further, changes in computing depreciation generally are a change in method of accounting, including a change in the depreciation method, period of recovery, or convention of a depreciable or amortizable asset, and a change to or from claiming the additional first year depreciation deduction provided by section 168(k), 1400L(b), or 1400N(d) under certain circumstances.

No comments were received suggesting changes to these rules. However, a commentator inquired whether a calendar-year taxpayer that has not claimed the 30-percent additional first year depreciation for qualified property acquired after September 10, 2001, and placed in service prior to January 1, 2002, may claim the 30-percent additional first year depreciation by requesting a change in method of accounting. To claim the 30-percent additional first year depreciation for this property, Rev. Proc. 2003–50 (2003–2 C.B. 119) provides that the taxpayer had to file an amended return on or before December 31, 2003, or file a Form 3115, “Application for Change in Accounting Method,” with the taxpayer's timely filed 2003 Federal tax return. If the taxpayer did not file this amended return or Form 3115, the taxpayer has made the deemed election not to deduct the additional first year depreciation for the 2001 taxable year. Accordingly, the taxpayer's change to claiming the 30-percent additional first year depreciation for qualified property placed in service in the taxable year that included September 11, 2001, is not a change in method of accounting under