

TO MODIFY THE EFFICIENCY STANDARDS FOR GRID-  
ENABLED WATER HEATERS

JUNE 9, 2015.—Committed to the Committee of the Whole House on the State of  
the Union and ordered to be printed

Mr. UPTON, from the Committee on Energy and Commerce,  
submitted the following

R E P O R T

[To accompany H.R. 906]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred  
the bill (H.R. 906) to modify the efficiency standards for grid-en-  
abled water heaters, having considered the same, report favorably  
thereon with an amendment and recommend that the bill as  
amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. GRID-ENABLED WATER HEATERS.**

Part B of title III of the Energy Policy and Conservation Act (42 U.S.C. 6291 et seq.) is amended—

(1) in section 325(e) (42 U.S.C. 6295(e)), by adding at the end the following:

“(6) **ADDITIONAL STANDARDS FOR GRID-ENABLED WATER HEATERS.**—

“(A) **DEFINITIONS.**—In this paragraph:

“(i) **ACTIVATION LOCK.**—The term ‘activation lock’ means a control mechanism (either a physical device directly on the water heater or a control system integrated into the water heater) that is locked by default and contains a physical, software, or digital communication that must be activated with an activation key to enable the product to operate at its designed specifications and capabilities and without which activation the product will provide not greater than 50 percent of the rated first hour delivery of hot water certified by the manufacturer.

“(ii) **GRID-ENABLED WATER HEATER.**—The term ‘grid-enabled water heater’ means an electric resistance water heater that—

“(I) has a rated storage tank volume of more than 75 gallons;

“(II) is manufactured on or after April 16, 2015;

“(III) has—

“(aa) an energy factor of not less than 1.061 minus the product obtained by multiplying—

“(AA) the rated storage volume of the tank, expressed in gallons; and

“(BB) 0.00168; or

“(bb) an equivalent alternative standard prescribed by the Secretary and developed pursuant to paragraph (5)(E);

“(IV) is equipped at the point of manufacture with an activation lock; and

“(V) bears a permanent label applied by the manufacturer that—

“(aa) is made of material not adversely affected by water;

“(bb) is attached by means of non-water-soluble adhesive; and

“(cc) advises purchasers and end-users of the intended and appropriate use of the product with the following notice printed in 16.5 point Arial Narrow Bold font:

“**IMPORTANT INFORMATION:** This water heater is intended only for use as part of an electric thermal storage or demand response program. It will not provide adequate hot water unless enrolled in such a program and activated by your utility company or another program operator. Confirm the availability of a program in your local area before purchasing or installing this product.’

“(B) **REQUIREMENT.**—The manufacturer or private labeler shall provide the activation key for a grid-enabled water heater only to a utility or other company that operates an electric thermal storage or demand response program that uses such a grid-enabled water heater.

“(C) **REPORTS.**—

“(i) **MANUFACTURERS.**—The Secretary shall require each manufacturer of grid-enabled water heaters to report to the Secretary annually the quantity of grid-enabled water heaters that the manufacturer ships each year.

“(ii) **OPERATORS.**—The Secretary shall require utilities and other demand response and thermal storage program operators to report annually the quantity of grid-enabled water heaters activated for their programs using forms of the Energy Information Agency or using such other mechanism that the Secretary determines appropriate after an opportunity for notice and comment.

“(iii) **CONFIDENTIALITY REQUIREMENTS.**—The Secretary shall treat shipment data reported by manufacturers as confidential business information.

“(D) **PUBLICATION OF INFORMATION.**—

“(i) **IN GENERAL.**—In 2017 and 2019, the Secretary shall publish an analysis of the data collected under subparagraph (C) to assess the extent to which shipped products are put into use in demand response and thermal storage programs.

“(ii) **PREVENTION OF PRODUCT DIVERSION.**—If the Secretary determines that sales of grid-enabled water heaters exceed by 15 percent or greater the quantity of such products activated for use in demand response and thermal storage programs annually, the Secretary shall, after opportunity for notice and comment, establish procedures to prevent product diversion for non-program purposes.

- “(E) COMPLIANCE.—
- “(i) IN GENERAL.—Subparagraphs (A) through (D) shall remain in effect until the Secretary determines under this section that—
- “(I) grid-enabled water heaters do not require a separate efficiency requirement; or
- “(II) sales of grid-enabled water heaters exceed by 15 percent or greater the quantity of such products activated for use in demand response and thermal storage programs annually and procedures to prevent product diversion for non-program purposes would not be adequate to prevent such product diversion.
- “(ii) EFFECTIVE DATE.—If the Secretary exercises the authority described in clause (i) or amends the efficiency requirement for grid-enabled water heaters, that action will take effect on the date described in subsection (m)(4)(A)(ii).
- “(iii) CONSIDERATION.—In carrying out this section with respect to electric water heaters, the Secretary shall consider the impact on thermal storage and demand response programs, including any impact on energy savings, electric bills, peak load reduction, electric reliability, integration of renewable resources, and the environment.
- “(iv) REQUIREMENTS.—In carrying out this paragraph, the Secretary shall require that grid-enabled water heaters be equipped with communication capability to enable the grid-enabled water heaters to participate in ancillary services programs if the Secretary determines that the technology is available, practical, and cost-effective.”;
- (2) in section 332(a) (42 U.S.C. 6302(a))—
- (A) in paragraph (5), by striking “or” at the end;
- (B) in the first paragraph (6), by striking the period at the end and inserting a semicolon;
- (C) by redesignating the second paragraph (6) as paragraph (7);
- (D) in subparagraph (B) of paragraph (7) (as so redesignated), by striking the period at the end and inserting “; or”; and
- (E) by adding at the end the following:
- “(8) for any person to—
- “(A) activate an activation lock for a grid-enabled water heater with knowledge that such water heater is not used as part of an electric thermal storage or demand response program;
- “(B) distribute an activation key for a grid-enabled water heater with knowledge that such activation key will be used to activate a grid-enabled water heater that is not used as part of an electric thermal storage or demand response program;
- “(C) otherwise enable a grid-enabled water heater to operate at its designed specification and capabilities with knowledge that such water heater is not used as part of an electric thermal storage or demand response program; or
- “(D) knowingly remove or render illegible the label of a grid-enabled water heater described in section 325(e)(6)(A)(ii)(V).”;
- (3) in section 333(a) (42 U.S.C. 6303(a))—
- (A) by striking “section 332(a)(5)” and inserting “paragraph (5), (6), (7), or (8) of section 332(a)”; and
- (B) by striking “paragraph (1), (2), or (5) of section 332(a)” and inserting “paragraph (1), (2), (5), (6), (7), or (8) of section 332(a)”; and
- (4) in section 334 (42 U.S.C. 6304)—
- (A) by striking “section 332(a)(5)” and inserting “paragraph (5), (6), (7), or (8) of section 332(a)”; and
- (B) by striking “section 332(a)(6)” and inserting “section 332(a)(7)”.

#### PURPOSE AND SUMMARY

H.R. 906, to modify the efficiency standards for grid-enabled water heaters was introduced by Rep. Ed Whitfield (R-KY) on February 11, 2015. The legislation amends the Energy and Policy Conservation Act to permit the continued manufacture of electric resistance water heaters above seventy-five gallons for use in thermal energy storage and demand response programs. To prevent water heaters produced for this purpose from being diverted to unauthorized use, the legislation requires a specified label, an activation key to be used by the utility operating a demand response pro-

gram, and annual reporting requirements for manufacturers and utilities.

#### BACKGROUND AND NEED FOR LEGISLATION

On March 22, 2010, the U.S. Department of Energy (DOE) issued a new energy efficiency standard, pursuant to the Energy Policy and Conservation Act, requiring nearly 200 percent efficiency for large capacity electric resistance water heaters. This standard applies to water heaters manufactured starting in April 2015. The new standard would, in effect, prohibit the manufacture of electric resistance water heaters of fifty-five gallons or larger capacity in favor of heat pump technology for water heaters of fifty-five gallons or larger capacity. Such heat pump water heaters are not compatible with certain utility thermal energy storage and demand response programs (i.e., programs that enable customers to reduce or shift their power use during peak demand periods).

#### HEARINGS

The Subcommittee on Energy and Power held a hearing on H.R. 906 on March 19, 2015. The Subcommittee received testimony from:

- Gary Connett, Director, Member Services and Demand-Side Management, Great River Energy;
- Steven Koep, Utility Sales Manager, Vaughn Thermal Corporation—Vaughn Electric Water Heaters;
- Steven Nadel, Executive Director, American Council for an Energy-Efficient Economy; and,
- Robin Roy, Director—Building Energy and Clean Energy Strategy, Natural Resources Defense Council.

#### COMMITTEE CONSIDERATION

On April 14 and 15, 2015, the full Committee on Energy and Commerce met in open markup session and ordered H.R. 906 reported to the House, as amended, by a voice vote.

#### COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. There were no record votes taken in connection with ordering H.R. 906 reported. A motion by Mr. Upton to order H.R. 906 reported to the House, as amended, was agreed to by a voice vote.

#### COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee held a hearing and made findings that are reflected in this report.

#### STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

The goal of H.R. 906 is to amend the Energy and Policy Conservation Act to permit the continued manufacture of electric resistance water heaters above seventy-five gallons for use in thermal energy storage and demand response programs.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX  
EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 906, would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

EARMARK, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

In compliance with clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives, the Committee finds that H.R. 906 contains no earmarks, limited tax benefits, or limited tariff benefits.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, May 4, 2015.*

Hon. FRED UPTON,  
*Chairman, Committee on Energy and Commerce,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 906, a bill to modify the efficiency standards for grid-enabled water heaters.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Megan Carroll.

Sincerely,

KEITH HALL,  
*Director.*

Enclosure.

*H.R. 906—A bill to modify the efficiency standards for grid-enabled water heaters*

H.R. 906 would specify energy-efficiency standards for certain water heaters, require manufacturers of such water heaters and utilities to report to the Secretary of Energy on their prevalence and use, and direct the Secretary to publish periodic analyses of that information.

Based on information from the Department of Energy, CBO estimates that the department would spend less than \$100,000 annually to meet new administrative and reporting requirements under H.R. 906, assuming the availability of appropriated funds. H.R. 906 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

H.R. 906 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO staff contact for this estimate is Megan Carroll. The estimate was approved by Theresa Gullo, Assistant Director for Budget Analysis.

#### FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

#### DUPLICATION OF FEDERAL PROGRAMS

No provision of H.R. 906 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

#### DISCLOSURE OF DIRECTED RULE MAKINGS

The Committee estimates that enacting H.R. 906 specifically directs to be completed no rule makings within the meaning of 5 U.S.C. 551.

#### ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

#### APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

#### SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

##### *Section 1. Grid-enabled water heaters*

Section 1 amends the Energy Policy and Conservation Act (EPCA) to provide additional energy conservation standards applicable to grid-enabled water heaters for use as part of an electric thermal storage or demand response program (a program that enables customers to reduce or shift their power use during peak demand periods). Specifically, section 1:

- Requires annual reports from: (1) manufacturers of such water heaters regarding the quantity of the products shipped each year, and (2) utilities and other demand response and thermal storage program operators regarding the quantity of products activated for their programs.
- Requires the Secretary of Energy to publish analyses of data collected from such reports and to establish procedures to prevent product diversion if sales of the products exceed by at least fifteen percent the quantity activated for use in the demand response and thermal storage programs annually.

- Maintains the standards and publication procedures established by this Act until the Secretary determines that: (1) such water heaters do not require a separate efficiency requirement, or (2) procedures to prevent product diversion for non-program purposes would not be adequate to prevent such product diversion.
- Requires the Secretary to consider the impact of EPCA electric water heater standards on thermal storage and demand response programs, including on energy savings, electric bills, peak load reduction, electric reliability, integration of renewable resources, and the environment.
- Directs the Secretary to require that the water heaters be equipped with communication capability to enable the grid-enabled water heaters to participate in ancillary services programs if the technology is available, practical, and cost-effective.
- Makes it unlawful for any person to:
  - activate an activation lock for a grid-enabled water heater with knowledge that it is not used as part of a demand response program;
  - distribute an activation key for such a water heater with the knowledge that it will be used to activate a heater that is not used as part of such program;
  - enable such water heater to operate at its designed specification and capabilities with the knowledge that it is not used as part of such program; or
  - knowingly remove or render illegible the label of such water heater.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

**ENERGY POLICY AND CONSERVATION ACT**

\* \* \* \* \*

**TITLE III—IMPROVING ENERGY EFFICIENCY**

\* \* \* \* \*

**PART B—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS OTHER THAN AUTOMOBILES**

\* \* \* \* \*

**ENERGY CONSERVATION STANDARDS**

- SEC. 325. (a) PURPOSES.—The purposes of this section are to—
- (1) provide Federal energy conservation standards applicable to covered products; and
  - (2) authorize the Secretary to prescribe amended or new energy conservation standards for each type (or class) of covered product.

(b) STANDARDS FOR REFRIGERATORS, REFRIGERATOR-FREEZERS, AND FREEZERS.—(1) The following is the maximum energy use allowed in kilowatt hours per year for the following products (other than those described in paragraph (2)) manufactured on or after January 1, 1990:

	Energy Standards Equations
Refrigerators and Refrigerator-Freezers with manual defrost .....	16.3 AV+316
Refrigerator-Freezers—partial automatic defrost .....	21.8 AV+429
Refrigerator-Freezers—automatic defrost with:	
Top mounted freezer without ice .....	23.5 AV+471
Side mounted freezer without ice .....	27.7 AV+488
Bottom mounted freezer without ice .....	27.7 AV+488
Top mounted freezer with through the door ice service .....	26.4 AV+535
Side mounted freezer with through the door ice .....	30.9 AV+547
Upright Freezers with:	
Manual defrost .....	10.9 AV+422
Automatic defrost .....	16.0 AV+623
Chest Freezers and all other freezers .....	14.8 AV+223

(2) The standards described in paragraph (1) do not apply to refrigerators and refrigerator-freezers with total refrigerated volume exceeding 39 cubic feet or freezers with total refrigerated volume exceeding 30 cubic feet.

(3)(A)(i) The Secretary shall publish a proposed rule, no later than July 1, 1988, to determine if the standards established by paragraph (1) should be amended. The Secretary shall publish a final rule no later than July 1, 1989, which shall contain such amendment, if any, and provide that the amendment shall apply to products manufactured on or after January 1, 1993. If such a final rule is not published before January 1, 1990, any amendment of such standards shall apply to products manufactured on or after January 1, 1995. Nothing in this subsection provides any justification or defense for a failure by the Secretary to comply with the nondiscretionary duty to publish final rules by the dates stated in this paragraph.

(ii)(I) If the Secretary does not publish a final rule before January 1, 1990, relating to the revision of the energy conservation standards for refrigerators, refrigerator-freezers and freezers, the regulations which established standards for such products and were promulgated by the California Energy Commission on December 14, 1984, to be effective January 1, 1992 (or any amendments to such standards that are not more stringent than the standards in the original regulations), shall apply in California to such products, effective beginning January 1, 1993, and shall not be preempted after such effective date by any energy conservation standard established in this section or prescribed, on or after January 1, 1990, under this section.

(II) If the Secretary does not publish a final rule before January 1, 1992, relating to the revision of the energy conservation standards for refrigerators, refrigerator-freezers and freezers, State regulations which apply to such products manufactured on or after January 1, 1995, shall apply to such products until the effective date of a rule issued under this section with respect to such products.

(B) After the publication of a final rule under subparagraph (A), the Secretary shall publish a final rule no later than five years after the date of publication of the previous final rule. The Sec-



retary shall determine in such rule whether to amend the standards in effect for the products described in paragraph (1).

(C) Any amendment prescribed under subparagraph (B) shall apply to products manufactured after a date which is five years after—

- (i) the effective date of the previous amendment; or
- (ii) if the previous final rule did not amend the standards, the earliest date by which the previous amendment could have been effective;

except that in no case may any amended standard apply to products manufactured within three years after publication of the final rule establishing such amended standard.

(4) REFRIGERATORS AND FREEZERS MANUFACTURED ON OR AFTER JANUARY 1, 2014.—

(A) IN GENERAL.—Not later than December 31, 2010, the Secretary shall publish a final rule determining whether to amend the standards in effect for refrigerators, refrigerator-freezers, and freezers manufactured on or after January 1, 2014.

(B) AMENDED STANDARDS.—The final rule shall contain any amended standards.

(c) STANDARDS FOR ROOM AIR CONDITIONERS.—(1) The energy efficiency ratio of room air conditioners shall be not less than the following for products manufactured on or after January 1, 1990:

Product Class:	Ratio
Without Reverse Cycle and With Louvered Sides:	
Less than 6,000 Btu .....	8.0
6,000 to 7,999 Btu .....	8.5
8,000 to 13,999 Btu .....	9.0
14,000 to 19,999 Btu .....	8.8
20,000 and more Btu .....	8.2
Without Reverse Cycle and Without Louvered Sides:	
Less than 6,000 Btu .....	8.0
6,000 to 7,999 Btu .....	8.5
8,000 to 13,999 Btu .....	8.5
14,000 to 19,999 Btu .....	8.5
20,000 and more Btu .....	8.2
With Reverse Cycle and With Louvered Sides .....	8.5
With Reverse Cycle, Without Louvered Sides .....	8.0

(2)(A) The Secretary shall publish a final rule no later than January 1, 1992, to determine if the standards established under paragraph (1) should be amended. Such rule shall contain such amendment, if any, and provide that the amendment shall apply to products manufactured on or after January 1, 1995.

(B) After January 1, 1992, the Secretary shall publish a final rule no later than five years after the date of publication of a previous final rule. The Secretary shall determine in such rule whether to amend the standards in effect for room air conditioners.

(C) Any amendment prescribed under subparagraph (B) shall apply to products manufactured after a date which is five years after—

- (i) the effective date of the previous amendment; or
- (ii) if the previous final rule did not amend the standards, the earliest date by which a previous amendment could have been effective;

except that in no case may any amended standard apply to products manufactured within three years after publication of the final rule establishing such amended standard.

(d) STANDARDS FOR CENTRAL AIR CONDITIONERS AND HEAT PUMPS.—(1) The seasonal energy efficiency ratio of central air conditioners and central air conditioning heat pumps shall be not less than the following:

(A) Split Systems: 10.0 for products manufactured on or after January 1, 1992.

(B) Single Package Systems: 9.7 for products manufactured on or after January 1, 1993.

(2) The heating seasonal performance factor of central air conditioning heat pumps shall be not less than the following:

(A) Split Systems: 6.8 for products manufactured on or after January 1, 1992.

(B) Single Package Systems: 6.6 for products manufactured on or after January 1, 1993.

(3)(A) The Secretary shall publish a final rule no later than January 1, 1994, to determine whether the standards established under paragraph (1) should be amended. Such rule shall contain such amendment, if any, and provide that the amendment shall apply to products manufactured on or after January 1, 1999. The Secretary shall publish a final rule no later than January 1, 1994, to determine whether the standards established under paragraph (2) shall be amended. Such rule shall contain such amendment, if any, and provide that the amendment shall apply to products manufactured on or after January 1, 2002.

(B) The Secretary shall publish a final rule after January 1, 1994, and no later than January 1, 2001, to determine whether the standards in effect for central air conditioners and central air conditioning heat pumps should be amended. Such rule shall provide that any amendment shall apply to products manufactured on or after January 1, 2006.

(4) STANDARDS FOR THROUGH-THE-WALL CENTRAL AIR CONDITIONERS, THROUGH-THE-WALL CENTRAL AIR CONDITIONING HEAT PUMPS, AND SMALL DUCT, HIGH VELOCITY SYSTEMS.—

(A) DEFINITIONS.—In this paragraph:

(i) SMALL DUCT, HIGH VELOCITY SYSTEM.—The term “small duct, high velocity system” means a heating and cooling product that contains a blower and indoor coil combination that—

(I) is designed for, and produces, at least 1.2 inches of external static pressure when operated at the certified air volume rate of 220–350 CFM per rated ton of cooling; and

(II) when applied in the field, uses high velocity room outlets generally greater than 1,000 fpm that have less than 6.0 square inches of free area.

(ii) THROUGH-THE-WALL CENTRAL AIR CONDITIONER; THROUGH-THE-WALL CENTRAL AIR CONDITIONING HEAT PUMP.—The terms “through-the-wall central air conditioner” and “through-the-wall central air conditioning heat pump” mean a central air conditioner or heat pump, respectively, that is designed to be installed to—

tally or partially within a fixed-size opening in an exterior wall, and—

- (I) is not weatherized;
- (II) is clearly and permanently marked for installation only through an exterior wall;
- (III) has a rated cooling capacity no greater than 30,000 Btu/hr;
- (IV) exchanges all of its outdoor air across a single surface of the equipment cabinet; and
- (V) has a combined outdoor air exchange area of less than 800 square inches (split systems) or less than 1,210 square inches (single packaged systems) as measured on the surface area described in subclause (IV).

(iii) REVISION.—The Secretary may revise the definitions contained in this subparagraph through publication of a final rule.

(B) SMALL-DUCT HIGH-VELOCITY SYSTEMS.—

(i) SEASONAL ENERGY EFFICIENCY RATIO.—The seasonal energy efficiency ratio for small-duct high-velocity systems shall be not less than—

- (I) 11.00 for products manufactured on or after January 23, 2006; and
- (II) 12.00 for products manufactured on or after January 1, 2015.

(ii) HEATING SEASONAL PERFORMANCE FACTOR.—The heating seasonal performance factor for small-duct high-velocity systems shall be not less than—

- (I) 6.8 for products manufactured on or after January 23, 2006; and
- (II) 7.2 for products manufactured on or after January 1, 2015.

(C) SUBSEQUENT RULEMAKINGS.—The Secretary shall conduct subsequent rulemakings for through-the-wall central air conditioners, through-the-wall central air conditioning heat pumps, and small duct, high velocity systems as part of any rulemaking under this section used to review or revise standards for other central air conditioners and heat pumps.

(e) STANDARDS FOR WATER HEATERS; POOL HEATERS; DIRECT HEATING EQUIPMENT.—(1) The energy factor of water heaters shall be not less than the following for products manufactured on or after January 1, 1990:

(A) Gas Water Heater:	.62 – (.0019 x Rated Storage Volume in gallons)
(B) Oil Water Heater:	.59 – (.0019 x Rated Storage Volume in gallons)
(C) Electric Water Heater:	.95 – (.00132 x Rated Storage Volume in gallons)

(2) The thermal efficiency of pool heaters manufactured on or after January 1, 1990, shall not be less than 78 percent.

(3) The efficiencies of gas direct heating equipment manufactured on or after January 1, 1990, shall be not less than the following:

Wall Fan type	Up to 42,000 Btu/hour .....	73% AFUE
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	Over 42,000 Btu/hour .....	74% AFUE
Gravity type	Up to 10,000 Btu/hour .....	59% AFUE
	Over 10,000 Btu/hour up to 12,000 Btu/hour .....	60% AFUE
	Over 12,000 Btu/hour up to 15,000 Btu/hour .....	61% AFUE
	Over 15,000 Btu/hour up to 19,000 Btu/hour .....	62% AFUE
	Over 19,000 Btu/hour up to 27,000 Btu/hour .....	63% AFUE
	Over 27,000 Btu/hour up to 46,000 Btu/hour .....	64% AFUE
	Over 46,000 Btu/hour .....	65% AFUE
Floor	Up to 37,000 Btu/hour .....	56% AFUE
	Over 37,000 Btu/hour .....	57% AFUE
Room	Up to 18,000 Btu/hour .....	57% AFUE
	Over 18,000 Btu/hour up to 20,000 Btu/hour .....	58% AFUE
	Over 20,000 Btu/hour up to 27,000 Btu/hour .....	63% AFUE
	Over 27,000 Btu/hour up to 46,000 Btu/hour .....	64% AFUE
	Over 46,000 Btu/hour .....	65% AFUE

(4)(A) The Secretary shall publish final rules no later than January 1, 1992, to determine whether the standards established by paragraph (1), (2), or (3) for water heaters, pool heaters, and direct heating equipment should be amended. Such rule shall provide that any amendment shall apply to products manufactured on or after January 1, 1995.

(B) The Secretary shall publish a final rule no later than January 1, 2000, to determine whether standards in effect for such products should be amended. Such rule shall provide that any such amendment shall apply to products manufactured on or after January 1, 2005.

(5) UNIFORM EFFICIENCY DESCRIPTOR FOR COVERED WATER HEATERS.—

(A) DEFINITIONS.—In this paragraph:

(i) COVERED WATER HEATER.—The term “covered water heater” means—

(I) a water heater; and

(II) a storage water heater, instantaneous water heater, and unfired hot water storage tank (as defined in section 340).

(ii) FINAL RULE.—The term “final rule” means the final rule published under this paragraph.

(B) PUBLICATION OF FINAL RULE.—Not later than 1 year after the date of enactment of this paragraph, the Secretary shall publish a final rule that establishes a uniform efficiency descriptor and accompanying test methods for covered water heaters.

(C) PURPOSE.—The purpose of the final rule shall be to replace with a uniform efficiency descriptor—

(i) the energy factor descriptor for water heaters established under this subsection; and

(ii) the thermal efficiency and standby loss descriptors for storage water heaters, instantaneous water heaters, and unfired water storage tanks established under section 342(a)(5).

(D) EFFECT OF FINAL RULE.—

(i) IN GENERAL.—Notwithstanding any other provision of this title, effective beginning on the effective date of the final rule, the efficiency standard for cov-

ered water heaters shall be denominated according to the efficiency descriptor established by the final rule.

(ii) EFFECTIVE DATE.—The final rule shall take effect 1 year after the date of publication of the final rule under subparagraph (B).

(E) CONVERSION FACTOR.—

(i) IN GENERAL.—The Secretary shall develop a mathematical conversion factor for converting the measurement of efficiency for covered water heaters from the test procedures in effect on the date of enactment of this paragraph to the new energy descriptor established under the final rule.

(ii) APPLICATION.—The conversion factor shall apply to models of covered water heaters affected by the final rule and tested prior to the effective date of the final rule.

(iii) EFFECT ON EFFICIENCY REQUIREMENTS.—The conversion factor shall not affect the minimum efficiency requirements for covered water heaters otherwise established under this title.

(iv) USE.—During the period described in clause (v), a manufacturer may apply the conversion factor established by the Secretary to rerate existing models of covered water heaters that are in existence prior to the effective date of the rule described in clause (v)(II) to comply with the new efficiency descriptor.

(v) PERIOD.—Clause (iv) shall apply during the period—

(I) beginning on the date of publication of the conversion factor in the Federal Register; and

(II) ending on the later of 1 year after the date of publication of the conversion factor, or December 31, 2015.

(F) EXCLUSIONS.—The final rule may exclude a specific category of covered water heaters from the uniform efficiency descriptor established under this paragraph if the Secretary determines that the category of water heaters—

(i) does not have a residential use and can be clearly described in the final rule; and

(ii) are effectively rated using the thermal efficiency and standby loss descriptors applied (as of the date of enactment of this paragraph) to the category under section 342(a)(5).

(G) OPTIONS.—The descriptor set by the final rule may be—

(i) a revised version of the energy factor descriptor in use as of the date of enactment of this paragraph;

(ii) the thermal efficiency and standby loss descriptors in use as of that date;

(iii) a revised version of the thermal efficiency and standby loss descriptors;

(iv) a hybrid of descriptors; or

(v) a new approach.

(H) APPLICATION.—The efficiency descriptor and accompanying test method established under the final rule shall

apply, to the maximum extent practicable, to all water heating technologies in use as of the date of enactment of this paragraph and to future water heating technologies.

(I) PARTICIPATION.—The Secretary shall invite interested stakeholders to participate in the rulemaking process used to establish the final rule.

(J) TESTING OF ALTERNATIVE DESCRIPTORS.—In establishing the final rule, the Secretary shall contract with the National Institute of Standards and Technology, as necessary, to conduct testing and simulation of alternative descriptors identified for consideration.

(K) EXISTING COVERED WATER HEATERS.—A covered water heater shall be considered to comply with the final rule on and after the effective date of the final rule and with any revised labeling requirements established by the Federal Trade Commission to carry out the final rule if the covered water heater—

(i) was manufactured prior to the effective date of the final rule; and

(ii) complied with the efficiency standards and labeling requirements in effect prior to the final rule.

(6) ADDITIONAL STANDARDS FOR GRID-ENABLED WATER HEATERS.—

(A) DEFINITIONS.—*In this paragraph:*

(i) ACTIVATION LOCK.—*The term “activation lock” means a control mechanism (either a physical device directly on the water heater or a control system integrated into the water heater) that is locked by default and contains a physical, software, or digital communication that must be activated with an activation key to enable the product to operate at its designed specifications and capabilities and without which activation the product will provide not greater than 50 percent of the rated first hour delivery of hot water certified by the manufacturer.*

(ii) GRID-ENABLED WATER HEATER.—*The term “grid-enabled water heater” means an electric resistance water heater that—*

*(I) has a rated storage tank volume of more than 75 gallons;*

*(II) is manufactured on or after April 16, 2015;*

*(III) has—*

*(aa) an energy factor of not less than 1.061 minus the product obtained by multiplying—*

*(AA) the rated storage volume of the tank, expressed in gallons; and*

*(BB) 0.00168; or*

*(bb) an equivalent alternative standard prescribed by the Secretary and developed pursuant to paragraph (5)(E);*

*(IV) is equipped at the point of manufacture with an activation lock; and*

*(V) bears a permanent label applied by the manufacturer that—*

(aa) is made of material not adversely affected by water;

(bb) is attached by means of non-water-soluble adhesive; and

(cc) advises purchasers and end-users of the intended and appropriate use of the product with the following notice printed in 16.5 point Arial Narrow Bold font:

**“IMPORTANT INFORMATION:** This water heater is intended only for use as part of an electric thermal storage or demand response program. It will not provide adequate hot water unless enrolled in such a program and activated by your utility company or another program operator. Confirm the availability of a program in your local area before purchasing or installing this product.”

**(B) REQUIREMENT.**—The manufacturer or private labeler shall provide the activation key for a grid-enabled water heater only to a utility or other company that operates an electric thermal storage or demand response program that uses such a grid-enabled water heater.

**(C) REPORTS.**—

(i) **MANUFACTURERS.**—The Secretary shall require each manufacturer of grid-enabled water heaters to report to the Secretary annually the quantity of grid-enabled water heaters that the manufacturer ships each year.

(ii) **OPERATORS.**—The Secretary shall require utilities and other demand response and thermal storage program operators to report annually the quantity of grid-enabled water heaters activated for their programs using forms of the Energy Information Agency or using such other mechanism that the Secretary determines appropriate after an opportunity for notice and comment.

(iii) **CONFIDENTIALITY REQUIREMENTS.**—The Secretary shall treat shipment data reported by manufacturers as confidential business information.

**(D) PUBLICATION OF INFORMATION.**—

(i) **IN GENERAL.**—In 2017 and 2019, the Secretary shall publish an analysis of the data collected under subparagraph (C) to assess the extent to which shipped products are put into use in demand response and thermal storage programs.

(ii) **PREVENTION OF PRODUCT DIVERSION.**—If the Secretary determines that sales of grid-enabled water heaters exceed by 15 percent or greater the quantity of such products activated for use in demand response and thermal storage programs annually, the Secretary shall, after opportunity for notice and comment, establish procedures to prevent product diversion for non-program purposes.

**(E) COMPLIANCE.**—

(i) **IN GENERAL.**—Subparagraphs (A) through (D) shall remain in effect until the Secretary determines under this section that—

(I) grid-enabled water heaters do not require a separate efficiency requirement; or

(II) sales of grid-enabled water heaters exceed by 15 percent or greater the quantity of such products activated for use in demand response and thermal storage programs annually and procedures to prevent product diversion for non-program purposes would not be adequate to prevent such product diversion.

(ii) *EFFECTIVE DATE.*—If the Secretary exercises the authority described in clause (i) or amends the efficiency requirement for grid-enabled water heaters, that action will take effect on the date described in subsection (m)(4)(A)(ii).

(iii) *CONSIDERATION.*—In carrying out this section with respect to electric water heaters, the Secretary shall consider the impact on thermal storage and demand response programs, including any impact on energy savings, electric bills, peak load reduction, electric reliability, integration of renewable resources, and the environment.

(iv) *REQUIREMENTS.*—In carrying out this paragraph, the Secretary shall require that grid-enabled water heaters be equipped with communication capability to enable the grid-enabled water heaters to participate in ancillary services programs if the Secretary determines that the technology is available, practical, and cost-effective.

(f) **STANDARDS FOR FURNACES AND BOILERS.**—(1) Furnaces (other than furnaces designed solely for installation in mobile homes) manufactured on or after January 1, 1992, shall have an annual fuel utilization efficiency of not less than 78 percent, except that—

(A) boilers (other than gas steam boilers) shall have an annual fuel utilization efficiency of not less than 80 percent and gas steam boilers shall have an annual fuel utilization efficiency of not less than 75 percent; and

(B) the Secretary shall prescribe a final rule not later than January 1, 1989, establishing an energy conservation standard—

(i) which is for furnaces (other than furnaces designed solely for installation in mobile homes) having an input of less than 45,000 Btu per hour and manufactured on or after January 1, 1992;

(ii) which provides that the annual fuel utilization efficiency of such furnaces shall be a specific percent which is not less than 71 percent and not more than 78 percent; and

(iii) which the Secretary determines is not likely to result in a significant shift from gas heating to electric resistance heating with respect to either residential construction or furnace replacement.

(2) Furnaces which are designed solely for installation in mobile homes and which are manufactured on or after September 1, 1990, shall have an annual fuel utilization efficiency of not less than 75 percent.



(3) BOILERS.—

(A) IN GENERAL.—Subject to subparagraphs (B) and (C), boilers manufactured on or after September 1, 2012, shall meet the following requirements:

Boiler Type	Minimum Annual Fuel Utilization Efficiency	Design Requirements
Gas Hot Water .....	82%	No Constant Burning Pilot, Automatic Means for Adjusting Water Temperature
Gas Steam .....	80%	No Constant Burning Pilot
Oil Hot Water .....	84%	Automatic Means for Adjusting Temperature
Oil Steam .....	82%	None
Electric Hot Water .....	None	Automatic Means for Adjusting Temperature
Electric Steam .....	None	None

(B) AUTOMATIC MEANS FOR ADJUSTING WATER TEMPERATURE.—

(i) IN GENERAL.—The manufacturer shall equip each gas, oil, and electric hot water boiler (other than a boiler equipped with a tankless domestic water heating coil) with automatic means for adjusting the temperature of the water supplied by the boiler to ensure that an incremental change in inferred heat load produces a corresponding incremental change in the temperature of water supplied.

(ii) SINGLE INPUT RATE.—For a boiler that fires at 1 input rate, the requirements of this subparagraph may be satisfied by providing an automatic means that allows the burner or heating element to fire only when the means has determined that the inferred heat load cannot be met by the residual heat of the water in the system.

(iii) NO INFERRED HEAT LOAD.—When there is no inferred heat load with respect to a hot water boiler, the automatic means described in clauses (i) and (ii) shall limit the temperature of the water in the boiler to not more than 140 degrees Fahrenheit.

(iv) OPERATION.—A boiler described in clause (i) or (ii) shall be operable only when the automatic means described in clauses (i), (ii), and (iii) is installed.

(C) EXCEPTION.—A boiler that is manufactured to operate without any need for electricity or any electric connection, electric gauges, electric pumps, electric wires, or electric devices shall not be required to meet the requirements of this paragraph.

(4)(A) The Secretary shall publish a final rule no later than January 1, 1992, to determine whether the standards established by

paragraph (2) for mobile home furnaces should be amended. Such rule shall provide that any amendment shall apply to products manufactured on or after January 1, 1994.

(B) The Secretary shall publish a final rule no later than January 1, 1994, to determine whether the standards established by this subsection for furnaces (including mobile home furnaces) should be amended. Such rule shall provide that any amendment shall apply to products manufactured on or after January 1, 2002.

(C) After January 1, 1997, and before January 1, 2007, the Secretary shall publish a final rule to determine whether standards in effect for such products should be amended. Such rule shall contain such amendment, if any, and provide that any amendment shall apply to products manufactured on or after January 1, 2012.

(D) Notwithstanding any other provision of this Act, if the requirements of subsection (o) are met, not later than December 31, 2013, the Secretary shall consider and prescribe energy conservation standards or energy use standards for electricity used for purposes of circulating air through duct work.

(g) STANDARDS FOR DISHWASHERS; CLOTHES WASHERS; CLOTHES DRYERS, FLUORESCENT LAMP BALLASTS.—(1) Dishwashers manufactured on or after January 1, 1988, shall be equipped with an option to dry without heat.

(2) All rinse cycles of clothes washers shall include an unheated water option, but may have a heated water rinse option, for products manufactured on or after January 1, 1988.

(3) Gas clothes dryers shall not be equipped with a constant burning pilot for products manufactured on or after January 1, 1988.

(4)(A) The Secretary shall publish final rules no later than January 1, 1990, to determine if the standards established under this subsection for products described in paragraphs (1), (2), and (3) should be amended. Such rules shall provide that any amendment shall apply to products the manufacture of which is completed on or after January 1, 1993.

(B) After January 1, 1990, the Secretary shall publish a final rule no later than five years after the date of publication of the previous final rule. The Secretary shall determine in such rule whether to amend the standards in effect for such products.

(C) Any such amendment shall apply to products manufactured after a date which is five years after—

(i) the effective date of the previous amendment; or

(ii) if the previous final rule did not amend the standard, the earliest date by which a previous amendment could have been in effect;

except that in no case may any amended standard apply to products manufactured within 3 years after publication of the final rule establishing such standard.

(5) Except as provided in paragraph (6), each fluorescent lamp ballast—

(A)(i) manufactured on or after January 1, 1990;

(ii) sold by the manufacturer on or after April 1, 1990; or

(iii) incorporated into a luminaire by a luminaire manufacturer on or after April 1, 1991; and

(B) designed—

- (i) to operate at nominal input voltages of 120 or 277 volts;
  - (ii) to operate with an input current frequency of 60 Hertz; and
  - (iii) for use in connection with an F40T12, F96T12, or F96T12HO lamps;
- shall have a power factor of 0.90 or greater and shall have a ballast efficacy factor not less than the following:

Application for Operation of	Ballast Input Voltage	Total Nominal Lamp Watts	Ballast Efficacy Factor
one F40T12 lamp	120	40	1.805
	277	40	1.805
two F40T12 lamps	120	80	1.060
	277	80	1.050
two F96T12 lamps	120	150	0.570
	277	150	0.570
two F96T12HO lamps	120	220	0.390
	277	220	0.390

(6) The standards described in paragraph (5) do not apply to (A) a ballast which is designed for dimming or for use in ambient temperatures of 0° F or less, or (B) a ballast which has a power factor of less than 0.90 and is designed and labeled for use only in residential building applications.

(7)(A) The Secretary shall publish a final rule no later than January 1, 1992, to determine if the standards established under paragraph (5) should be amended, including whether such standards should be amended so that they would be applicable to ballasts described in paragraph (6) and other fluorescent lamp ballasts. Such rule shall contain such amendment, if any, and provide that the amendment shall apply to products manufactured on or after January 1, 1995.

(B) After January 1, 1992, the Secretary shall publish a final rule no later than five years after the date of publication of a previous final rule. The Secretary shall determine in such rule whether to amend the standards in effect for fluorescent lamp ballasts, including whether such standards should be amended so that they would be applicable to additional fluorescent lamp ballasts.

(C) Any amendment prescribed under subparagraph (B) shall apply to products manufactured after a date which is five years after—

- (i) the effective date of the previous amendment; or
- (ii) if the previous final rule did not amend the standards, the earliest date by which a previous amendment could have been effective;

except that in no case may any amended standard apply to products manufactured within three years after publication of the final rule establishing such amended standard.

(8)(A) Each fluorescent lamp ballast (other than replacement ballasts or ballasts described in subparagraph (C))—

- (i) (I) manufactured on or after July 1, 2009;
- (II) sold by the manufacturer on or after October 1, 2009; or
- (III) incorporated into a luminaire by a luminaire manufacturer on or after July 1, 2010; and

(ii) designed—

(I) to operate at nominal input voltages of 120 or 277 volts;

(II) to operate with an input current frequency of 60 Hertz; and

(III) for use in connection with F34T12 lamps, F96T12/ES lamps, or F96T12HO/ES lamps; shall have a power factor of 0.90 or greater and shall have a ballast efficacy factor of not less than the following:

<b>Application for operation of</b>	<b>Ballast input voltage</b>	<b>Total nominal lamp watts</b>	<b>Ballast efficacy factor</b>
One F34T12 lamp	120/277	34	2.61
Two F34T12 lamps	120/277	68	1.35
Two F96T12/ES lamps	120/277	120	0.77
Two F96T12HO/ES lamps	120/277	190	0.42.

(B) The standards described in subparagraph (A) shall apply to all ballasts covered by subparagraph (A)(ii) that are manufactured on or after July 1, 2010, or sold by the manufacturer on or after October 1, 2010.

(C) The standards described in subparagraph (A) do not apply to—

- (i) a ballast that is designed for dimming to 50 percent or less of the maximum output of the ballast;
- (ii) a ballast that is designed for use with 2 F96T12HO lamps at ambient temperatures of negative 20°F or less and for use in an outdoor sign; or
- (iii) a ballast that has a power factor of less than 0.90 and is designed and labeled for use only in residential applications.

(9) RESIDENTIAL CLOTHES WASHERS MANUFACTURED ON OR AFTER JANUARY 1, 2011.—

(A) IN GENERAL.—A top-loading or front-loading standard-size residential clothes washer manufactured on or after January 1, 2011, shall have—

- (i) a Modified Energy Factor of at least 1.26; and
- (ii) a water factor of not more than 9.5.

(B) AMENDMENT OF STANDARDS.—

(i) IN GENERAL.—Not later than December 31, 2011, the Secretary shall publish a final rule determining whether to amend the standards in effect for clothes washers manufactured on or after January 1, 2015.

(ii) AMENDED STANDARDS.—The final rule shall contain any amended standards.

(10) RESIDENTIAL DISHWASHERS MANUFACTURED ON OR AFTER JANUARY 1, 2010.—

(A) IN GENERAL.—A dishwasher manufactured on or after January 1, 2010, shall—

- (i) for a standard size dishwasher not exceed 355 kWh/year and 6.5 gallons per cycle; and
- (ii) for a compact size dishwasher not exceed 260 kWh/year and 4.5 gallons per cycle.

(B) AMENDMENT OF STANDARDS.—

(i) IN GENERAL.—Not later than January 1, 2015, the Secretary shall publish a final rule determining whether to amend the standards for dishwashers manufactured on or after January 1, 2018.

(ii) AMENDED STANDARDS.—The final rule shall contain any amended standards.

(h) STANDARDS FOR KITCHEN RANGES AND OVENS.—(1) Gas kitchen ranges and ovens having an electrical supply cord shall not be equipped with a constant burning pilot for products manufactured on or after January 1, 1990.

(2)(A) The Secretary shall publish a final rule no later than January 1, 1992, to determine if the standards established for kitchen ranges and ovens in this subsection should be amended. Such rule shall contain such amendment, if any, and provide that the amendment shall apply to products manufactured on or after January 1, 1995.

(B) The Secretary shall publish a final rule no later than January 1, 1997, to determine whether standards in effect for such

products should be amended. Such rule shall apply to products manufactured on or after January 1, 2000.

(i) GENERAL SERVICE FLUORESCENT LAMPS, GENERAL SERVICE INCANDESCENT LAMPS, INTERMEDIATE BASE INCANDESCENT LAMPS, CANDELABRA BASE INCANDESCENT LAMPS, AND INCANDESCENT REFLECTOR LAMPS.—

(1) STANDARDS.—

(A) DEFINITION OF EFFECTIVE DATE.—In this paragraph (other than subparagraph (D)), the term “effective date” means, with respect to each type of lamp specified in a table contained in subparagraph (B), the last day of the period of months corresponding to that type of lamp (as specified in the table) that follows October 24, 1992.

(B) MINIMUM STANDARDS.—Each of the following general service fluorescent lamps and incandescent reflector lamps manufactured after the effective date specified in the tables contained in this paragraph shall meet or exceed the following lamp efficacy and CRI standards:

FLUORESCENT LAMPS

Lamp Type	Nominal Lamp Wattage	Minimum CRI	Minimum Average Lamp Efficacy (LPW)	Effective Date (Period of Months)
4-foot medium bi-pin ....	>35 W	69	75.0	36
	≤35 W	45	75.0	36
2-foot U-shaped .....	>35 W	69	68.0	36
	≤35 W	45	64.0	36
8-foot slimline .....	65 W	69	80.0	18
	≤65 W	45	80.0	18
8-foot high output .....	>100 W	69	80.0	18
	≤100 W	45	80.0	18

INCANDESCENT REFLECTOR LAMPS

Nominal Lamp Wattage	Minimum Average Lamp Efficacy (LPW)	Effective Date (Period of Months)
40–50 .....	10.5	36
51–66 .....	11.0	36
67–85 .....	12.5	36
86–115 .....	14.0	36
116–155 .....	14.5	36
156–205 .....	15.0	36

(C) EXEMPTIONS.—The standards specified in subparagraph (B) shall not apply to the following types of incandescent reflector lamps:

(i) Lamps rated at 50 watts or less that are ER30, BR30, BR40, or ER40 lamps.

(ii) Lamps rated at 65 watts that are BR30, BR40, or ER40 lamps.

(iii) R20 incandescent reflector lamps rated 45 watts or less.

(D) EFFECTIVE DATES.—

(i) ER, BR, AND BPAR LAMPS.—The standards specified in subparagraph (B) shall apply with respect to ER incandescent reflector lamps, BR incandescent reflector lamps, BPAR incandescent reflector lamps, and similar bulb shapes on and after January 1, 2008.

(ii) LAMPS BETWEEN 2.25–2.75 INCHES IN DIAMETER.—The standards specified in subparagraph (B) shall apply with respect to incandescent reflector lamps with a diameter of more than 2.25 inches, but not more than 2.75 inches, on and after the later of January 1, 2008, or the date that is 180 days after the date of enactment of the Energy Independence and Security Act of 2007.

(2) Notwithstanding section 332(a)(5) and section 332(b), it shall not be unlawful for a manufacturer to sell a lamp which is in compliance with the law at the time such lamp was manufactured.

(3) Not less than 36 months after the date of the enactment of this subsection, the Secretary shall initiate a rulemaking procedure and shall publish a final rule not later than the end of the 54-month period beginning on the date of the enactment of this subsection to determine if the standards established under paragraph (1) should be amended. Such rule shall contain such amendment, if any, and provide that the amendment shall apply to products manufactured on or after the 36-month period beginning on the date such final rule is published.

(4) Not less than eight years after the date of the enactment of this subsection, the Secretary shall initiate a rulemaking procedure and shall publish a final rule not later than nine years and six months after the date of the enactment of this subsection to determine if the standards in effect for fluorescent lamps and incandescent lamps should be amended. Such rule shall contain such amendment, if any, and provide that the amendment shall apply to products manufactured on or after the 36-month period beginning on the date such final rule is published.

(5) Not later than the end of the 24-month period beginning on the date labeling requirements under section 324(a)(2)(C) become effective, the Secretary shall initiate a rulemaking procedure to determine if the standards in effect for fluorescent lamps and incandescent lamps should be amended so that they would be applicable to additional general service fluorescent and shall publish, not later than 18 months after initiating such rulemaking, a final rule including such amended standards, if any. Such rule shall provide that the amendment shall apply to products manufactured after a date which is 36 months after the date such rule is published.

(6) STANDARDS FOR GENERAL SERVICE LAMPS.—

(A) RULEMAKING BEFORE JANUARY 1, 2014.—

(i) IN GENERAL.—Not later than January 1, 2014, the Secretary shall initiate a rulemaking procedure to determine whether—

(I) standards in effect for general service lamps should be amended to establish more stringent standards than the standards specified in paragraph (1)(A); and

(II) the exemptions for certain incandescent lamps should be maintained or discontinued



based, in part, on exempted lamp sales collected by the Secretary from manufacturers.

(ii) SCOPE.—The rulemaking—

(I) shall not be limited to incandescent lamp technologies; and

(II) shall include consideration of a minimum standard of 45 lumens per watt for general service lamps.

(iii) AMENDED STANDARDS.—If the Secretary determines that the standards in effect for general service incandescent lamps should be amended, the Secretary shall publish a final rule not later than January 1, 2017, with an effective date that is not earlier than 3 years after the date on which the final rule is published.

(iv) PHASED-IN EFFECTIVE DATES.—The Secretary shall consider phased-in effective dates under this subparagraph after considering—

(I) the impact of any amendment on manufacturers, retiring and repurposing existing equipment, stranded investments, labor contracts, workers, and raw materials; and

(II) the time needed to work with retailers and lighting designers to revise sales and marketing strategies.

(v) BACKSTOP REQUIREMENT.—If the Secretary fails to complete a rulemaking in accordance with clauses (i) through (iv) or if the final rule does not produce savings that are greater than or equal to the savings from a minimum efficacy standard of 45 lumens per watt, effective beginning January 1, 2020, the Secretary shall prohibit the sale of any general service lamp that does not meet a minimum efficacy standard of 45 lumens per watt.

(vi) STATE PREEMPTION.—Neither section 327(b) nor any other provision of law shall preclude California or Nevada from adopting, effective beginning on or after January 1, 2018—

(I) a final rule adopted by the Secretary in accordance with clauses (i) through (iv);

(II) if a final rule described in subclause (I) has not been adopted, the backstop requirement under clause (v); or

(III) in the case of California, if a final rule described in subclause (I) has not been adopted, any California regulations relating to these covered products adopted pursuant to State statute in effect as of the date of enactment of the Energy Independence and Security Act of 2007.

(B) RULEMAKING BEFORE JANUARY 1, 2020.—

(i) IN GENERAL.—Not later than January 1, 2020, the Secretary shall initiate a rulemaking procedure to determine whether—

(I) standards in effect for general service incandescent lamps should be amended to reflect lumen

ranges with more stringent maximum wattage than the standards specified in paragraph (1)(A); and

(II) the exemptions for certain incandescent lamps should be maintained or discontinued based, in part, on exempted lamp sales data collected by the Secretary from manufacturers.

(ii) SCOPE.—The rulemaking shall not be limited to incandescent lamp technologies.

(iii) AMENDED STANDARDS.—If the Secretary determines that the standards in effect for general service incandescent lamps should be amended, the Secretary shall publish a final rule not later than January 1, 2022, with an effective date that is not earlier than 3 years after the date on which the final rule is published.

(iv) PHASED-IN EFFECTIVE DATES.—The Secretary shall consider phased-in effective dates under this subparagraph after considering—

(I) the impact of any amendment on manufacturers, retiring and repurposing existing equipment, stranded investments, labor contracts, workers, and raw materials; and

(II) the time needed to work with retailers and lighting designers to revise sales and marketing strategies.

(7)(A) With respect to any lamp to which standards are applicable under this subsection or any lamp specified in section 346, the Secretary shall inform any Federal entity proposing actions which would adversely impact the energy consumption or energy efficiency of such lamp of the energy conservation consequences of such action. It shall be the responsibility of such Federal entity to carefully consider the Secretary's comments.

(B) Notwithstanding section 325(n)(1), the Secretary shall not be prohibited from amending any standard, by rule, to permit increased energy use or to decrease the minimum required energy efficiency of any lamp to which standards are applicable under this subsection if such action is warranted as a result of other Federal action (including restrictions on materials or processes) which would have the effect of either increasing the energy use or decreasing the energy efficiency of such product.

(8) Not later than the date on which standards established pursuant to this subsection become effective, or, with respect to high-intensity discharge lamps covered under section 346, the effective date of standards established pursuant to such section, each manufacturer of a product to which such standards are applicable shall file with the Secretary a laboratory report certifying compliance with the applicable standard for each lamp type. Such report shall include the lumen output and wattage consumption for each lamp type as an average of measurements taken over the preceding 12-month period. With respect to lamp types which are not manufactured during the 12-month period preceding the date such standards become effective, such report shall be filed with the Secretary not later than the date which is 12 months after the date manufacturing is commenced and shall include the lumen output and watt-

age consumption for each such lamp type as an average of measurements taken during such 12-month period.

(j) STANDARDS FOR SHOWERHEADS AND FAUCETS.—(1) The maximum water use allowed for any showerhead manufactured after January 1, 1994, is 2.5 gallons per minute when measured at a flowing water pressure of 80 pounds per square inch. Any such showerhead shall also meet the requirements of ASME/ANSI A112.18.1M–1989, 7.4.3(a).

(2) The maximum water use allowed for any of the following faucets manufactured after January 1, 1994, when measured at a flowing water pressure of 80 pounds per square inch, is as follows:

Lavatory faucets .....	2.5 gallons per minute
Lavatory replacement aerators .....	2.5 gallons per minute
Kitchen faucets .....	2.5 gallons per minute
Kitchen replacement aerators .....	2.5 gallons per minute
Metering faucets .....	0.25 gallons per cycle

(3)(A) If the maximum flow rate requirements or the design requirements of ASME/ANSI Standard A112.18.1M–1989 are amended to improve the efficiency of water use of any type or class of showerhead or faucet and are approved by ANSI, the Secretary shall, not later than 12 months after the date of such amendment, publish a final rule establishing an amended uniform national standard for that product at the level specified in the amended ASME/ANSI Standard A112.18.1M and providing that such standard shall apply to products manufactured after a date which is 12 months after the publication of such rule, unless the Secretary determines, by rule published in the Federal Register, that adoption of a uniform national standard at the level specified in such amended ASME/ANSI Standard A112.18.1M—

- (i) is not technologically feasible and economically justified under subsection (o);
- (ii) is not consistent with the maintenance of public health and safety; or
- (iii) is not consistent with the purposes of this Act.

(B)(i) As part of the rulemaking conducted under subparagraph (A), the Secretary shall also determine if adoption of a uniform national standard for any type or class of showerhead or faucet more stringent than such amended ASME/ANSI Standard A112.18.1M—

- (I) would result in additional conservation of energy or water;
- (II) would be technologically feasible and economically justified under subsection (o); and
- (III) would be consistent with the maintenance of public health and safety.

(ii) If the Secretary makes an affirmative determination under clause (i), the final rule published under subparagraph (A) shall waive the provisions of section 327(c) with respect to any State regulation concerning the water use or water efficiency of such type or class of showerhead or faucet if such State regulation—

- (I) is more stringent than amended ASME/ANSI Standard A112.18.1M for such type or class of showerhead or faucet and the standard in effect for such product on the day before the date on which a final rule is published under subparagraph (A); and

(II) is applicable to any sale or installation of all products in such type or class of showerhead or faucet.

(C) If, after any period of five consecutive years, the maximum flow rate requirements of the ASME/ANSI standard for showerheads are not amended to improve the efficiency of water use of such products, or after any such period such requirements for faucets are not amended to improve the efficiency of water use of such products, the Secretary shall, not later than six months after the end of such five-year period, publish a final rule waiving the provisions of section 327(c) with respect to any State regulation concerning the water use or water efficiency of such type or class of showerhead or faucet if such State regulation—

- (i) is more stringent than the standards in effect for such type or class of showerhead or faucet; and
- (ii) is applicable to any sale or installation of all products in such type or class of showerhead or faucet.

(k) STANDARDS FOR WATER CLOSETS AND URINALS.—(1)(A) Except as provided in subparagraph (B), the maximum water use allowed in gallons per flush for any of the following water closets manufactured after January 1, 1994, is the following:

Gravity tank-type toilets .....	1.6 gpf.
Flushometer tank toilets .....	1.6 gpf.
Electromechanical hydraulic toilets .....	1.6 gpf.
Blowout toilets .....	3.5 gpf.

(B) The maximum water use allowed for any gravity tank-type white 2-piece toilet which bears an adhesive label conspicuous upon installation consisting of the words “Commercial Use Only” manufactured after January 1, 1994, and before January 1, 1997, is 3.5 gallons per flush.

(C) The maximum water use allowed for flushometer valve toilets, other than blowout toilets, manufactured after January 1, 1997, is 1.6 gallons per flush.

(2) The maximum water use allowed for any urinal manufactured after January 1, 1994, is 1.0 gallon per flush.

(3)(A) If the maximum flush volume requirements of ASME Standard A112.19.6–1990 are amended to improve the efficiency of water use of any low consumption water closet or low consumption urinal and are approved by ANSI, the Secretary shall, not later than 12 months after the date of such amendment, publish a final rule establishing an amended uniform national standard for that product at the level specified in amended ASME/ANSI Standard A112.19.6 and providing that such standard shall apply to products manufactured after a date which is one year after the publication of such rule, unless the Secretary determines, by rule published in the Federal Register, that adoption of a uniform national standard at the level specified in such amended ASME/ANSI Standard A112.19.6—

- (i) is not technologically feasible and economically justified under subsection (o);
- (ii) is not consistent with the maintenance of public health and safety; or
- (iii) is not consistent with the purposes of this Act.

(B)(i) As part of the rulemaking conducted under subparagraph (A), the Secretary shall also determine if adoption of a uniform national standard for any type or class of low consumption water clos-

et or low consumption urinal more stringent than such amended ASME/ANSI Standard A112.19.6 for such product—

(I) would result in additional conservation of energy or water;

(II) would be technologically feasible and economically justified under subsection (o); and

(III) would be consistent with the maintenance of public health and safety.

(ii) If the Secretary makes an affirmative determination under clause (i), the final rule published under subparagraph (A) shall waive the provisions of section 327(c) with respect to any State regulation concerning the water use or water efficiency of such type or class of low consumption water closet or low consumption urinal if such State regulation—

(I) is more stringent than amended ASME/ANSI Standard A112.19.6 for such type or class of low consumption water closet or low consumption urinal and the standard in effect for such product on the day before the date on which a final rule is published under subparagraph (A); and

(II) is applicable to any sale or installation of all products in such type or class of low consumption water closet or low consumption urinal.

(C) If, after any period of five consecutive years, the maximum flush volume requirements of the ASME/ANSI standard for low consumption water closets are not amended to improve the efficiency of water use of such products, or after any such period such requirements for low consumption urinals are not amended to improve the efficiency of water use of such products, the Secretary shall, not later than six months after the end of such five-year period, publish a final rule waiving the provisions of section 327(c) with respect to any State regulation concerning the water use or water efficiency of such type or class of water closet or urinal if such State regulation—

(i) is more stringent than the standards in effect for such type or class of water closet or urinal; and

(ii) is applicable to any sale or installation of all products in such type or class of water closet or urinal.

(1) STANDARDS FOR OTHER COVERED PRODUCTS.—(1) The Secretary may prescribe an energy conservation standard for any type (or class) of covered products of a type specified in paragraph (19) of section 322(a) if the requirements of subsections (o) and (p) are met and the Secretary determines that—

(A) the average per household energy use within the United States by products of such type (or class) exceeded 150 kilowatt-hours (or its Btu equivalent) for any 12-month period ending before such determination;

(B) the aggregate household energy use within the United States by products of such type (or class) exceeded 4,200,000,000 kilowatt-hours (or its Btu equivalent) for any such 12-month period;

(C) substantial improvement in the energy efficiency of products of such type (or class) is technologically feasible; and

(D) the application of a labeling rule under section 324 to such type (or class) is not likely to be sufficient to induce manufacturers to produce, and consumers and other persons to

purchase, covered products of such type (or class) which achieve the maximum energy efficiency which is technologically feasible and economically justified.

(2) Any new or amended standard for covered products of a type specified in paragraph (19) of section 322(a) shall not apply to products manufactured within five years after the publication of a final rule establishing such standard.

(3) The Secretary may, in accordance with subsections (o) and (p), prescribe an energy conservation standard for television sets. Any such standard may not become effective with respect to products manufactured before January 1, 1992.

(4) ENERGY EFFICIENCY STANDARDS FOR CERTAIN LAMPS.—

(A) IN GENERAL.—The Secretary shall prescribe an energy efficiency standard for rough service lamps, vibration service lamps, 3-way incandescent lamps, 2,601–3,300 lumen general service incandescent lamps, and shatter-resistant lamps in accordance with this paragraph.

(B) BENCHMARKS.—Not later than 1 year after the date of enactment of this paragraph, the Secretary, in consultation with the National Electrical Manufacturers Association, shall—

(i) collect actual data for United States unit sales for each of calendar years 1990 through 2006 for each of the 5 types of lamps described in subparagraph (A) to determine the historical growth rate of the type of lamp; and

(ii) construct a model for each type of lamp based on coincident economic indicators that closely match the historical annual growth rate of the type of lamp to provide a neutral comparison benchmark to model future unit sales after calendar year 2006.

(C) ACTUAL SALES DATA.—

(i) IN GENERAL.—Effective for each of calendar years 2010 through 2025, the Secretary, in consultation with the National Electrical Manufacturers Association, shall—

(I) collect actual United States unit sales data for each of 5 types of lamps described in subparagraph (A); and

(II) not later than 90 days after the end of each calendar year, compare the lamp sales in that year with the sales predicted by the comparison benchmark for each of the 5 types of lamps described in subparagraph (A).

(ii) CONTINUATION OF TRACKING.—

(I) DETERMINATION.—Not later than January 1, 2023, the Secretary shall determine if actual sales data should be tracked for the lamp types described in subparagraph (A) after calendar year 2025.

(II) CONTINUATION.—If the Secretary finds that the market share of a lamp type described in subparagraph (A) could significantly erode the market share for general service lamps, the Secretary

shall continue to track the actual sales data for the lamp type.

(D) ROUGH SERVICE LAMPS.—

(i) IN GENERAL.—Effective beginning with the first year that the reported annual sales rate for rough service lamps demonstrates actual unit sales of rough service lamps that achieve levels that are at least 100 percent higher than modeled unit sales for that same year, the Secretary shall—

(I) not later than 90 days after the end of the previous calendar year, issue a finding that the index has been exceeded; and

(II) not later than the date that is 1 year after the end of the previous calendar year, complete an accelerated rulemaking to establish an energy conservation standard for rough service lamps.

(ii) BACKSTOP REQUIREMENT.—If the Secretary fails to complete an accelerated rulemaking in accordance with clause (i)(II), effective beginning 1 year after the date of the issuance of the finding under clause (i)(I), the Secretary shall require rough service lamps to—

(I) have a shatter-proof coating or equivalent technology that is compliant with NSF/ANSI 51 and is designed to contain the glass if the glass envelope of the lamp is broken and to provide effective containment over the life of the lamp;

(II) have a maximum 40-watt limitation; and

(III) be sold at retail only in a package containing 1 lamp.

(E) VIBRATION SERVICE LAMPS.—

(i) IN GENERAL.—Effective beginning with the first year that the reported annual sales rate for vibration service lamps demonstrates actual unit sales of vibration service lamps that achieve levels that are at least 100 percent higher than modeled unit sales for that same year, the Secretary shall—

(I) not later than 90 days after the end of the previous calendar year, issue a finding that the index has been exceeded; and

(II) not later than the date that is 1 year after the end of the previous calendar year, complete an accelerated rulemaking to establish an energy conservation standard for vibration service lamps.

(ii) BACKSTOP REQUIREMENT.—If the Secretary fails to complete an accelerated rulemaking in accordance with clause (i)(II), effective beginning 1 year after the date of the issuance of the finding under clause (i)(I), the Secretary shall require vibration service lamps to—

(I) have a maximum 40-watt limitation; and

(II) be sold at retail only in a package containing 1 lamp.

(F) 3-WAY INCANDESCENT LAMPS.—

(i) IN GENERAL.—Effective beginning with the first year that the reported annual sales rate for 3-way in-

candescent lamps demonstrates actual unit sales of 3-way incandescent lamps that achieve levels that are at least 100 percent higher than modeled unit sales for that same year, the Secretary shall—

(I) not later than 90 days after the end of the previous calendar year, issue a finding that the index has been exceeded; and

(II) not later than the date that is 1 year after the end of the previous calendar year, complete an accelerated rulemaking to establish an energy conservation standard for 3-way incandescent lamps.

(ii) BACKSTOP REQUIREMENT.—If the Secretary fails to complete an accelerated rulemaking in accordance with clause (i)(II), effective beginning 1 year after the date of issuance of the finding under clause (i)(I), the Secretary shall require that—

(I) each filament in a 3-way incandescent lamp meet the new maximum wattage requirements for the respective lumen range established under subsection (i)(1)(A); and

(II) 3-way lamps be sold at retail only in a package containing 1 lamp.

(G) 2,601–3,300 LUMEN GENERAL SERVICE INCANDESCENT LAMPS.—Effective beginning with the first year that the reported annual sales rate demonstrates actual unit sales of 2,601–3,300 lumen general service incandescent lamps in the lumen range of 2,601 through 3,300 lumens (or, in the case of a modified spectrum, in the lumen range of 1,951 through 2,475 lumens) that achieve levels that are at least 100 percent higher than modeled unit sales for that same year, the Secretary shall impose—

(i) a maximum 95-watt limitation on general service incandescent lamps in the lumen range of 2,601 through 3,300 lumens; and

(ii) a requirement that those lamps be sold at retail only in a package containing 1 lamp.

(H) SHATTER-RESISTANT LAMPS.—

(i) IN GENERAL.—Effective beginning with the first year that the reported annual sales rate for shatter-resistant lamps demonstrates actual unit sales of shatter-resistant lamps that achieve levels that are at least 100 percent higher than modeled unit sales for that same year, the Secretary shall—

(I) not later than 90 days after the end of the previous calendar year, issue a finding that the index has been exceeded; and

(II) not later than the date that is 1 year after the end of the previous calendar year, complete an accelerated rulemaking to establish an energy conservation standard for shatter-resistant lamps.

(ii) BACKSTOP REQUIREMENT.—If the Secretary fails to complete an accelerated rulemaking in accordance with clause (i)(II), effective beginning 1 year after the



date of issuance of the finding under clause (i)(I), the Secretary shall impose—

(I) a maximum wattage limitation of 40 watts on shatter resistant lamps; and

(II) a requirement that those lamps be sold at retail only in a package containing 1 lamp.

(I) RULEMAKINGS BEFORE JANUARY 1, 2025.—

(i) IN GENERAL.—Except as provided in clause (ii), if the Secretary issues a final rule prior to January 1, 2025, establishing an energy conservation standard for any of the 5 types of lamps for which data collection is required under any of subparagraphs (D) through (G), the requirement to collect and model data for that type of lamp shall terminate unless, as part of the rulemaking, the Secretary determines that continued tracking is necessary.

(ii) BACKSTOP REQUIREMENT.—If the Secretary imposes a backstop requirement as a result of a failure to complete an accelerated rulemaking in accordance with clause (i)(II) of any of subparagraphs (D) through (G), the requirement to collect and model data for the applicable type of lamp shall continue for an additional 2 years after the effective date of the backstop requirement.

(m) AMENDMENT OF STANDARDS.—

(1) IN GENERAL.—Not later than 6 years after issuance of any final rule establishing or amending a standard, as required for a product under this part, the Secretary shall publish—

(A) a notice of the determination of the Secretary that standards for the product do not need to be amended, based on the criteria established under subsection (n)(2); or

(B) a notice of proposed rulemaking including new proposed standards based on the criteria established under subsection (o) and the procedures established under subsection (p).

(2) NOTICE.—If the Secretary publishes a notice under paragraph (1), the Secretary shall—

(A) publish a notice stating that the analysis of the Department is publicly available; and

(B) provide an opportunity for written comment.

(3) AMENDMENT OF STANDARD; NEW DETERMINATION.—

(A) AMENDMENT OF STANDARD.—Not later than 2 years after a notice is issued under paragraph (1)(B), the Secretary shall publish a final rule amending the standard for the product.

(B) NEW DETERMINATION.—Not later than 3 years after a determination under paragraph (1)(A), the Secretary shall make a new determination and publication under subparagraph (A) or (B) of paragraph (1).

(4) APPLICATION TO PRODUCTS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), an amendment prescribed under this subsection shall apply to—

(i) with respect to refrigerators, refrigerator-freezers, freezers, room air conditioners, dishwashers, clothes washers, clothes dryers, fluorescent lamp ballasts, and kitchen ranges and ovens, such a product that is manufactured after the date that is 3 years after publication of the final rule establishing an applicable standard; and

(ii) with respect to central air conditioners, heat pumps, water heaters, pool heaters, direct heating equipment, and furnaces, such a product that is manufactured after the date that is 5 years after publication of the final rule establishing an applicable standard.

(B) OTHER NEW STANDARDS.—A manufacturer shall not be required to apply new standards to a product with respect to which other new standards have been required during the prior 6-year period.

(5) REPORTS.—The Secretary shall promptly submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Energy and Natural Resources of the Senate—

(A) a progress report every 180 days on compliance with this section, including a specific plan to remedy any failures to comply with deadlines for action established under this section; and

(B) all required reports to the Court or to any party to the Consent Decree in *State of New York v Bodman*, Consolidated Civil Actions No. 05 Civ. 7807 and No. 05 Civ. 7808.

(n) PETITION FOR AN AMENDED STANDARD.—(1) With respect to each covered product described in paragraphs (1) through (11), and in paragraphs (13) and (14) of section 322(a), any person may petition the Secretary to conduct a rulemaking to determine for a covered product if the standards contained either in the last final rule required under subsections (b) through (i) of this section or in a final rule published under this section should be amended.

(2) The Secretary shall grant a petition if he finds that it contains evidence which, assuming no other evidence were considered, provides an adequate basis for amending the standards under the following criteria—

(A) amended standards will result in significant conservation of energy;

(B) amended standards are technologically feasible; and

(C) amended standards are cost effective as described in subsection (o)(2)(B)(i)(II).

The grant of a petition by the Secretary under this subsection creates no presumption with respect to the Secretary's determination of any of the criteria in a rulemaking under this section.

(3) NOTICE OF DECISION.—Not later than 180 days after the date of receiving a petition, the Secretary shall publish in the Federal Register a notice of, and explanation for, the decision of the Secretary to grant or deny the petition.

(4) NEW OR AMENDED STANDARDS.—Not later than 3 years after the date of granting a petition for new or amended standards, the Secretary shall publish in the Federal Register—

- (A) a final rule that contains the new or amended standards; or
  - (B) a determination that no new or amended standards are necessary.
- (5) An amendment prescribed under this subsection shall apply to products manufactured after a date which is 5 years after—
- (A) the effective date of the previous amendment pursuant to this part; or
  - (B) if the previous final rule published under this part did not amend the standard, the earliest date by which a previous amendment could have been in effect, except that in no case may an amended standard apply to products manufactured within 3 years (for refrigerators, refrigerator-freezers, and freezers, room air conditioners, dishwashers, clothes washers, clothes dryers, fluorescent lamp ballasts, general service fluorescent lamps, incandescent reflector lamps, and kitchen ranges and ovens) or 5 years (for central air conditioners and heat pumps, water heaters, pool heaters, direct heating equipment and furnaces) after publication of the final rule establishing a standard.
- (6) CRITERIA FOR PRESCRIBING NEW OR AMENDED STANDARDS.—
- (1) The Secretary may not prescribe any amended standard which increases the maximum allowable energy use, or, in the case of showerheads, faucets, water closets, or urinals, water use, or decreases the minimum required energy efficiency, of a covered product.
- (2)(A) Any new or amended energy conservation standard prescribed by the Secretary under this section for any type (or class) of covered product shall be designed to achieve the maximum improvement in energy efficiency, or, in the case of showerheads, faucets, water closets, or urinals, water efficiency, which the Secretary determines is technologically feasible and economically justified.
- (B)(i) In determining whether a standard is economically justified, the Secretary shall, after receiving views and comments furnished with respect to the proposed standard, determine whether the benefits of the standard exceed its burdens by, to the greatest extent practicable, considering—
- (I) the economic impact of the standard on the manufacturers and on the consumers of the products subject to such standard;
  - (II) the savings in operating costs throughout the estimated average life of the covered product in the type (or class) compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered products which are likely to result from the imposition of the standard;
  - (III) the total projected amount of energy, or as applicable, water, savings likely to result directly from the imposition of the standard;
  - (IV) any lessening of the utility or the performance of the covered products likely to result from the imposition of the standard;
  - (V) the impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the imposition of the standard;

(VI) the need for national energy and water conservation; and

(VII) other factors the Secretary considers relevant.

(ii) For purposes of clause (i)(V), the Attorney General shall make a determination of the impact, if any, of any lessening of competition likely to result from such standard and shall transmit such determination, not later than 60 days after the publication of a proposed rule prescribing or amending an energy conservation standard, in writing to the Secretary, together with an analysis of the nature and extent of such impact. Any such determination and analysis shall be published by the Secretary in the Federal Register.

(iii) If the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy, and as applicable, water, savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure, there shall be a rebuttable presumption that such standard level is economically justified. A determination by the Secretary that such criterion is not met shall not be taken into consideration in the Secretary's determination of whether a standard is economically justified.

(3) The Secretary may not prescribe an amended or new standard under this section for a type (or class) of covered product if—

(A) for products other than dishwashers, clothes washers, clothes dryers, and kitchen ranges and ovens, a test procedure has not been prescribed pursuant to section 323 with respect to that type (or class) of product; or

(B) the Secretary determines, by rule, that the establishment of such standard will not result in significant conservation of energy or, in the case of showerheads, faucets, water closets, or urinals, water, or that the establishment of such standard is not technologically feasible or economically justified.

For purposes of section 327, a determination under subparagraph (B) with respect to any type (or class) of covered products shall have the same effect as would a standard prescribed for such type (or class).

(4) The Secretary may not prescribe an amended or new standard under this section if the Secretary finds (and publishes such finding) that interested persons have established by a preponderance of the evidence that the standard is likely to result in the unavailability in the United States in any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States at the time of the Secretary's finding. The failure of some types (or classes) to meet this criterion shall not affect the Secretary's determination of whether to prescribe a standard for other types (or classes).

(5) The Secretary may set more than 1 energy conservation standard for products that serve more than 1 major function by setting 1 energy conservation standard for each major function.

(6) REGIONAL STANDARDS FOR FURNACES, CENTRAL AIR CONDITIONERS, AND HEAT PUMPS.—

(A) IN GENERAL.—In any rulemaking to establish a new or amended standard, the Secretary may consider the es-

establishment of separate standards by geographic region for furnaces (except boilers), central air conditioners, and heat pumps.

(B) NATIONAL AND REGIONAL STANDARDS.—

(i) NATIONAL STANDARD.—If the Secretary establishes a regional standard for a product, the Secretary shall establish a base national standard for the product.

(ii) REGIONAL STANDARDS.—If the Secretary establishes a regional standard for a product, the Secretary may establish more restrictive standards for the product by geographic region as follows:

(I) For furnaces, the Secretary may establish 1 additional standard that is applicable in a geographic region defined by the Secretary.

(II) For any cooling product, the Secretary may establish 1 or 2 additional standards that are applicable in 1 or 2 geographic regions as may be defined by the Secretary.

(C) BOUNDARIES OF GEOGRAPHIC REGIONS.—

(i) IN GENERAL.—Subject to clause (ii), the boundaries of additional geographic regions established by the Secretary under this paragraph shall include only contiguous States.

(ii) ALASKA AND HAWAII.—The States of Alaska and Hawaii may be included under this paragraph in a geographic region that the States are not contiguous to.

(iii) INDIVIDUAL STATES.—Individual States shall be placed only into a single region under this paragraph.

(D) PREREQUISITES.—In establishing additional regional standards under this paragraph, the Secretary shall—

(i) establish additional regional standards only if the Secretary determines that—

(I) the establishment of additional regional standards will produce significant energy savings in comparison to establishing only a single national standard; and

(II) the additional regional standards are economically justified under this paragraph; and

(ii) consider the impact of the additional regional standards on consumers, manufacturers, and other market participants, including product distributors, dealers, contractors, and installers.

(E) APPLICATION; EFFECTIVE DATE.—

(i) BASE NATIONAL STANDARD.—Any base national standard established for a product under this paragraph shall—

(I) be the minimum standard for the product; and

(II) apply to all products manufactured or imported into the United States on and after the effective date for the standard.

(ii) REGIONAL STANDARDS.—Any additional and more restrictive regional standard established for a product under this paragraph shall apply to any such product

installed on or after the effective date of the standard in States in which the Secretary has designated the standard to apply.

(F) CONTINUATION OF REGIONAL STANDARDS.—

(i) IN GENERAL.—In any subsequent rulemaking for any product for which a regional standard has been previously established, the Secretary shall determine whether to continue the establishment of separate regional standards for the product.

(ii) REGIONAL STANDARD NO LONGER APPROPRIATE.—Except as provided in clause (iii), if the Secretary determines that regional standards are no longer appropriate for a product, beginning on the effective date of the amended standard for the product—

(I) there shall be 1 base national standard for the product with Federal enforcement; and

(II) State authority for enforcing a regional standard for the product shall terminate.

(iii) REGIONAL STANDARD APPROPRIATE BUT STANDARD OR REGION CHANGED.—

(I) STATE NO LONGER CONTAINED IN REGION.—Subject to subclause (III), if a State is no longer contained in a region in which a regional standard that is more stringent than the base national standard applies, the authority of the State to enforce the regional standard shall terminate.

(II) STANDARD OR REGION REVISED SO THAT EXISTING REGIONAL STANDARD EQUALS BASE NATIONAL STANDARD.—If the Secretary revises a base national standard for a product or the geographic definition of a region so that an existing regional standard for a State is equal to the revised base national standard—

(aa) the authority of the State to enforce the regional standard shall terminate on the effective date of the revised base national standard; and

(bb) the State shall be subject to the revised base national standard.

(III) STANDARD OR REGION REVISED SO THAT EXISTING REGIONAL STANDARD EQUALS BASE NATIONAL STANDARD.—If the Secretary revises a base national standard for a product or the geographic definition of a region so that the standard for a State is lower than the previously approved regional standard, the State may continue to enforce the previously approved standard level.

(iv) WAIVER OF FEDERAL PREEMPTION.—Nothing in this paragraph diminishes the authority of a State to enforce a State regulation for which a waiver of Federal preemption has been granted under section 327(d).

(G) ENFORCEMENT.—

(i) BASE NATIONAL STANDARD.—

(I) IN GENERAL.—The Secretary shall enforce any base national standard.

(II) TRADE ASSOCIATION CERTIFICATION PROGRAMS.—In enforcing the base national standard, the Secretary shall use, to the maximum extent practicable, national standard nationally recognized certification programs of trade associations.

(ii) REGIONAL STANDARDS.—

(I) ENFORCEMENT PLAN.—Not later than 90 days after the date of the issuance of a final rule that establishes a regional standard, the Secretary shall initiate a rulemaking to develop and implement an effective enforcement plan for regional standards for the products that are covered by the final rule.

(II) RESPONSIBLE ENTITIES.—Any rules regarding enforcement of a regional standard shall clearly specify which entities are legally responsible for compliance with the standards and for making any required information or labeling disclosures.

(III) FINAL RULE.—Not later than 15 months after the date of the issuance of a final rule that establishes a regional standard for a product, the Secretary shall promulgate a final rule covering enforcement of regional standards for the product.

(IV) INCORPORATION BY STATES AND LOCALITIES.—A State or locality may incorporate any Federal regional standard into State or local building codes or State appliance standards.

(V) STATE ENFORCEMENT.—A State agency may seek enforcement of a Federal regional standard in a Federal court of competent jurisdiction.

(H) INFORMATION DISCLOSURE.—

(i) IN GENERAL.—Not later than 90 days after the date of the publication of a final rule that establishes a regional standard for a product, the Federal Trade Commission shall undertake a rulemaking to determine the appropriate 1 or more methods for disclosing information so that consumers, distributors, contractors, and installers can easily determine whether a specific piece of equipment that is installed in a specific building is in conformance with the regional standard that applies to the building.

(ii) METHODS.—A method of disclosing information under clause (i) may include—

(I) modifications to the Energy Guide label; or

(II) other methods that make it easy for consumers and installers to use and understand at the point of installation.

(iii) COMPLETION OF RULEMAKING.—The rulemaking shall be completed not later 15 months after the date of the publication of a final rule that establishes a regional standard for a product.

(p) PROCEDURE FOR PRESCRIBING NEW OR AMENDED STANDARDS.—Any new or amended energy conservation standard shall be prescribed in accordance with the following procedure:

(1) A proposed rule which prescribes an amended or new energy conservation standard or prescribes no amendment or no new standard for a type (or class) of covered products shall be published in the Federal Register. In prescribing any such proposed rule with respect to a standard, the Secretary shall determine the maximum improvement in energy efficiency or maximum reduction in energy use that is technologically feasible for each type (or class) of covered products. If such standard is not designed to achieve such efficiency or use, the Secretary shall state in the proposed rule the reasons therefor.

(2) After the publication of such proposed rulemaking, the Secretary shall, in accordance with section 336, afford interested persons an opportunity, during a period of not less than 60 days, to present oral and written comments (including an opportunity to question those who make such presentations, as provided in such section) on matters relating to such proposed rule, including—

(A) whether the standard to be prescribed is economically justified (taking into account those factors which the Secretary must consider under subsection (o)(2)) or will result in the effects described in subsection (o)(4);

(B) whether the standard will achieve the maximum improvement in energy efficiency which is technologically feasible;

(C) if the standard will not achieve such improvement, whether the reasons for not achieving such improvement are adequate; and

(D) whether such rule should prescribe a level of energy use or efficiency which is higher or lower than that which would otherwise apply in the case of any group of products within the type (or class) that will be subject to such standard.

(3) A final rule prescribing an amended or new energy conservation standard or prescribing no amended or new standard for a type (or class) of covered products shall be published as soon as is practicable, but not less than 90 days, after publication of the proposed rule in the Federal Register.

(4) DIRECT FINAL RULES.—

(A) IN GENERAL.—On receipt of a statement that is submitted jointly by interested persons that are fairly representative of relevant points of view (including representatives of manufacturers of covered products, States, and efficiency advocates), as determined by the Secretary, and contains recommendations with respect to an energy or water conservation standard—

(i) if the Secretary determines that the recommended standard contained in the statement is in accordance with subsection (o) or section 342(a)(6)(B), as applicable, the Secretary may issue a final rule that establishes an energy or water conservation standard and is published simultaneously with a notice of proposed rulemaking that proposes a new or amended en-



ergy or water conservation standard that is identical to the standard established in the final rule to establish the recommended standard (referred to in this paragraph as a “direct final rule”); or

(ii) if the Secretary determines that a direct final rule cannot be issued based on the statement, the Secretary shall publish a notice of the determination, together with an explanation of the reasons for the determination.

(B) PUBLIC COMMENT.—The Secretary shall solicit public comment for a period of at least 110 days with respect to each direct final rule issued by the Secretary under subparagraph (A)(i).

(C) WITHDRAWAL OF DIRECT FINAL RULES.—

(i) IN GENERAL.—Not later than 120 days after the date on which a direct final rule issued under subparagraph (A)(i) is published in the Federal Register, the Secretary shall withdraw the direct final rule if—

(I) the Secretary receives 1 or more adverse public comments relating to the direct final rule under subparagraph (B)(i) or any alternative joint recommendation; and

(II) based on the rulemaking record relating to the direct final rule, the Secretary determines that such adverse public comments or alternative joint recommendation may provide a reasonable basis for withdrawing the direct final rule under subsection (o), section 342(a)(6)(B), or any other applicable law.

(ii) ACTION ON WITHDRAWAL.—On withdrawal of a direct final rule under clause (i), the Secretary shall—

(I) proceed with the notice of proposed rulemaking published simultaneously with the direct final rule as described in subparagraph (A)(i); and

(II) publish in the Federal Register the reasons why the direct final rule was withdrawn.

(iii) TREATMENT OF WITHDRAWN DIRECT FINAL RULES.—A direct final rule that is withdrawn under clause (i) shall not be considered to be a final rule for purposes of subsection (o).

(D) EFFECT OF PARAGRAPH.—Nothing in this paragraph authorizes the Secretary to issue a direct final rule based solely on receipt of more than 1 statement containing recommended standards relating to the direct final rule.

(q) SPECIAL RULE FOR CERTAIN TYPES OR CLASSES OF PRODUCTS.—(1) A rule prescribing an energy conservation standard for a type (or class) of covered products shall specify a level of energy use or efficiency higher or lower than that which applies (or would apply) for such type (or class) for any group of covered products which have the same function or intended use, if the Secretary determines that covered products within such group—

(A) consume a different kind of energy from that consumed by other covered products within such type (or class); or

(B) have a capacity or other performance-related feature which other products within such type (or class) do not have

and such feature justifies a higher or lower standard from that which applies (or will apply) to other products within such type (or class).

In making a determination under this paragraph concerning whether a performance-related feature justifies the establishment of a higher or lower standard, the Secretary shall consider such factors as the utility to the consumer of such a feature, and such other factors as the Secretary deems appropriate.

(2) Any rule prescribing a higher or lower level of energy use or efficiency under paragraph (1) shall include an explanation of the basis on which such higher or lower level was established.

(r) INCLUSION IN STANDARDS OF TEST PROCEDURES AND OTHER REQUIREMENTS.—Any new or amended energy conservation standard prescribed under this section shall include, where applicable, test procedures prescribed in accordance with section 323 and may include any requirement which the Secretary determines is necessary to assure that each covered product to which such standard applies meets the required minimum level of energy efficiency or maximum quantity of energy use specified in such standard.

(s) DETERMINATION OF COMPLIANCE WITH STANDARDS.—Compliance with, and performance under, the energy conservation standards (except for design standards authorized by this part) established in, or prescribed under, this section shall be determined using the test procedures and corresponding compliance criteria prescribed under section 323.

(t) SMALL MANUFACTURER EXEMPTION.—(1) Subject to paragraph (2), the Secretary may, on application of any manufacturer, exempt such manufacturer from all or part of the requirements of any energy conservation standard established in or prescribed under this section for any period not longer than the 24-month period beginning on the date such rule becomes effective, if the Secretary finds that the annual gross revenues of such manufacturer from all its operations (including the manufacture and sale of covered products) does not exceed \$8,000,000 for the 12-month period preceding the date of the application. In making such finding with respect to any manufacturer, the Secretary shall take into account the annual gross revenues of any other person who controls, is controlled by, or is under common control with, such manufacturer.

(2) The Secretary may not exercise the authority granted under paragraph (1) with respect to any type (or class) of covered product subject to an energy conservation standard under this section unless the Secretary makes a finding, after obtaining the written views of the Attorney General, that a failure to allow an exemption under paragraph (1) would likely result in a lessening of competition.

(u) BATTERY CHARGER AND EXTERNAL POWER SUPPLY ELECTRIC ENERGY CONSUMPTION.—(1)(A) Not later than 18 months after the date of enactment of this subsection, the Secretary shall, after providing notice and an opportunity for comment, prescribe, by rule, definitions and test procedures for the power use of battery chargers and external power supplies.

(B) In establishing the test procedures under subparagraph (A), the Secretary shall—

(i) consider existing definitions and test procedures used for measuring energy consumption in standby mode and other modes; and

(ii) assess the current and projected future market for battery chargers and external power supplies.

(C) The assessment under subparagraph (B)(ii) shall include—

(i) estimates of the significance of potential energy savings from technical improvements to battery chargers and external power supplies; and

(ii) suggested product classes for energy conservation standards.

(D) Not later than 18 months after the date of enactment of this subsection, the Secretary shall hold a scoping workshop to discuss and receive comments on plans for developing energy conservation standards for energy use for battery chargers and external power supplies.

(E) EXTERNAL POWER SUPPLIES AND BATTERY CHARGERS.—

(i) ENERGY CONSERVATION STANDARDS.—

(I) EXTERNAL POWER SUPPLIES.—Not later than 2 years after the date of enactment of this subsection, the Secretary shall issue a final rule that determines whether energy conservation standards shall be issued for external power supplies or classes of external power supplies.

(II) BATTERY CHARGERS.—Not later than July 1, 2011, the Secretary shall issue a final rule that prescribes energy conservation standards for battery chargers or classes of battery chargers or determine that no energy conservation standard is technically feasible and economically justified.

(ii) For each product class, any energy conservation standards issued under clause (i) shall be set at the lowest level of energy use that—

(I) meets the criteria and procedures of subsections (o), (p), (q), (r), (s), and (t); and

(II) would result in significant overall annual energy savings, considering standby mode and other operating modes.

(2) The Secretary and the Administrator shall collaborate and develop programs (including programs under section 324A and other voluntary industry agreements or codes of conduct) that are designed to reduce standby mode energy use.

(3) EFFICIENCY STANDARDS FOR CLASS A EXTERNAL POWER SUPPLIES.—

(A) IN GENERAL.—Subject to subparagraphs (B) through (E), a class A external power supply manufactured on or after the later of July 1, 2008, or the date of enactment of this paragraph shall meet the following standards:

<b>Active Mode</b>	
<b>Nameplate Output</b>	<b>Required Efficiency (decimal equivalent of a percent- age)</b>
Less than 1 watt	0.5 times the Nameplate Output
From 1 watt to not more than 51 watts	The sum of 0.09 times the Natural Logarithm of the Nameplate Output and 0.5
Greater than 51 watts	0.85
<b>No-Load Mode</b>	
<b>Nameplate Output</b>	.....
Not more than 250 watts	<b>Maximum Consumption</b>
	0.5 watts

(B) NONCOVERED SUPPLIES.—A class A external power supply shall not be subject to subparagraph (A) if the class A external power supply is—

- (i) manufactured during the period beginning on July 1, 2008, and ending on June 30, 2015; and
- (ii) made available by the manufacturer as a service part or a spare part for an end-use product—
  - (I) that constitutes the primary load; and
  - (II) was manufactured before July 1, 2008.

(C) MARKING.—Any class A external power supply manufactured on or after the later of July 1, 2008 or the date of enactment of this paragraph shall be clearly and permanently marked in accordance with the External Power Supply International Efficiency Marking Protocol, as referenced in the “Energy Star Program Requirements for Single Voltage External AC–DC and AC–AC Power Supplies, version 1.1” published by the Environmental Protection Agency.

(D) AMENDMENT OF STANDARDS.—

(i) FINAL RULE BY JULY 1, 2011.—

(I) IN GENERAL.—Not later than July 1, 2011, the Secretary shall publish a final rule to determine whether the standards established under subparagraph (A) should be amended.

(II) ADMINISTRATION.—The final rule shall—

- (aa) contain any amended standards; and
- (bb) apply to products manufactured on or after July 1, 2013.

(ii) FINAL RULE BY JULY 1, 2015.—

(I) IN GENERAL.—Not later than July 1, 2015 the Secretary shall publish a final rule to determine whether the standards then in effect should be amended.

(II) ADMINISTRATION.—The final rule shall—

- (aa) contain any amended standards; and
- (bb) apply to products manufactured on or after July 1, 2017.

(E) NONAPPLICATION OF NO-LOAD MODE ENERGY EFFICIENCY STANDARDS TO EXTERNAL POWER SUPPLIES FOR CERTAIN SECURITY OR LIFE SAFETY ALARMS OR SURVEILLANCE SYSTEMS.—

(i) DEFINITION OF SECURITY OR LIFE SAFETY ALARM OR SURVEILLANCE SYSTEM.—In this subparagraph:

(I) IN GENERAL.—The term “security or life safety alarm or surveillance system” means equipment designed and marketed to perform any of the following functions (on a continuous basis):

(aa) Monitor, detect, record, or provide notification of intrusion or access to real property or physical assets or notification of threats to life safety.

(bb) Deter or control access to real property or physical assets, or prevent the unauthorized removal of physical assets.

(cc) Monitor, detect, record, or provide notification of fire, gas, smoke, flooding, or other physical threats to real property, physical assets, or life safety.

(II) EXCLUSION.—The term “security or life safety alarm or surveillance system” does not include any product with a principal function other than life safety, security, or surveillance that—

(aa) is designed and marketed with a built-in alarm or theft-deterrent feature; or

(bb) does not operate necessarily and continuously in active mode.

(ii) NONAPPLICATION OF NO-LOAD MODE REQUIREMENTS.—The No-Load Mode energy efficiency standards established by this paragraph shall not apply to an external power supply manufactured before July 1, 2017, that—

(I) is an AC-to-AC external power supply;

(II) has a nameplate output of 20 watts or more;

(III) is certified to the Secretary as being designed to be connected to a security or life safety alarm or surveillance system component; and

(IV) on establishment within the External Power Supply International Efficiency Marking Protocol, as referenced in the “Energy Star Program Requirements for Single Voltage External Ac-Dc and Ac-Ac Power Supplies”, published by the Environmental Protection Agency, of a distinguishing mark for products described in this clause, is permanently marked with the distinguishing mark.

(iii) ADMINISTRATION.—In carrying out this subparagraph, the Secretary shall—

(I) require, with appropriate safeguard for the protection of confidential business information, the submission of unit shipment data on an annual basis; and

(II) restrict the eligibility of external power supplies for the exemption provided under this subparagraph on a finding that a substantial number of the external power supplies are being marketed to or installed in applications other than security or life safety alarm or surveillance systems.

(4) END-USE PRODUCTS.—An energy conservation standard for external power supplies shall not constitute an energy conservation standard for the separate end-use product to which the external power supply is connected.

(5) EXEMPT SUPPLIES.—

(A) FEBRUARY 10, 2014, RULE.—

(i) IN GENERAL.—An external power supply shall not be subject to the final rule entitled “Energy Conservation Program: Energy Conservation Standards for External Power Supplies”, published at 79 Fed. Reg. 7845 (February 10, 2014), if the external power supply—

(I) is manufactured during the period beginning on February 10, 2016, and ending on February 10, 2020;

(II) is marked in accordance with the External Power Supply International Efficiency Marking Protocol, as in effect on February 10, 2016;

(III) meets, where applicable, the standards under paragraph (3)(A), and has been certified to the Secretary as meeting International Efficiency Level IV or higher of the External Power Supply International Efficiency Marking Protocol, as in effect on February 10, 2016; and

(IV) is made available by the manufacturer as a service part or a spare part for an end-use product that—

(aa) constitutes the primary load; and

(bb) was manufactured before February 10, 2016.

(ii) REPORTING.—The Secretary may require manufacturers of products exempted pursuant to clause (i) to report annual total units shipped as service and spare parts that fall below International Efficiency Level VI.

(iii) LIMITATION OF EXEMPTION.—The Secretary may issue a rule, after providing public notice and opportunity for public comment, to limit the applicability of the exemption established under clause (i) if the Secretary determines that the exemption is resulting in a significant reduction of the energy savings that would otherwise result from the final rule described in such clause.

(B) AMENDED STANDARDS.—

(i) IN GENERAL.—The Secretary may exempt an external power supply from any amended standard under this subsection if the external power supply—

(I) is manufactured within four years of the compliance date of the amended standard;

(II) complies with applicable marking requirements adopted by the Secretary prior to the amendment;

(III) meets the standards that were in effect prior to the amendment; and

(IV) is made available by the manufacturer as a service part or a spare part for an end-use product that—

(aa) constitutes the primary load; and

(bb) was manufactured before the compliance date of the amended standard.

(ii) REPORTING.—The Secretary may require manufacturers of a product exempted pursuant to clause (i) to report annual total units shipped as service and spare parts that do not meet the amended standard.

(v) REFRIGERATED BEVERAGE VENDING MACHINES.—(1) Not later than 4 years after the date of enactment of this subsection, the Secretary shall prescribe, by rule, energy conservation standards for refrigerated bottle or canned beverage vending machines.

(2) In establishing energy conservation standards under this subsection, the Secretary shall use the criteria and procedures prescribed under subsections (o) and (p).

(3) Any energy conservation standard prescribed under this subsection shall apply to products manufactured 3 years after the date of publication of a final rule establishing the energy conservation standard.

(w) ILLUMINATED EXIT SIGNS.—An illuminated exit sign manufactured on or after January 1, 2006, shall meet the version 2.0 Energy Star Program performance requirements for illuminated exit signs prescribed by the Environmental Protection Agency.

(x) TORCHIERES.—A torchiere manufactured on or after January 1, 2006—

(1) shall consume not more than 190 watts of power; and

(2) shall not be capable of operating with lamps that total more than 190 watts.

(y) LOW VOLTAGE DRY-TYPE DISTRIBUTION TRANSFORMERS.—The efficiency of a low voltage dry-type distribution transformer manufactured on or after January 1, 2007, shall be the Class I Efficiency Levels for distribution transformers specified in table 4–2 of the “Guide for Determining Energy Efficiency for Distribution Transformers” published by the National Electrical Manufacturers Association (NEMA TP–1–2002).

(z) TRAFFIC SIGNAL MODULES AND PEDESTRIAN MODULES.—Any traffic signal module or pedestrian module manufactured on or after January 1, 2006, shall—

(1) meet the performance requirements used under the Energy Star program of the Environmental Protection Agency for traffic signals, as in effect on the date of enactment of this subsection; and

(2) be installed with compatible, electrically connected signal control interface devices and conflict monitoring systems.

(aa) UNIT HEATERS.—A unit heater manufactured on or after the date that is 3 years after the date of enactment of this subsection shall—

(1) be equipped with an intermittent ignition device; and

(2) have power venting or an automatic flue damper.

(bb) MEDIUM BASE COMPACT FLUORESCENT LAMPS.—(1) A bare lamp and covered lamp (no reflector) medium base compact fluorescent lamp manufactured on or after January 1, 2006, shall meet the following requirements prescribed by the August 9, 2001, version of the Energy Star Program Requirements for Compact Fluorescent Lamps, Energy Star Eligibility Criteria, Energy-Efficiency Specification issued by the Environmental Protection Agency and Department of Energy:

- (A) Minimum initial efficacy.
- (B) Lumen maintenance at 1000 hours.
- (C) Lumen maintenance at 40 percent of rated life.
- (D) Rapid cycle stress test.
- (E) Lamp life.

(2) The Secretary may, by rule, establish requirements for color quality (CRI), power factor, operating frequency, and maximum allowable start time based on the requirements prescribed by the August 9, 2001, version of the Energy Star Program Requirements for Compact Fluorescent Lamps.

(3) The Secretary may, by rule—

- (A) revise the requirements established under paragraph (2);
- or
- (B) establish other requirements, after considering energy savings, cost effectiveness, and consumer satisfaction.

(cc) DEHUMIDIFIERS.—(1) Dehumidifiers manufactured on or after October 1, 2007, shall have an Energy Factor that meets or exceeds the following values:

<b>Product Capacity (pints/day):</b>	<b>Minimum Energy Factor (Liters/kWh)</b>
25.00 or less .....	1.00
25.01 – 35.00 .....	1.20
35.01 – 54.00 .....	1.30
54.01 – 74.99 .....	1.50
75.00 or more .....	2.25.

(2) DEHUMIDIFIERS MANUFACTURED ON OR AFTER OCTOBER 1, 2012.—Dehumidifiers manufactured on or after October 1, 2012, shall have an Energy Factor that meets or exceeds the following values:

<b>Product Capacity (pints/day):</b>	<b>Minimum Energy Factor (liters/kWh)</b>
Up to 35.00 .....	1.35
35.01–45.00 .....	1.50
45.01–54.00 .....	1.60
54.01–75.00 .....	1.70
Greater than 75.00 .....	2.5.

(dd) COMMERCIAL PRERINSE SPRAY VALVES.—Commercial prerinse spray valves manufactured on or after January 1, 2006, shall have a flow rate of not more than 1.6 gallons per minute.

(ee) MERCURY VAPOR LAMP BALLASTS.—Mercury vapor lamp ballasts (other than specialty application mercury vapor lamp ballasts) shall not be manufactured or imported after January 1, 2008.



(ff) CEILING FANS AND CEILING FAN LIGHT KITS.—(1)(A) All ceiling fans manufactured on or after January 1, 2007, shall have the following features:

- (i) Fan speed controls separate from any lighting controls.
- (ii) Adjustable speed controls (either more than 1 speed or variable speed).
- (iii) The capability of reversible fan action, except for—
  - (I) fans sold for industrial applications;
  - (II) fans sold for outdoor applications; and
  - (III) cases in which safety standards would be violated by the use of the reversible mode.

(B) The Secretary may define the exceptions described in clause (iv) in greater detail, but shall not substantively expand the exceptions.

(2)(A) Ceiling fan light kits with medium screw base sockets manufactured on or after January 1, 2007, shall be packaged with screw-based lamps to fill all screw base sockets.

(B) The screw-based lamps required under subparagraph (A) shall—

- (i) meet the Energy Star Program Requirements for Compact Fluorescent Lamps, version 3.0, issued by the Department of Energy; or
- (ii) use light sources other than compact fluorescent lamps that have lumens per watt performance at least equivalent to comparably configured compact fluorescent lamps meeting the Energy Star Program Requirements described in clause (i).

(3) Ceiling fan light kits with pin-based sockets for fluorescent lamps manufactured on or after January 1, 2007 shall—

(A) meet the Energy Star Program Requirements for Residential Light Fixtures version 4.0 issued by the Environmental Protection Agency; and

(B) be packaged with lamps to fill all sockets.

(4)(A) By January 1, 2007, the Secretary shall consider and issue requirements for any ceiling fan lighting kits other than those covered in paragraphs (2) and (3), including candelabra screw base sockets.

(B) The requirements issued under subparagraph (A) shall be effective for products manufactured 2 years after the date of the final rule.

(C) If the Secretary fails to issue a final rule by the date specified in subparagraph (A), any type of ceiling fan lighting kit described in subparagraph (A) that is manufactured after January 1, 2009—

- (i) shall not be capable of operating with lamps that total more than 190 watts; and
- (ii) shall be packaged with lamps to fill all sockets.

(5)(A) After January 1, 2010, the Secretary may consider, and issue, if the requirements of subsections (o) and (p) are met, amended energy efficiency standards for ceiling fan light kits.

(B) Any amended standards issued under subparagraph (A) shall apply to products manufactured not earlier than 2 years after the date of publication of the final rule establishing the amended standard.

(6)(A) Notwithstanding any other provision of this Act, the Secretary may consider, and issue, if the requirements of subsections

(o) and (p) are met, energy efficiency or energy use standards for electricity used by ceiling fans to circulate air in a room.

(B) In issuing the standards under subparagraph (A), the Secretary shall consider—

(i) exempting, or setting different standards for, certain product classes for which the primary standards are not technically feasible or economically justified; and

(ii) establishing separate exempted product classes for highly decorative fans for which air movement performance is a secondary design feature.

(7) Section 327 shall apply to the products covered in paragraphs (1) through (4) beginning on the date of enactment of this subsection, except that any State or local labeling requirement for ceiling fans prescribed or enacted before the date of enactment of this subsection shall not be preempted until the labeling requirements applicable to ceiling fans established under section 324 take effect.

(gg) STANDBY MODE ENERGY USE.—

(1) DEFINITIONS.—

(A) IN GENERAL.—Unless the Secretary determines otherwise pursuant to subparagraph (B), in this subsection:

(i) ACTIVE MODE.—The term “active mode” means the condition in which an energy-using product—

(I) is connected to a main power source;

(II) has been activated; and

(III) provides 1 or more main functions.

(ii) OFF MODE.—The term “off mode” means the condition in which an energy-using product—

(I) is connected to a main power source; and

(II) is not providing any standby or active mode function.

(iii) STANDBY MODE.—The term “standby mode” means the condition in which an energy-using product—

(I) is connected to a main power source; and

(II) offers 1 or more of the following user-oriented or protective functions:

(aa) To facilitate the activation or deactivation of other functions (including active mode) by remote switch (including remote control), internal sensor, or timer.

(bb) Continuous functions, including information or status displays (including clocks) or sensor-based functions.

(B) AMENDED DEFINITIONS.—The Secretary may, by rule, amend the definitions under subparagraph (A), taking into consideration the most current versions of Standards 62301 and 62087 of the International Electrotechnical Commission.

(2) TEST PROCEDURES.—

(A) IN GENERAL.—Test procedures for all covered products shall be amended pursuant to section 323 to include standby mode and off mode energy consumption, taking into consideration the most current versions of Standards 62301 and 62087 of the International Electrotechnical Commission, with such energy consumption integrated

into the overall energy efficiency, energy consumption, or other energy descriptor for each covered product, unless the Secretary determines that—

(i) the current test procedures for a covered product already fully account for and incorporate the standby mode and off mode energy consumption of the covered product; or

(ii) such an integrated test procedure is technically infeasible for a particular covered product, in which case the Secretary shall prescribe a separate standby mode and off mode energy use test procedure for the covered product, if technically feasible.

(B) DEADLINES.—The test procedure amendments required by subparagraph (A) shall be prescribed in a final rule no later than the following dates:

(i) December 31, 2008, for battery chargers and external power supplies.

(ii) March 31, 2009, for clothes dryers, room air conditioners, and fluorescent lamp ballasts.

(iii) June 30, 2009, for residential clothes washers.

(iv) September 30, 2009, for residential furnaces and boilers.

(v) March 31, 2010, for residential water heaters, direct heating equipment, and pool heaters.

(vi) March 31, 2011, for residential dishwashers, ranges and ovens, microwave ovens, and dehumidifiers.

(C) PRIOR PRODUCT STANDARDS.—The test procedure amendments adopted pursuant to subparagraph (B) shall not be used to determine compliance with product standards established prior to the adoption of the amended test procedures.

(3) INCORPORATION INTO STANDARD.—

(A) IN GENERAL.—Subject to subparagraph (B), based on the test procedures required under paragraph (2), any final rule establishing or revising a standard for a covered product, adopted after July 1, 2010, shall incorporate standby mode and off mode energy use into a single amended or new standard, pursuant to subsection (o), if feasible.

(B) SEPARATE STANDARDS.—If not feasible, the Secretary shall prescribe within the final rule a separate standard for standby mode and off mode energy consumption, if justified under subsection (o).

(hh) METAL HALIDE LAMP FIXTURES.—

(1) STANDARDS.—

(A) IN GENERAL.—Subject to subparagraphs (B) and (C), metal halide lamp fixtures designed to be operated with lamps rated greater than or equal to 150 watts but less than or equal to 500 watts shall contain—

(i) a pulse-start metal halide ballast with a minimum ballast efficiency of 88 percent;

(ii) a magnetic probe-start ballast with a minimum ballast efficiency of 94 percent; or

(iii) a nonpulse-start electronic ballast with—

- (I) a minimum ballast efficiency of 92 percent for wattages greater than 250 watts; and
  - (II) a minimum ballast efficiency of 90 percent for wattages less than or equal to 250 watts.
- (B) EXCLUSIONS.—The standards established under subparagraph (A) shall not apply to—
- (i) fixtures with regulated lag ballasts;
  - (ii) fixtures that use electronic ballasts that operate at 480 volts; or
  - (iii) fixtures that—
    - (I) are rated only for 150 watt lamps;
    - (II) are rated for use in wet locations, as specified by the National Electrical Code 2002, section 410.4(A); and
    - (III) contain a ballast that is rated to operate at ambient air temperatures above 50°C, as specified by UL 1029–2001.
- (C) APPLICATION.—The standards established under subparagraph (A) shall apply to metal halide lamp fixtures manufactured on or after the later of—
- (i) January 1, 2009; or
  - (ii) the date that is 270 days after the date of enactment of this subsection.
- (2) FINAL RULE BY JANUARY 1, 2012.—
- (A) IN GENERAL.—Not later than January 1, 2012, the Secretary shall publish a final rule to determine whether the standards established under paragraph (1) should be amended.
- (B) ADMINISTRATION.—The final rule shall—
- (i) contain any amended standard; and
  - (ii) apply to products manufactured on or after January 1, 2015.
- (3) FINAL RULE BY JANUARY 1, 2019.—
- (A) IN GENERAL.—Not later than January 1, 2019, the Secretary shall publish a final rule to determine whether the standards then in effect should be amended.
- (B) ADMINISTRATION.—The final rule shall—
- (i) contain any amended standards; and
  - (ii) apply to products manufactured after January 1, 2022.
- (4) DESIGN AND PERFORMANCE REQUIREMENTS.—Notwithstanding any other provision of law, any standard established pursuant to this subsection may contain both design and performance requirements.
- (ii) APPLICATION DATE.—Section 327 applies—
- (1) to products for which energy conservation standards are to be established under subsection (l), (u), or (v) beginning on the date on which a final rule is issued by the Secretary, except that any State or local standard prescribed or enacted for the product before the date on which the final rule is issued shall not be preempted until the energy conservation standard established under subsection (l), (u), or (v) for the product takes effect; and
  - (2) to products for which energy conservation standards are established under subsections (w) through (hh) on the date of

enactment of those subsections, except that any State or local standard prescribed or enacted before the date of enactment of those subsections shall not be preempted until the energy conservation standards established under subsections (w) through (hh) take effect.

\* \* \* \* \*

#### PROHIBITED ACTS

SEC. 332. (a) IN GENERAL.—It shall be unlawful—

(1) for any manufacturer or private labeler to distribute in commerce any new covered product to which a rule under section 324 applies, unless such covered product is labeled in accordance with such rule;

(2) for any manufacturer, distributor, retailer, or private labeler to remove from any new covered product or render illegible any label required to be provided with such product under a rule under section 324;

(3) for any manufacturer to fail to permit access to, or copying of, records required to be supplied under this part, or fail to make reports or provide other information required to be supplied under this part;

(4) for any person to fail to comply with an applicable requirement of section 326(a), (b)(2), (b)(3), or (b)(5);

(5) for any manufacturer or private labeler to distribute in commerce any new covered product which is not in conformity with an applicable energy conservation standard established in or prescribed under this part, except to the extent that the new covered product is covered by a regional standard that is more stringent than the base national standard; **[or]**

(6) for any manufacturer or private labeler to knowingly sell a product to a distributor, contractor, or dealer with knowledge that the entity routinely violates any regional standard applicable to the product**[.];**

**[(6)]** (7) for any manufacturer, distributor, retailer, or private labeler to distribute in commerce an adapter that—

(A) is designed to allow an incandescent lamp that does not have a medium screw base to be installed into a fixture or lampholder with a medium screw base socket; and

(B) is capable of being operated at a voltage range at least partially within 110 and 130 volts**[.];** or

(8) for any person to—

(A) activate an activation lock for a grid-enabled water heater with knowledge that such water heater is not used as part of an electric thermal storage or demand response program;

(B) distribute an activation key for a grid-enabled water heater with knowledge that such activation key will be used to activate a grid-enabled water heater that is not used as part of an electric thermal storage or demand response program;

(C) otherwise enable a grid-enabled water heater to operate at its designed specification and capabilities with knowledge that such water heater is not used as part of an electric thermal storage or demand response program; or

(D) knowingly remove or render illegible the label of a grid-enabled water heater described in section 325(e)(6)(A)(ii)(V).

(b) DEFINITION.—For purposes of this section, the term “new covered product” means a covered product the title of which has not passed to a purchaser who buys such product for purposes other than (1) reselling such product, or (2) leasing such product for a period in excess of one year.

#### ENFORCEMENT

SEC. 333. (a) IN GENERAL.—Except as provided in subsection (c), any person who knowingly violates any provision of section 332 shall be subject to a civil penalty of not more than \$100 for each violation. Such penalties shall be assessed by the Commission, except that penalties for violations of section 332(a)(3) which relate to requirements prescribed by the Secretary, violations of section 332(a)(4) which relate to requests of the Secretary under section 326(b)(2), or violations of [section 332(a)(5)] *paragraph (5), (6), (7), or (8) of section 332(a)* shall be assessed by the Secretary. Civil penalties assessed under this part may be compromised by the agency or officer authorized to assess the penalty, taking into account the nature and degree of the violation and the impact of the penalty upon a particular respondent. Each violation of [paragraph (1), (2), or (5) of section 332(a)] *paragraph (1), (2), (5), (6), (7), or (8) of section 332(a)* shall constitute a separate violation with respect to each covered product, and each day of violation of section 332(a) (3) or (4) shall constitute a separate violation.

(b) DEFINITION.—As used in subsection (a), the term “knowingly” means (1) the having of actual knowledge, or (2) the presumed having of knowledge deemed to be possessed by a reasonable man who acts in the circumstances, including knowledge obtainable upon the exercise of due care.

(c) SPECIAL RULE.—It shall be an unfair or deceptive act or practice in or affecting commerce (within the meaning of section 5(a)(1) of the Federal Trade Commission Act) for any person to violate section 323(c), except to the extent that such violation is prohibited under the provisions of section 332(a)(1), in which case such provisions shall apply.

(d) PROCEDURE FOR ASSESSING PENALTY.—(1) Before issuing an order assessing a civil penalty against any person under this section, the Secretary shall provide to such person notice of the proposed penalty. Such notice shall inform such person of his opportunity to elect in writing within 30 days after the date of receipt of such notice to have the procedures of paragraph (3) (in lieu of those of paragraph (2)) apply with respect to such assessment.

(2)(A) Unless an election is made within 30 calendar days after receipt of notice under paragraph (1) to have paragraph (3) apply with respect to such penalty, the Secretary shall assess the penalty, by order, after a determination of violation has been made on the record after an opportunity for an agency hearing pursuant to

section 554 of title 5, United States Code, before an administrative law judge appointed under section 3105 of such title 5. Such assessment order shall include the administrative law judge's findings and the basis for such assessment.

(B) Any person against whom a penalty is assessed under this paragraph may, within 60 calendar days after the date of the order of the Secretary assessing such penalty, institute an action in the United States court of appeals for the appropriate judicial circuit for judicial review of such order in accordance with chapter 7 of title 5, United States Code. The court shall have jurisdiction to enter a judgment affirming, modifying, or setting aside in whole or in part, the order of the Secretary, or the court may remand the proceeding to the Secretary for such further action as the court may direct.

(3)(A) In the case of any civil penalty with respect to which the procedures of this paragraph have been elected, the Secretary shall promptly assess such penalty, by order, after the date of the receipt of the notice under paragraph (1) of the proposed penalty.

(B) If the civil penalty has not been paid within 60 calendar days after the assessment order has been made under subparagraph (A), the Secretary shall institute an action in the appropriate district court of the United States for an order affirming the assessment of the civil penalty. The court shall have authority to review de novo the law and the facts involved, and shall have jurisdiction to enter a judgment enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part, such assessment.

(C) Any election to have this paragraph apply may not be revoked except with the consent of the Secretary.

(4) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order under paragraph (2), or after the appropriate district court has entered final judgment in favor of the Secretary under paragraph (3), the Secretary shall institute an action to recover the amount of such penalty in any appropriate district court of the United States. In such action, the validity and appropriateness of such final assessment order or judgment shall not be subject to review.

(5)(A) Notwithstanding the provisions of title 28, United States Code, or section 502(c) of the Department of Energy Organization Act, the Secretary shall be represented by the general counsel of the Department of Energy (or any attorney or attorneys within the Department of Energy designated by the Secretary) who shall supervise, conduct, and argue any civil litigation to which paragraph (3) of this subsection applies (including any related collection action under paragraph (4)) in a court of the United States or in any other court, except the Supreme Court. However, the Secretary or the general counsel shall consult with the Attorney General concerning such litigation, and the Attorney General shall provide, on request, such assistance in the conduct of such litigation as may be appropriate.

(B) Subject to the provisions of section 502(c) of the Department of Energy Organization Act, the Secretary shall be represented by the Attorney General, or the Solicitor General, as appropriate, in actions under this subsection, except to the extent provided in subparagraph (A) of this paragraph.

(C) Section 402(d) of the Department of Energy Organization Act shall not apply with respect to the functions of the Secretary under this subsection.

(6) For purposes of applying the preceding provisions of this subsection in the case of the assessment of a penalty by the Commission for a violation of paragraphs (1) and (2) of section 332, references in such provisions to "Secretary" and "Department of Energy" shall be considered to be references to the "Commission".

#### INJUNCTIVE ENFORCEMENT

SEC. 334. The United States district courts shall have jurisdiction to restrain (1) any violation of section 332 and (2) any person from distributing in commerce any covered product which does not comply with an applicable rule under section 324 or 325. Any such action shall be brought by the Commission, except that any such action to restrain any violation of section 332(a)(3) which relates to requirements prescribed by the Secretary, any violation of section 332(a)(4) which relates to requests of the Secretary under section 326(b)(2), or any violation of ~~section 332(a)(5)~~ *paragraph (5), (6), (7), or (8) of section 332(a)* shall be brought by the Secretary. Any such action to restrain any person from distributing in commerce a general service incandescent lamp that does not comply with the applicable standard established under section 325(i) or an adapter prohibited under ~~section 332(a)(6)~~ *section 332(a)(7)* may also be brought by the attorney general of a State in the name of the State. Any such action may be brought in the United States district court for a district wherein any act, omission, or transaction constituting the violation occurred, or in such court for the district wherein the defendant is found or transacts business. In any action under this section, process may be served on a defendant in any other district in which the defendant resides or may be found.

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