



17 June 2022

Steven Chybowski
Office of Energy Resources
One Capitol Hill
4th Floor
Providence, RI 02908

VIA EMAIL TO: Steven.Chybowski@energy.ri.gov

RE: Comments on Proposed Rule 300-RICR-00-00-4, PART 4 – Appliance and Equipment Energy and Water Energy Efficiency Standards Regulation.

Dear Mr. Chybowski:

The Home Ventilating Institute (“HVI”) is an ISO 17065 compliant certification body and a trade association representing over 100 manufacturers located in North America, South America, Asia, and Europe. Our manufacturer members provide the residential and light commercial ventilating products that deliver essential indoor air quality to homes and businesses throughout North America. HVI is pleased to partner with Rhode Island on the new standards for Residential Ventilating Fans (“RVFs”). HVI certifies RVFs, ensuring that consumers and builders can choose high-performing, energy-efficient appliances. HVI’s outstanding record in providing certification in this area resulted in the Rhode Island General Assembly naming HVI’s Publication 916, “HVI Airflow Test Procedure,” as the testing standard for RVFs in the Appliance and Equipment Energy and Water Efficiency Standards Act of 2021, codified at R.I. Gen. Law. 39-27.1-1, *et seq.* (“the Act”). See R.I. Gen. Law. 39-27.1-4(10).

As an ISO accredited certification body of RVFs, HVI is uniquely positioned to certify compliance with Rhode Island’s standards and identify compliant products so that Rhode Island regulators, retailers, installers, distributors, and consumers can be confident that the products stocked on store shelves in the state meet the General Assembly’s high goals of energy efficiency.

We suggest a few points of clarity in the proposed Rule to help effectuate Rhode Island’s new standards.

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Testing

Sec. 4.5(A) cites to R.I. Gen Laws § 39-27.1-4 for minimum product standards, which indicates that RVFs prove compliance “when tested in accordance with” HVI Airflow Test Procedure.¹ However, Sec. 4.5(B) says that manufacturers must test “samples of their products” in accordance with R.I. Gen. Laws § 39-27.1-7. That statute points back to the regulations without further guidance:

The manufacturers of products covered by this chapter shall test samples of their products *in accordance with the test procedures adopted pursuant to this chapter*. The commissioner may adopt updated test methods when new versions of test procedures become available.

R.I. Gen. Laws § 39-27.1-7(a). HVI suggests that the regulation should reference the entire Act, rather than this individual section, which does not contain the relevant information. **HVI proposes changing the reference in Sec. 4.5(B) from R.I. Gen. Laws § 39-27.1-7 to “The Appliance and Equipment Energy and Water Efficiency Standards Act of 2021,” codified at R.I. Gen. Laws § 39-27.1-1, et seq.** to identify the HVI Airflow Test Procedure as the appropriate test, as the General Assembly determined.

Certification

Sec. 4.5(C) requires manufacturers to “certify to the Commissioner that their products are in compliance [and that] [t]he certifications shall be based upon test results.” It appears that Rhode Island will rely on yet-to-be-promulgated “guidelines” to determine the certification process for new appliance models covered by the Act. **Given that HVI’s testing procedure is an element of compliance, we ask that HVI be approved as a third-party certifier in the guidelines.**

HVI provides a publicly accessible Certified Products Directory, which stands ready to incorporate Rhode Island standards as a “check box” for certified products. HVI already provides this service to the State of Vermont as you can see in the following screenshot of the Bathroom Exhaust Fans and Kitchen Exhaust Fans sections of the directory.

¹ The statute mistakenly refers to HVI as the Home *Ventilation* Institute; the correct name is the Home *Ventilating* Institute. See R.I. Gen. Laws § 39-27.1-4(b)(10).

HVI Publication 911: Certified Home Ventilating Products Directory®

Section I - Complete Product Listing

Please note that Model Numbers are shown with spaces and dashes removed in order to facilitate the sorting function within the directory.

* Some HVI-Certified Models are also ENERGY STAR-rated as indicated by a "Yes" in the "ENERGY STAR" column. This field is provided for information only. To confirm the current ENERGY STAR listings, visit the [Ventilating Fans Product Finder](#).

 Save HVI Product Directory as a spreadsheet

Search:

Product Category	Product Subcategory	Brand Owner	Brand Name	Model	Rated Airflow (cfm)	Rated Sound (Sones)	Input Power (Watts)	* Energy Star	Meets Vermont Efficiency Reqs
Bathroom Exhaust Fans		Homewerks Worldwide, LLC	Homewerks Worldwide	7140-50-G3	50	1	17	No	No
Bathroom Exhaust Fans		Homewerks Worldwide, LLC	Homewerks Worldwide	7140-50-G3	27			No	No
Bathroom Exhaust Fans		Homewerks Worldwide, LLC	Homewerks Worldwide	7140-80-G3	80	1.5	28	Yes	Yes
Bathroom Exhaust Fans		Homewerks Worldwide, LLC	Homewerks Worldwide	7140-80-G3	58			Yes	Yes
Bathroom Exhaust Fans		Homewerks Worldwide, LLC	Homewerks Worldwide	7141-80-G3	80	1.1	28	No	Yes
Bathroom Exhaust Fans		Homewerks Worldwide, LLC	Homewerks Worldwide	7141-80-G3	57			No	Yes
Kitchen Range Hoods	Microwave	IKEA Purchasing Services, US, Inc.	IKEA	004.621.66	100	1.3		No	No
Kitchen Range Hoods	Microwave	IKEA Purchasing Services, US, Inc.	IKEA	004.621.66	170	4		No	No

See <https://www.hvi.org/hvi-certified-products-directory/>. A regulator, retailer, installer, distributor, or consumer may easily search the Directory by model number and know immediately if a particular product meets Rhode Island standards.

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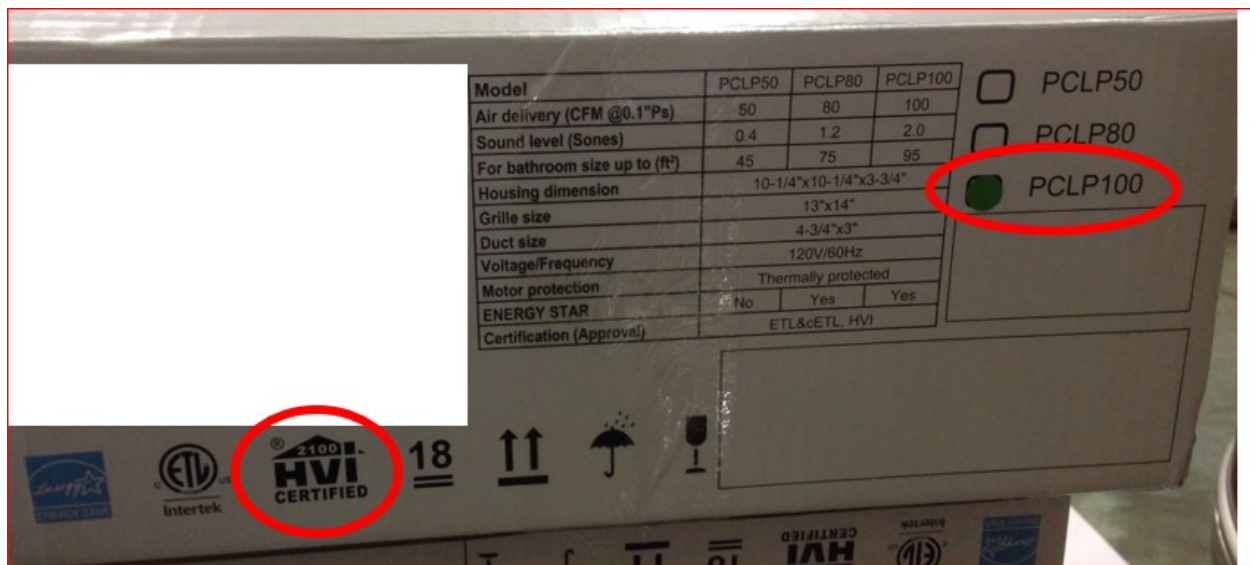
Labeling

Sec. 4.5(D) requires manufacturers of new products to identify with a mark on the outside of the packaging, each compliant product. The Rule allows that “the model number . . . or any label earned as part of the certification process may be used for this purpose and shall be deemed as providing sufficient information to determine compliance.”

HVI supports the Commissioner’s goal of simplifying these requirements through coordination with other states and federal agencies, and “allow[ing] the use of existing marks . . . that connote compliance with the efficiency requirements.” Section 4.5(D). Certainly, in this time of record-breaking inflation, HVI does not want well-meaning regulation to result in unnecessary price increases which will inevitably hurt the consumer.

When different states set different requirements for RVF efficiency and require specific labeling to identify compliant products, text on such a label becomes long and cumbersome as well as constantly obsolete as more states adopt new versions of the requirements. This state-by-state differential, as well as the constantly evolving compliance standards and labeling requirements, will be extremely costly for manufacturers and unnecessarily increase consumer prices.

If Rhode Island lists HVI as a third-party certifier in the guidelines, **HVI will add Rhode Island compliance to its Certified Product Directory (free of charge to Rhode Island). Each HVI certified product is already labeled as such, and a regulator, retailer, installer, or consumer, will be able to easily confirm, by using the model number on the product packaging, whether the product complies with Rhode Island standards.**



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Liability and Enforcement

HVI has followed Rhode Island's adoption of these new appliance standards closely. During the debate and passage of S0399 in the General Assembly last year, it appeared that the legislature determined to leave particular details regarding enforcement of the Act to the more technically-qualified executive agency. HVI presents, for the Commissioner's consideration some potential points of clarification with regard to liability under the Act.

The statute obligates manufacturers to three things: testing, certification, and marking. See R.I. Gen. Laws § 39-27.1-7(a)-(c). HVI and its members stand ready to comply with those provisions. HVI also understands that if the Commissioner tests a product sold in Rhode Island and it does not meet the state standards, the manufacturer will be liable for the purchase price of the product and the cost of the testing. R.I. Gen. Laws § 39-27.1-7(d). Section (f) of that Code Section, however, states as follows:

(f) The commissioner shall investigate complaints received concerning violations of this chapter and shall report the results of the investigations to the attorney general. The attorney general may institute proceedings to enforce the provisions of this chapter. Any manufacturer, distributor, or retailer, or any person who installs a product covered by this chapter for compensation, who or that violates any provision of this chapter shall be issued a warning by the commissioner for any first violation and subject to a civil penalty of up to one hundred dollars (\$100) for each offense. Repeat violations shall be subject to a civil penalty of not more than five hundred dollars (\$500) for each offense. Each violation shall constitute a separate offense, and each day that the violation continues shall constitute a separate offense. Penalties assessed under this subsection are in addition to costs assessed under subsection (d) of this section.

While HVI's membership wants to comply with the regulations, the following situations could catch an unwitting manufacturer in a cumulating penalty situation.

- (a) If an independent appliance retailer, who orders his own product from an out-of-state distributor, stocks his shelves with non-compliant products, is the manufacturer of that product liable? Would the manufacturer be required to pay \$500 per day, per product, for as long as the product remains on the retailer's shelf?
- (b) While we do not anticipate this happening, if the Commissioner were to test a sample product and find that it does not meet the Rhode Island standard, would the manufacturer of that product not only be liable for cost of the sample product and the testing under R.I. Gen. Laws § 39.27.1-7(d), but also be required to pay \$500 per item for all identical model numbers offered for sale in Rhode Island at that time? Would the penalty per item be multiplied by the number of days each item was on a shelf for sale?
- (c) Given that contractors may be licensed in multiple states, it is foreseeable that an out-of-state contractor may install a noncompliant product which he purchases in his home state, in a home or business in Rhode Island. Would the manufacturer of that non-compliant product be liable for that installation and penalized \$500 per day that the product is installed in Rhode Island?

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HVI asks that proposed Rule be amended to include an additional subsection clarifying liability.

4.x Liability

A. With reference to R.I. Gen. Laws § 39-27.1-7(f), liability under this rule and R.I. Gen. Laws § 39-27.1-1, et seq., is limited to the following actions or omissions:

- 1. Manufacturers shall be liable for failure to test, certify or mark their product as required by the guidelines, this regulation, and R.I. Gen. Laws § 39-27.1-7(a)-(d).**
- 2. Retailers are liable under this regulation if they sell or offer for sale any non-compliant product in Rhode Island in violation of R.I. Gen. Laws § 39-27.1-5(a).**
- 3. Distributors in Rhode Island violate R.I. Gen. Laws § 39-27.1-5(a), and this regulation if they ship non-compliant product to a retailer for sale in Rhode Island.**
- 4. Any person who installs a non-compliant product for compensation violates R.I. Gen. Laws § 39-27.1-5(b).**

HVI also asks that the rule further define “violation” as it is used in R.I. Gen. Laws § 39-27.1-7(f), as the per item, per day penalty makes sense in some situations, but not others. For example, if a contractor installs a non-compliant product, and his violation is discovered and the product replaced, one year later, would the contractor be fined for each day the product was installed in the home?

We are supportive of the Rhode Island Appliance and Equipment Energy and Water Energy Efficiency Standards Regulation and have a stake in its success. We hope that the government will consider our recommendations, and we would be glad to discuss these matters further should you have any questions. Please feel free to reach out to Matt Matheny, HVI Engineering Director, at iaq@hvi.org.

Kind regards,



Jacki Donner, CEO