

FEDERAL TRADE COMMISSION

16 CFR Part 305

[RIN 3084- AB03]

RULE CONCERNING DISCLOSURES REGARDING ENERGY CONSUMPTION AND WATER USE OF CERTAIN HOME APPLIANCES AND OTHER PRODUCTS REQUIRED UNDER THE ENERGY POLICY AND CONSERVATION ACT ("APPLIANCE LABELING RULE")

AGENCY: Federal Trade Commission (FTC or Commission).

ACTION: Advance notice of proposed rulemaking.

SUMMARY: Section 325 of the Energy Independence and Security Act of 2007 provides the Commission with authority to promulgate energy labeling rules for consumer electronics, including televisions. The Commission is seeking comment on whether it should require labels for televisions and other consumer electronic products.

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

DATES: Comments must be received by May 14, 2009.

ADDRESSES: Interested parties are invited to submit written comments electronically or in paper form. Comments should refer to "Consumer Electronics Labeling, Project No. P094201" to facilitate the organization of comments. Please note that comments will be placed on the public record of this proceeding -- including on the publicly accessible FTC website, at <http://www.ftc.gov/os/publiccomments.shtm> -- and therefore should not include any sensitive or confidential information. In particular, comments should not include any sensitive personal information, such as an individual's Social Security Number; date of birth; driver's license

number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include any “[t]rade secrets and commercial or financial information obtained from a person and privileged or confidential,” as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and Commission Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled “Confidential,” and must comply with FTC Rule 4.9(c).¹

Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted by using the following weblink:

<https://secure.commentworks.com/ftc-electronicslabeling> (and following the instructions on the web-based form). To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the weblink <https://secure.commentworks.com/ftc-electronicslabeling>. If this Notice appears at <http://www.regulations.gov/search/index.jsp>, you may also file an electronic comment through that website. The Commission will consider all comments that regulations.gov forwards to it. You may also visit the FTC website at <http://www.ftc.gov> to read the Notice and the news release describing it.

¹ FTC Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission’s General Counsel, consistent with applicable law and the public interest. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

A comment filed in paper form should include the “Consumer Electronics Labeling, Project No. P094201” reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135 (Annex T), 600 Pennsylvania Avenue, NW, Washington, DC 20580. The FTC requests that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC website, to the extent practicable, at <http://www.ftc.gov/os/publiccomments.shtm>. As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC’s privacy policy, at <http://www.ftc.gov/ftc/privacy.shtm>.

SUPPLEMENTARY INFORMATION:

Section 325 of the Energy Independence and Security Act of 2007 (EISA or the Act) (Pub. L. 110-140) gives the Commission authority to require energy labeling for five categories of consumer electronic products. In accordance with that Act, the Commission is seeking comment on labeling for such products. This Notice provides information about current energy labeling requirements, the FTC’s new authority for consumer electronics labeling, background

on previous FTC labeling activities related to these products, potential television labeling, potential labeling for other consumer electronics, and a series of questions for commenters.

I. Current Energy Labeling Requirements

Section 324 of the Energy Policy and Conservation Act (EPCA) (42 U.S.C. 6294) requires the FTC to prescribe labeling rules for the disclosure of estimated annual energy costs or alternative energy consumption information for a variety of products covered by the statute, including home appliances (*e.g.*, refrigerators, clothes washers, and dishwashers), lighting, and plumbing products.² For most covered products, labels must disclose energy information derived from Department of Energy (DOE) test procedures.³ The Commission may also require sellers, including retailers, to disclose energy information found on the label in any printed material displayed or distributed at the point of sale. In addition, the Commission may direct manufacturers to provide energy-related disclosures including instructions for the maintenance, use, or repair of the covered product.⁴

² For most appliances, the Commission must prescribe labeling rules unless it determines that labeling is not technologically or economically feasible (42 U.S.C. 6294(a)(1)). For central air conditioners, heat pumps, furnaces, and clothes washers, the statute requires labeling unless the Commission finds that labeling is not technologically or economically feasible or is not likely to assist consumers in making purchasing decisions (42 U.S.C. 6294(a)(2)(A)). Pursuant to Section 6294(a)(1), the Commission determined not to require labeling for television sets, kitchen ranges, ovens, clothes dryers, humidifiers, dehumidifiers, and certain home heating equipment other than furnaces. *See* 44 FR 66466, 66468-66469 (Nov. 19, 1979).

³ Section 323 of EPCA (42 U.S.C. 6293) directs DOE to develop test procedures for major household appliances. Manufacturers must follow these test procedures to determine their products' compliance with DOE's energy conservation standards (required by Section 325 of EPCA), and to derive the energy consumption or efficiency values to put on required labels.

⁴ 42 U.S.C. 6294(c).

The Commission implements EPCA's directive through the Appliance Labeling Rule (16 CFR Part 305). Under the Rule, appliance manufacturers must disclose specific energy use information at the point of sale in the form of a yellow "EnergyGuide" label affixed to each unit. This information also must appear in catalogs and on Internet sites from which covered products can be ordered. Labels for most appliances must provide the product's estimated annual operating cost as the primary disclosure. To calculate these operating cost estimates, manufacturers must use national average cost figures for energy (*e.g.*, electricity, natural gas, etc.) determined by DOE. The Rule also allows manufacturers to place the U.S. Government ENERGY STAR logo on labels for products that qualify for that program.⁵ Required labels for appliances must include a "range of comparability" (published by the Commission) that shows, for most products, the highest and lowest operating cost of all similar appliance models. These ranges help consumers compare similar models.

The Commission's Rule also requires manufacturers of most covered products to file data reports with the FTC. These reports must contain the estimated annual energy consumption or energy efficiency ratings for the appliances derived from tests performed pursuant to the DOE test procedures (16 CFR 305.8(b)).⁶

⁵ ENERGY STAR is a voluntary labeling program that identifies high efficiency products. The Environmental Protection Agency (EPA) and DOE administer the ENERGY STAR program. *See* <http://www.energystar.gov>.

⁶ *See* 42 U.S.C. 6296(b)(2)&(4).

II. FTC's New Authority for Consumer Electronics Labeling

Section 325 of EISA amends EPCA to direct the Commission to prescribe labeling for televisions, personal computers, cable or satellite set-top boxes, stand-alone digital video recorder boxes, and personal computer monitors.⁷ The Act also specifically provides the Commission with discretion to consider other types of energy disclosures for consumers in lieu of traditional product labeling for these consumer electronics.⁸ The Commission must issue such requirements no later than 18 months after DOE publishes applicable test procedures for such products. In the absence of such test procedures, the Commission has discretion to require labeling if it identifies adequate non-DOE testing procedures, and determines that disclosure requirements for those products are likely to assist consumers in making purchasing decisions.⁹ EISA also gives the Commission discretion to require comparative information on the label or in other disclosures. Finally, the amendments provide the Commission with authority to require labeling or other disclosures for any other consumer product if the FTC determines such labeling is likely to assist consumers in making purchasing decisions.¹⁰

⁷ However, the Act states that the requirements would not apply in any case in which the Commission determines that the rules would not be technologically or economically feasible or would not be likely to assist consumers in making purchasing decisions. *See* EISA, Section 325 (42 U.S.C. 6294(a)).

⁸ The Act directs the Commission to “prescribe labeling or other disclosure requirements for the energy use of” the covered consumer electronic products. 42 U.S.C. 6294(a)(2)(I)(i).

⁹ Any FTC labeling requirements must become effective 18 months after they are issued. 42 U.S.C. 6294(a)(2)(I)(iii).

¹⁰ Under EPCA, a “consumer product” means any article which consumes, or is designed to consume energy and which, to any significant extent, is distributed in commerce for personal use or consumption by individuals. 42 U.S.C. 6291(1). As with the five consumer electronic categories specifically listed in the EISA amendments, the FTC may identify a non-DOE test procedure for labeling such additional consumer products (in the absence of a DOE test

A. Television Labeling

The Commission is seeking comment on possible energy labeling or similar disclosures for televisions. As discussed in more detail below, the Commission did not require television labeling in its original 1979 Rule. In 2007, the Commission revisited this issue but declined to require television labeling because the existing DOE test procedure was inapplicable to modern televisions. Because EISA now allows the FTC to use non-DOE test procedures for television labeling requirements, we are seeking comment on whether to require labeling based on a new test procedure recently adopted by EPA's ENERGY STAR program. We also seek comment on whether there are other test procedures we should consider.

Televisions have been covered products under EPCA since the 1970's. In 1979, the Commission determined not to require labeling because there was little variation in the annual energy costs of competing television models and such costs were a small fraction of the purchase price. The Commission, therefore, believed it was unlikely that labels for televisions would promote industry efforts to increase energy efficiency, or provide benefits to consumers.¹¹

In 2007, the FTC revisited the issue and sought comment on whether the Rule should require television labeling.¹² Several commenters urged the Commission to require labeling. The comments suggested that many modern televisions use as much, or more, electricity than products currently labeled under the Rule. In addition, comments indicated that there is a

procedure) and has discretion to require comparative information on the label.

¹¹ 44 FR 66466, 66468 (Nov. 19, 1979).

¹² 72 FR 6836, 6857 (Feb. 13, 2007).

significant range of energy use among similar products on the market.¹³ The energy consumption characteristics of televisions, therefore, appear to be significantly different than when the Commission decided to forgo labeling in the 1970's. After considering these comments, the Commission concluded that energy labeling for televisions may assist consumers in making purchasing decisions.¹⁴ At the same time, however, the record indicated that current DOE test procedures were inadequate to test most televisions on the market. Because the law at that time required the use of DOE test procedures, the Commission decided not to proceed further until the DOE test procedure was revised.¹⁵

The most recent EPCA amendments allow the Commission to consider non-DOE test procedures for television labeling. EPA's ENERGY STAR program has adopted criteria for televisions based on specific international test procedures (Section 11 of "IEC 62087, Ed. 2.0: Methods of Measurement for the Power Consumption of Audio, Video and Related Equipment" and "IEC 62301, Ed. 1.0: Household Electrical Appliances - Measurement of Standby Power").¹⁶ The procedures require manufacturers to measure the power consumed by televisions when the products are on and in standby mode. Given these existing ENERGY STAR procedures and the

¹³ According to the Natural Resources Defense Council (NRDC), there are now many "large-screen" digital televisions on the market that use 500 or more kilowatt-hours per year, as much energy as many new refrigerators. NRDC (#519870-00025). At an FTC public workshop held during the 2007 proceeding, one participant suggested that the average 42-inch plasma television draws 334 watts, with models ranging from 201 watts to 520 watts. Workshop Tr. at 198 (<http://www.ftc.gov/os/comments/energylabelling-workshop/060503wrkshoptrnscrip.pdf>).

¹⁴ See 72 FR 49948, 49962 (Aug. 29, 2007).

¹⁵ 72 FR at 6858 (Feb. 13, 2007).

¹⁶ See International Electrotechnical Commission (<http://www.iec.ch/>); and "ENERGY STAR Program Requirements for Televisions Eligibility Criteria (Version 3.0)" (http://www.energystar.gov/ia/partners/product_specs/eligibility/tv_vcr_elig.pdf).

comments received in response to the 2007 proceeding, the Commission is considering television labeling again and seeks comment on adoption of the IEC procedures (and any other appropriate procedures) for labeling purposes.

The Commission also is seeking comment on the appropriate format for television energy use disclosures. The Appliance Labeling Rule follows a consistent approach for labeling most large covered products displayed in showrooms. In particular, the Rule requires manufacturers to affix a yellow EnergyGuide label that displays yearly operating cost as the primary energy disclosure for the product. The Commission is seeking comment on whether such an approach is appropriate for televisions or whether there are alternative formats and locations for the disclosure of energy information.¹⁷ Although televisions routinely appear in showrooms, the configuration of these products may raise placement issues not present with appliances such as refrigerators or clothes washers. For example, it may be difficult to affix labels on the products themselves in a location that is visible to consumers without blocking the television screen. As detailed in Section III of this Notice, the Commission is seeking input on a variety of issues related to television disclosures, including the need for such disclosures, the format and placement of information, comparative information, usage assumptions, and test procedures.

¹⁷ The current EnergyGuide label is the product of a two-year rulemaking effort concluded in 2007. During that proceeding, the Commission solicited comment about various label designs including energy use or efficiency disclosures, annual operating cost disclosures, and a five-star rating system (*i.e.*, a “categorical” label). Based on consumer research and the comments received during that proceeding, the Commission revised the EnergyGuide label to feature prominently annual operating costs on the label. Because this research on showroom products was so recent, we do not plan to duplicate that labeling research for televisions. *See* 72 FR 49948 (Aug. 29, 2007).

B. Other Consumer Electronic Products

The Commission is also seeking information about potential labeling requirements for personal computers, cable or satellite set-top boxes, stand-alone digital video recorder boxes, personal computer monitors, and other consumer electronic products. Although currently there are no DOE tests for these products, EISA gives the Commission the discretion to require energy disclosures for them using non-DOE test procedures. Therefore, the Commission is seeking comment on the need for such disclosures, any appropriate test procedures, the format of labels or disclosures, and the placement of labels on the products. We are also seeking comment on a series of questions about potential labeling detailed in Section III of this Notice.

III. Request for Comment

The Commission seeks written comments on a series of questions related to labeling for televisions and other consumer electronic products. We invite interested persons to submit written comments on any issue of fact, law, or policy that may bear upon the FTC's labeling requirements. The Commission encourages commenters to respond to the specific questions. However, commenters do not need to respond to all questions. Please provide explanations for your answers and supporting evidence where appropriate. After examining the comments, the Commission will determine whether to propose any specific amendments.

A. Televisions

To facilitate the Commission's efforts to consider energy disclosures for televisions, we request that commenters consider the following questions and issues:

1. Need for Labeling:
 - a. Would labeling or other energy disclosures for televisions “assist consumers in making purchasing decisions”? Why or why not?
 - b. Is there any evidence that labeling or energy disclosures for televisions would “not be technologically or economically feasible”? If so, please provide such information.
 - c. What benefits, if any, would labeling or other energy disclosures provide for consumers and businesses (including small businesses)? What costs, if any, would such labeling or other energy disclosures impose on consumers and businesses (including small businesses)?
2. Energy Use Data: Is there data regarding energy use of televisions in the market? Is there data that shows a significant difference in the energy use of other models? What are the typical annual energy costs of each product?
3. Reports, Studies, or Research: Do any recent reports, studies, or research provide data relevant to energy use, operating costs, and labeling for televisions in the United States or other countries?¹⁸ If so, please provide such reports, studies, or research.

¹⁸ When statistical or scientific data is presented, the Commission requests enough detail about data, study design, statistical analysis, and findings to enable it to understand the methodology that was used to conduct the analysis.

4. Test Procedures: If the Commission were to require labeling, should the Commission require the use of Section 11 of “IEC 62087, Ed. 2.0: Methods of Measurement for the Power Consumption of Audio, Video and Related Equipment” and “IEC 62301, Ed. 1.0: Household Electrical Appliances - Measurement of Standby Power” as adopted by ENERGY STAR for television labeling purposes? What are the advantages and disadvantages to adopting the ENERGY STAR procedures?

a. Usage Rates: To derive annual operating cost figures for potential disclosures, the Rule must require standard usage assumptions for televisions (*e.g.*, 5 hours per day). EPA’s Eligibility Criteria (Section 3) uses annual power consumption estimates on a daily usage pattern of 5 hours in “On Mode” and 19 hours in “standby.” If the FTC were to require labeling or other energy disclosures, should the FTC adopt EPA’s usage patterns? What are the advantages and disadvantages to adopting such usage patterns?

b. Other Test Procedure Issues: Are there any issues not addressed by Section 11 of IEC 62087 that the Commission should address in a potential Rule? Are there any aspects of the ENERGY STAR criteria (not otherwise contained in IEC 62087 or IEC 62301) that the Commission should incorporate into its labeling requirements? In particular, ENERGY STAR (Section 4.E.2.) has specifications that go beyond the IEC test procedure regarding input signal levels, broadcast test materials, true power factor, testing at default factory settings, and automatic brightness control. Should the FTC adopt any of these particular EPA specifications in its requirements? If so, which ones and why? If not, which ones and why not?

c. Alternative Test Procedures: Are there any other test procedures the Commission should adopt in lieu of the ENERGY STAR procedure? If so, please explain why

the Commission should adopt such procedures. What are the advantages and disadvantages to adopting such alternative procedures?

5. Format, Content, and Placement: If the Commission were to require labeling or other energy disclosures, how should it require manufacturers or other sellers to disclose such information? Should television labels follow the same “EnergyGuide” format, content, and placement requirements applicable to other covered showroom products such as refrigerators? What form should the label take (*e.g.*, hang tag, adhesive label, static cling label)?

a. Retailer Role: What role should retailers have, if any, in providing these disclosures?¹⁹ Should retailers have a responsibility for the placement of disclosures in brick and mortar stores? If so, what should this responsibility be?

b. Internet Disclosures: Should the Commission consider energy disclosure options that do not provide consumer information at the point of purchase in the form of a label or other in-store disclosures (*e.g.*, Internet-only disclosures with no labeling on the product or product package)? If so, what should be the format, content, and placement of such disclosures? Should such Internet disclosures (and other catalog disclosures) be any different than those for other covered products under the Rule (such as refrigerators)?

6. Comparative Information: What comparative information, if any, should the Rule require on labels or in other disclosures about the energy use of televisions?

a. Should the Commission require disclosure of a range of comparability similar to EnergyGuide labels for other covered products? If not, why not? If so, how should

¹⁹ Section 324(c)(4) of EPCA (42 U.S.C. 6294(c)(4)) states: “A rule under this section applicable to a covered product may require disclosure, in any printed matter displayed or distributed at the point of sale of such product, of any information which may be required under this section to be disclosed on the label of such product.”

such comparative information be organized? Should the comparisons be made across model types or technologies (*e.g.*, LCD, plasma, screen resolutions, etc.)? Should the Commission limit comparative information to screen size (*e.g.*, 1" to 20", 21" to 29", 30" to 39", 40" to 49", 50" to 59", and 60" or more)? Should the Commission use some other approach for establishing such categories? If so, what approach? What would be the advantages and disadvantages to such an approach?

b. Is there information available from which to develop approximate ranges for labeling purposes or should the Commission wait for manufacturers to test all their products and submit such data to the Commission?

7. Reporting Requirements: What data, if any, should the Rule require manufacturers to submit to the FTC?²⁰ Should the Commission use the data in developing ranges of comparability (*e.g.*, ranges organized by screen size)?

B. Other Consumer Electronics

To facilitate the Commission's consideration of energy disclosures for personal computers, personal computer monitors, cable or satellite set-top boxes, stand-alone digital video recorder boxes, and other consumer electronic products, we request that commenters respond to the following questions and issues:

²⁰ Under 42 U.S.C. 6296(b)(2), "[i]f requested by the Secretary or Commission, the manufacturer of a covered product to which a rule under section 6294 of this title applies shall provide, within 30 days of the date of the request, the data from which the information included on the label and required by the rule was derived." In addition, 42 U.S.C. 6296(b)(4) states, "[e]ach manufacturer of a covered product to which a rule under section 6294 of this title applies shall annually, at a time specified by the Commission, supply to the Commission relevant data respecting energy consumption or water use developed in accordance with the test procedures applicable to such product under section 6293 of this title."

1. Need for Energy Disclosures:

a. Should the Commission require labeling or other energy disclosures for personal computers, personal computer monitors, cable or satellite set-top boxes, and stand-alone digital video recorder boxes? Would labeling or other energy disclosures “assist consumers in making purchasing decisions”? Is there any evidence that labeling or other energy disclosures for these products would “not be technologically or economically feasible” or “not likely to assist consumers in making purchasing decisions”?

b. Are there any other consumer electronic products (*i.e.*, beyond those listed above) that the Commission should consider for labeling or other energy disclosures? If so, which ones? Would labeling or other energy disclosures “assist consumers in making purchasing decisions”?

c. What benefits, if any, would labeling or other energy disclosures for consumer electronics (*i.e.*, any product identified in response to 1.a. or 1.b. immediately above) provide for consumers and businesses (including small businesses)? What costs would such labeling or other energy disclosures impose on consumers and businesses (including small businesses)?

2. Energy Use Data: Is there data regarding energy use of consumer electronic products (*i.e.*, any product identified in response to 1.a. or 1.b. above) in the market? If so, is there data that shows a significant difference in the energy use of other models? What are the annual energy costs of these products?

3. Reports, Studies, or Research: Do any recent reports, studies, or research provide data relevant to potential energy disclosures for consumer electronics products in the United States or other countries?²¹

4. Test Procedures: Are there existing adequate test procedures for consumer electronic products that could yield annual energy consumption estimates? If so, are such test procedures currently used by industry or in any government standards program? Would such test procedures be appropriate for the Commission to adopt for labeling purposes? Why or why not?

5. Format, Content, and Placement: If the Commission considers labeling or other energy disclosures for one or more of these products, what should be the format, content, and placement of such information? How do consumers purchase these products (*e.g.*, in stores, online, etc.)? Should disclosures appear on the products themselves, on packaging, through other point of purchase material, or through some other means?

a. Retailer Role: What role, if any, should retailers have in providing these disclosures? Should retailers have a responsibility for the placement of disclosures in brick and mortar stores? If so, what should this responsibility be?

b. Internet Disclosures: Should the Commission consider energy disclosure options that do not provide consumer information at the point of purchase in the form of a label or other in-store disclosure (*e.g.*, Internet-only disclosures with no labeling on the product or

²¹ When statistical or scientific data is presented, the Commission requests enough detail about data, study design, statistical analysis, and findings to enable it to understand the methodology that was used to conduct the analysis.

product package)? Should such Internet disclosures (and other catalog disclosures) be any different than those for other covered products under the Rule (such as refrigerators)?

c. Content: If labeling or other energy disclosures should be required, what types of information should be included on such labels? Should labeling provide the same information as the EnergyGuide label (*i.e.*, yearly operating costs, energy use, and comparative information)? Or should the label require something different or additional?

6. Comparative Information: What, if any, disclosures should the Rule require about other products on the market? If the Commission requires a label, should the label contain a range of comparability like other covered products with the EnergyGuide label? If not, why not? If so, how should such comparative information be organized? Should the comparisons be made across model types and technologies? Is there data available from which to develop approximate ranges for labeling purposes or should the Commission wait for manufacturers to test all their products and submit such data to the Commission?

7. Reporting Requirements: What data, if any, should the Rule require manufacturers to submit to the FTC?

List of Subjects in 16 CFR Part 305

Advertising, Consumer Protection, Energy Conservation, Household Appliances, Labeling, Lamp Products, Penalties, Reporting and Recordkeeping Requirements.

By direction of the Commission.

Donald S. Clark
Secretary