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FEDERAL TRADE COMMISSION

16 CFR Part 305

RIN 3084-AB15

Energy Labeling Rule

AGENCY: Federal Trade Commission.

<https://www.regulations.gov> | 0-g11.965 0 TD .000

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Federal Trade Commission (FTC or Commission) seeks public comment on potential amendments to the Energy Labeling Rule (Rule), including energy labels for several new consumer product categories, and other amendments to improve the Rule's effectiveness, and reduce unnecessary burdens.

DATES: Comments must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the Matter No. R61104)”on pyou

Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

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

SUPPLEMENTARY INFORMATION:

I. Overview

The Commission seeks comment on amendments to its existing Energy Labeling Rule at 16 CFR Part 305. As discussed below, the Commission specifically seeks comment on whether it should add new consumer product categories to the labeling program, increase the availability of online labels and other energy information, and streamline existing

Energy Policy and Conservation Act of 1975 (EPCA). The Rule requires energy labeling for major home appliances and other consumer products to help consumers compare the energy usage and costs of competing models. It also contains labeling requirements for refrigerators, refrigerator-freezers, freezers, dishwashers, water heaters, clothes

III. Potential Rule Improvements

A. Potential Labels for New Product Categories

The Commission seeks comment on whether to add several new product categories to the energy labeling program. Under EPCA, FTC has authority to require energy labels for consumer products. Specifically, in addition to products named in the statute or designated by DOE under that agency's authority, FTC may require labels pursuant to 42 U.S.C. 6292(a)(6) for any consumer product as long as a label "is likely to assist consumers in making purchasing decisions."⁴ The Commission seeks comment on potential new labels for (1) the product categories listed below, and (2) any other consumer products that may be appropriate for energy labels. The Commission has not made any final determination regarding whether energy labels are warranted for any of the products discussed below at III.A.2.

In considering the product types listed below or other potential products, commenters should address any issues relevant to whether the Commission should require labeling for specific product categories. Typically, energy labels are most likely to help consumers when the underlying products use a substantial amount of energy and exhibit a range of annual energy costs across competing similar models. In addition to requiring energy use figures, the Commission has authority to require disclosure of additional information relating to energy consumption, including instructions for maintenance, use, repair. 42 U.S.C. 6294(c)(5). If no

⁴ 42 U.S.C. 6294(a)(6) (see 42 U.S.C. 6291(1) (defining "consumer product"). For additional FTC labeling authority, see 42 U.S.C. 6292(a)(5). For new product categories that DOE classifies as "covered" pursuant to 42 U.S.C. 6292(b), the FTC may prescribe labeling under 42 U.S.C. 6294(a)(3) if (1) the Commission determines labeling will assist purchasers in making purchasing decisions, (2) DOE has prescribed test procedures for the product class, and (3) the Commission concludes labeling for the class is economically and technologically feasible.

DOE test procedure exists for a particular product type, commenters should address whether competent and reliable test procedures exist that yield adequate, consistent estimated energy use disclosures on the labels.

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boxes, in stores displayed out of the boxes, or through professional installers, etc.);

- How consumers typically shop (e.g., make purchasing decisions) for the products, and whether they shop online, in stores, or through some other means (e.g., discussions at home with installers);

- What, if any, subgroupings are appropriate for product categories by size, configuration, fuel used, or type (please provide specific information);

- Whether and why range information would be useful on the label and, if so, whether such range data is available;

- Whether and why labels for the product should appear on boxes, the products themselves, or through some other location or means;

- Any particular burdens associated with labeling specific product categories; and

- Whether the labels should provide any other available information about those products relevant to their energy consumption and consumer use.

2. List of Potential New Product Categories

Clothes Dryers EPCA designates clothes dryers covered products in 42 U.S.C. 6292.

In 1979, the Commission declined to require labels for clothes dryers after finding models on the market had a limited range of energy use. In 2014, the Commission reconsidered clothes dryer labels, and again declined to require them, concluding that dryer information continued to

⁵ 44 FR at 66469. Under EPCA, the Commission must prescribe labels for dryers unless it finds labeling would not be technologically or economically feasible. 42 U.S.C. 6294(a)(1). In initially promulgating the Rule in 1979, the Commission, after examining the statute and statutory history, concluded “the Congress[’s] intent was to permit the exclusion of any product category, if the Commission found that the costs of the labeling program would substantially outweigh any potential benefits to consumers.” 44 FR at 66467–68.

Finally, media reports suggest there are ongoing concerns in the market about the consistency of advertised flow rate or capacity claims (e.g., recommended room sizes¹⁰). FTC labeling requirements mandating specific test procedure requirements would ensure consumers have uniform information about competing models.

Miscellaneous Refrigerator Products DOE has designated miscellaneous refrigerators (MREFs) as covered products under EP

uncovered. A single such incandescent bulb can cost consumers more than \$3 per year in electricity costs, which can add up if multiple bulbs are used in a home. The LED equivalent for such bulbs, however, has an annual energy cost of about 50 cents. These products are not currently covered by DOE standards. However, the FTC has authority to require labeling for them under 42 U.S.C. 6294(a)(6). In addition to the general questions listed above, commenters should address whether the Commission should change the Rule's coverage to include such lower brightness bulbs or any other lighting products, (full color "tunable" lamps with adjustable color and CCT¹³).

Residential Ice Makers Consumers can purchase desktop icemakers in various configurations, including portable, non-portable, uncooled storage and non-portable, cooled storage units. Residential models generally produce fewer than 50 pounds of ice per hour. There are currently no DOE standard test procedure requirements specifically for these models. DOE tested these products in 2014, and found that models used significant energy. The DOE data also suggested a significant range of energy consumption may exist among models offered in the market.¹⁴ Although DOE developed and applied that procedure for ice makers for research purposes, it ultimately did not publish test procedure for these products.

In addition to the general questions listed above, the Commission seeks comment on which capacity categories should apply to consumer (residential) models for labeling purposes,

¹³ In the past, the Commission has looked beyond DOE's specific lamp definitions, which generally cover products subject to DOE's efficiency standards, to include products designated as "specialty consumer lamps" using its general labeling authority at 42 U.S.C. 6294(a)(6). 80 FR 67285 (Nov. 2, 2015).

¹⁴ See Preliminary Technical Support Document EERE-2011-BT-STD-0043-0024, Section 7.2.3 and Table 7.2.4, DOE, <https://beta.regulations.gov/document/EERE-2011-BT-STD-0043-0024>.

and whether DOE's test procedure for commercial icemakers can be used as a basis for EnergyGuide labels for residential models.

Humidifiers Consumers use residential humidifiers, including portable and whole-house devices, either to increase or maintain the humidity levels in all or part of the home or to ease illness symptoms.¹⁵ There are currently no DOE standard test procedures for these products. A 2012 EPA ENERGY STAR report suggested differences in energy consumption among competing humidifiers, particularly for whole-house models.¹⁶ The report also stated there is “very little, if any, correlation between humidification capacity (square feet) and watt rating.” The report concluded, by choosing energy-efficient humidifiers, consumers could collectively save an estimated 3.4 terawatts of electricity over the lifetime of these products, equating to nearly \$400,000,000. However, the report indicated there was no standard test procedure for measuring the energy consumption of portable models.

Miscellaneous Gas Products (“Hearth Products”) In February 2022, DOE tentatively determined that miscellaneous gas products, which are comprised of decorative hearths and outdoor heaters, qualify as covered products under EPCA.¹⁷ These products include fireplaces, fire pits, and other similar products that have decorative purposes, but also provide heat. DOE proposed to define “decorative hearth products” as gas-fired appliances that: simulate a solid-fueled fireplace or present a flame pattern; include products designed for indoor and/or

¹⁵ See 42 U.S.C. 6294(a)(6) (general labeling authority). For dehumidifiers, EPCA contains a specific prohibition for an “Energy Guide” label requirement. 42 U.S.C. 6294(a)(5)(c).

¹⁶ ENERGY STAR Market & Industry Scoping Report Residential Humidifiers October 2012. https://www.energystar.gov/sites/default/files/asset/document/ENERGY_STAR_Scoping_Report_Residential_Humidifiers.pdf

¹⁷ 87 FR 6786 (Feb. 7, 2022).

outdoor use; are not designed to be operated with a thermostat; are not designed to provide space heating to the indoor space in which they are installed; and are not designed to provide heat proximate to the unit. DOE estimates indicate that these products can consume substantial energy.¹⁸ In addition to the general questions above, the Commission requests comment on whether the Commission should consider labeling related products outside of DOE's current proposal (e.g., electric models) and whether test procedures are or are likely to be available for such products.¹⁹

Cooking Tops EPCA lists "kitchen ranges and ovens" as covered products.²⁰ In 1979, the Commission decided not to require labeling for cooking tops, as well as ranges and ovens, citing the small variability of energy use between models.²¹ More recent information from DOE, however, suggests the Commission should revisit this issue. Specifically, DOE research found that energy consumption for gas cooking top models may vary significantly depending on burner and grate design. DOE also noted energy consumption among similar electric cooking top models can vary depending on whether the product employs induction or resistance heating or

¹⁸ For example, DOE estimated the calculated per-household weighted average ignition energy of use of outdoor heaters to be 0.7 MMBtu/yr and the weighted burner energy use to be 2.2 MMBtu/yr, for total outdoor heater household energy use of 2.9 MMBtu/yr (859 kWh/yr), and estimated the weighted average (indoor and outdoor products) per-household energy use of a miscellaneous gas product to be 4.1 MMBtu/yr (1,211 kWh/yr). 87 FR at 6792. DOE also discussed these general issues in 2013. 78 FR 79638, 79640 (Dec. 1, 2013). There is currently no DOE test procedure for these products.

¹⁹ The Commission also seeks comment on whether the Rule should contain any affirmative energy disclosures or labels for furnace fans, which are components of products already labeled under the Rule. See 79 FR 38129 (July 3, 2014) (DOE standards for furnace fans).

²⁰ 42 U.S.C. 6292(a)(10).

²¹ 44 FR 66466, 66469 (Nov. 19, 1979) ("Since the substantial costs of a labeling requirement would not produce corresponding consumer benefits, the Commission has determined that labeling of kitchen ranges and ovens would not be economically feasible.").

has smooth or coil elements.²²

In August 2020, DOE withdrew its test procedure for these products,²³ citing concerns about whether the procedure yielded representative results for average use.²⁴ In February 2021, DOE listed the cooking products test procedure withdrawal as one of thirteen rulemakings the agency would reconsider pursuant to Executive Order 13990.²⁵ In July 2022, DOE reestablished a test procedure for conventional cooking tops.²⁶

In addition to questions regarding whether labeling cooking tops would help consumers in their purchasing decisions, the Commission seeks comment on whether there is an alternative test procedure the agency could use for EnergyGuide labels.

Electric Spas In February 2022, DOE published a final determination that portable electric spas qualify as covered product under EPCA and followed up with a final coverage determination in September 2022.²⁷ DOE estimated more than 3 million households in the U.S. operate portable electric spas regularly, using approximately and an estimated average energy consumption of 1,699 kWh per year per household (~\$238/yr).

B. Matching Label Format and Location to Consumer Shopping Patterns

The Commission also seeks comment on whether any Rule changes are necessary to ensure current labeling requirements are consistent with current consumer shopping behavior.

²² 81 FR 60784, 60800-60802 (Sept. 2, 2016).

²³ 85 FR 50757 (Aug. 18, 2020).

²⁴ In December 2020, DOE also sought comments on revised standards for these products. 85 FR 80982 (Dec. 14, 2020).

²⁵ rj8 0 T. .0001 n De8 5gl6ion l6ion ll6ion7.74 Tmo9e

For several product categories (e.g., refrigerators, clothes washers, dishwashers, and televisions), the Rule currently requires manufacturers to affix labels to units themselves. However, of the millions of units produced each year, only a fraction are actually displayed on a showroom floor. For products typically displayed in packaging (e.g., room air conditioners, lighting, ceiling fans, and lighting products), the Rule requires manufacturers to incorporate the label on the packaging. For products sold online, the Rule requires retail sellers to include label information on product pages. To aid retailers with this function, manufacturers must make their EnergyGuide labels available on a website and report that website to the FTC, which they can do via the DOE Compliance Certification Management System (CCMS).

Under EPCA, the Commission must “require that each covered product in the type or class of covered products to which the rule applies bear a label disclosing energy use information. 42 U.S.C. 6294(c)(1). However, EPCA provides flexibility for the Commission to determine the placement of labels in a manner likely to assist consumers in making purchasing decisions.”²⁸

Pursuant to this authority, the Commission seeks comment on whether it should amend the current approach in light of contemporary retail and consumer practices. Specifically, the Commission solicits comments on alternatives to the current “showroom-ready” approach. Such changes could include requiring retailers to affix showroom labels (provided by the manufacturer) for the small number of units that are displayed, allowing manufacturers to include labels on or in product packaging (e.g., on product boxes, literature packs, instruction manuals, and through QR codes) in lieu of affixing labels separately to every unit itself, and/or requiring retailers to provide label information in some other method or location. The Commission additionally requests any recent research data demonstrating when and where consumers typically make purchase decisions for the types of products covered by the Rule. Examples of relevant information include:

- What percentage of consumers rely on showroom visits to obtain information about their purchases, particularly for products that currently bear a label directly on the unit (e.g., refrigerators)?
- What percentage of consumers research and compare models online before their purchases?
- Should the Commission eliminate requirements for manufacturers to place labels directly on products typically displayed in showrooms (e.g., refrigerators, clothes washers, dishwashers, and televisions) and require manufacturers to provide the labels with the product in a different way (e.g., on packaging, instruction manuals, or literature bags)?

make written disclosures at point-of-sale). In 2014, the Commission sought comment on whether it should require retailers to affix labels on units they display in their showrooms. 79 FR 34642, 34658 (June 18, 2014).

- Should the Rule require retailers to display the EnergyGuide label for those individual units they choose to display out packages in their showrooms?

C. Repair Instructions

The Commission also seeks comment on potential requirements related to repair instructions. Under EPCA, 42 USC 6294(c)(5), the Commission has authority to require manufacturers to provide consumers with additional information relating to energy consumption, including instructions for the maintenance, use, or repair of the covered product” if the Commission finds such information would assist with purchase decisions or in the use of the product, and would not be unduly burdensome to manufacturers. The Commission seeks comment on whether, for any product covered, the Rule should require manufacturers to provide consumers with access to repair instructions (with updates). Specifically, comments should address whether lack of access to repair instructions for covered products is an existing problem for consumers; whether providing such information would assist consumers in their purchasing

The Rule at 16 CFR 305.23(b)(6) and 16 CFR 305.23(c)(4) currently offers guidance to manufacturers who choose to use bilingual labels. Lighting Facts, including guidance on label content and format. Should the Rule offer similar guidance on bilingual labels for the other consumer products covered by the Rule? Are there other improvements that could be made to the Rule that would help non-English speaking multilingual consumers with their purchasing decisions?

IV. Comment Submissions

You can file a comment online or on paper for the FTC to consider your comment, we must receive it on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Write “Energy Labeling Rule (16 CFR Part 305) (Matter No. R611004)” on your comment. Because of the public health emergency in response to the COVID-19 outbreak and the agency’s heightened security screening, postal mail addressed to the Commission will be subject to delay. As a result, we strongly encourage you to submit your comments online through the <https://www.regulations.gov> website. To ensure that the Commission considers your online comment, please follow the instructions on the web-based form. Your comment—including your name and your state—will be placed on the public record of this proceeding, including the <https://www.regulations.gov> website. As a matter of discretion, the Commission tries to remove individual’s contact information from comments before placing them on the [regulations.gov](https://www.regulations.gov) site.

If you file your comment on paper, write “Energy Labeling Rule (16 CFR Part 305) (Matter No. R611004)” on your comment and on an envelope, and mail it to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW,

Suite CC-5610 (Annex J), Washington, DC 20024, deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the publicly accessible website at www.regulations.gov, you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else'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. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any "trade secret or any commercial or financial information which . . . is privileged or confidential"—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

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), 16 CFR 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. See FTC Rule 4.9(c). Your

comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted publicly at www.regulations.gov, we cannot edit or remove your comment unless you submit a confidentiality request that meets the requirements for such treatment under FTC uch tr