

FTC Explores Changes to Energy Labeling Rule, Right to Repair

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Labeling, administered by the Federal Trade Commission (FTC), is a key element of the federal energy efficiency program under the Energy Policy and Conservation Act (EPCA).¹ FTC is undertaking a rulemaking to improve its Energy Labeling Rule (initially promulgated in 1979)—which could have significant impacts on a broad array of products.² It has issued an advance notice of proposed rulemaking (ANPR)³ seeking public comment on numerous labeling issues. Comments are due by December 27, 2022.

Among the issues are: potentially adding several additional consumer product categories to the labeling program; increasing the availability of energy information; modifying labeling content; and, perhaps most contentiously, requiring repair instructions. FTC says that its intent is to improve the Rule's effectiveness and reduce unnecessary burden.

Comments on the ANPR will help shape a potential notice of proposed rulemaking (NOPR) leading to the adoption of a final rule. Interested parties should take advantage of opportunities to participate at every stage of these proceedings.

Potential Labels for New Product Categories. The Energy Labeling Rule currently covers numerous product categories, with requirements relating to such things as yellow EnergyGuide labels, catalogs, and websites. FTC wants comment on potential labeling for the following additional product categories: clothes dryers; air cleaners (air purifiers); miscellaneous refrigerator products; additional lamps (light bulbs); residential ice makers; humidifiers; miscellaneous gas products (hearth products); cooking tops; and electric spas. FTC also wants comment on any other consumer products that may be appropriate for energy labels.

FTC has expressed specific interest in a long list of issues related to this topic. At the top of the list is whether labels will assist consumers in their purchasing decisions, and why. This is an essential consideration under EPCA for requiring labeling. Other issues concern, e.g., typical energy use and energy efficiency of various models on the market; whether, and how, potential market changes will affect label benefits; labeling burdens; duty cycles; typical methods by which these products are sold; how consumers typically make purchasing decisions; and label location and contents.

Matching Label Format and Location to Consumer Shopping Patterns. FTC also wants comment on whether any changes to the Energy Labeling Rule are necessary to ensure that current labeling requirements are consistent with current consumer shopping behavior.

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.

Repair Instructions. One of the ANPR's most significant parts is FTC's request for comment on whether the Energy Labeling Rule should, for the first time, require manufacturers of covered products to provide consumers with access to repair instructions (with updates). EPCA allows FTC to require manufacturers of covered products to provide "information relating to energy consumption, including instructions for

the maintenance, use, or repair of the covered product.” But this is only if FTC determines that this additional information “would assist consumers in making purchasing decisions or in using such product, and that such requirement would not be unduly burdensome to manufacturers.”⁴

FTC says that 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 decisions or product use; whether providing such information would be unduly burdensome to manufacturers; and any other relevant issues.

FTC’s Chair Lina M. Khan has included a statement with the ANPR strongly supporting Americans’ right to repair their own products.⁵

General Label Content and Format Requirements. FTC wants comment on whether it should consider changes to the Energy Labeling Rule’s label content and format requirements.

FTC wants to know whether there are any prescriptive requirements (e.g., type size and style, label size, number of picas, paper weight, and label attachment provisions) in the Rule that are unnecessarily burdensome. It also wants to know: if there are improvements it could make to the content of the information on labels (or other locations such as product manuals or websites) to help consumers with their purchasing decisions; is there a role for QR codes in conveying useful information to consumers; and are there any improvements to the format, size, or layout of the labels that would help consumers with their purchasing decisions.

FTC Commissioner Christine S. Wilson has included a statement with the ANPR stressing that she has urged FTC to seek comment on the more prescriptive aspects of the Rule. She says she strongly believes that EPCA’s mandate to issue a labeling Rule “does not require the Rule to include the highly detailed and prescriptive requirements in the current Rule.”⁶

Requiring Links to Online Lighting Facts Labels. FTC wants comment on whether the Energy Labeling Rule should require lamp manufacturers to include information regarding their Lighting Facts labels with their data reports required by DOE.

Updating Cost Figures for Lighting Facts and Ceiling Fan Labels. FTC wants comment on whether it should update the electricity cost disclosure on the Lighting Facts and ceiling fan labels to reflect recent DOE national estimates.

Phasing Out Transitional Language for Refrigerator and Clothes Washer Labels. FTC wants comment on whether it should phase out language on refrigerator and clothes washer labels that the agency added in 2013 to help distinguish models tested with the current DOE procedure from those tested with an older version.

Consistency With DOE Requirements. FTC wants comment on whether any changes or updates are necessary to the Energy Labeling Rule’s requirements (e.g., definitions, product coverage, capacity descriptions, etc.) to ensure consistency, where necessary, with DOE requirements.

Bilingual Label Guidance. The Energy Labeling Rule currently offers guidance to manufacturers who choose to use bilingual labels for Lighting Facts, including guidance on label content and format. FTC asks whether the Rule should offer similar guidance on bilingual labels for the other consumer products covered by the Rule. It also wants to know if there are other improvements that could be made to the Rule that would help non-English speaking or multilingual consumers with their purchasing decisions.

Conclusion. Energy efficiency, including efficiency labeling, has long been a central component of U.S. energy policy. Energy efficiency initiatives have dramatically accelerated in the Biden Administration.

The new FTC rulemaking on labeling is a significant part of that push. Stakeholders should take advantage of opportunities to make their views known in this rulemaking—and other efficiency initiatives that could affect them.

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For more information on HWG LLP’s energy practice, please contact [John A. Hodges](#) or [Gena E. Cadieux](#).

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¹ See EPCA, 42 U.S.C.A. § 6291 et seq. Energy efficiency standards and test procedures are administered by the Department of Energy (DOE). See 10 C.F.R. pts. 429-31.

² 16 C.F.R. pt. 305.

³ FTC, Energy Labeling Rule, Advance Notice of Proposed Rulemaking (ANPR), 87 Fed. Reg. 64399 (Oct. 25, 2022).

⁴ 42 U.S.C.A. § 6294(c)(5).

⁵ 87 Fed. Reg. at 64404-05.

⁶ *Id.* 64405.