



Federal Trade Commission  
Office of the Secretary, Room H-135 (Annex A)  
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<http://secure.commentworks.com/energyguide>

**Comments of Consumers Union of the U.S. Inc.  
to the Federal Trade Commission  
“Appliance Labeling Rule Amendments, R511994”  
Notice of Proposed rulemaking; Request for Public Comment  
16 C.F.R. Part 305**

**Introduction**

Consumers Union (CU), publisher of *Consumer Reports*, submits the following comments in response to the Federal Trade Commission (“FTC” or “Commission”) Notice of Proposed Rulemaking: Request for Public Comment (“NPR” or “Proposed Rule”), on the Appliance Labeling Rule.<sup>1</sup>

Section 137 of the Energy Policy Act of 2005 (Pub. L. 109-58) requires the Commission to conduct a rulemaking to examine the effectiveness of current energy efficiency labeling requirements for consumer products issued pursuant to the Energy Policy and Conservation Act. The Commission is seeking comments on proposed amendments to the existing labeling requirements.

Below are CU’s comments on the changes to the Code of Federal Regulations (C.F.R.) proposed in the NPR:

**1. Section 305.10. “Ranges of Comparability Information on Required Labels.”<sup>2</sup>**

The Proposed Rule would amend this section to direct the Commission to amend the range of comparability and representative average energy cost information every five years.

- o We have no objection to the Commission amending the representative average energy information, (e.g., the national average cost of electricity) every five years. The value of the EnergyGuide to consumers stems from the fact that it is for comparative purposes. Its purpose is not necessarily to reflect the product’s actual cost to the consumer. For this reason, the Commission could, for

<sup>1</sup> See 72 Fed. Reg. 6836 (February 13, 2007).

<sup>2</sup> See 72 Fed. Reg. at 6839, 6849, and 6863.

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example, always use 10 cents per kW-hour as the rate and never, ever change it -- despite the fact that the national average electric rate does change over time. As it stands, at any one time there is a wide range in electricity costs across the United States.

- The down-side to the above approach, however, is that as the cost of energy increases, the differences in the final cost to the consumer between the most- and least-efficient products increases -- and efficient products look more and more attractive. It should, however, be made more clear to consumers that the displayed costs are for comparative purposes only and may not necessarily represent their actual costs.
- We believe that five years is too long a time period to amend the range of comparability. If such a long time period is allowed, after several years, efficient products will drop below the lowest (left most) displayed value. This will lead to consumer confusion and dismissal of the EnergyGuide as a useful tool. We think that the graphical bar should not start with the value of the most efficient product on the market at the time the label is drawn up, but rather the left-hand side of the bar (the most efficient) should start some 25% below the most efficient product on the market. This will leave enough room for inevitable efficiency improvements to be reflected on the bar graph.

## 2. **“Alternate Proposal: Multiple-Year Operating Cost Label”<sup>3</sup>**

Here again, we have no objection to this proposed label because it is for comparative purposes. However, the Commission should consider the fact that most appliances have an average life of about 10 years in U.S. households.

Footnote 60<sup>4</sup> in the NPR states: “Should energy costs change dramatically during the interim, the Commission would have the discretion to update the figures before the end of the five year period. Because “dramatic” is a relative term, it is too vague. We encourage the Commission to use a more specific approach that says, for example, *Should energy costs change by more than 25% during the interim, the Commission would consider updating the figures before the end of the five year period.*”

## 3. **Section 305.11. “Labeling for refrigerators, refrigerator-freezers, dishwashers, clothes washers, water heaters, room air conditioners, and pool heaters.”**

We strongly support the change in the Proposed Rule that would amend this section to require operating cost as the primary disclosure on the EnergyGuide label. We are concerned, however, that the new language proposed to clarify the scope of the comparison ranges for refrigerator products will not go far enough nor be clear enough to help most consumers. The proposed wording is below:

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<sup>3</sup> Id. at 6849.

<sup>4</sup> Id. at 6848.

“Size, door attributes, and ice features affect energy use -- so other [refrigerators/freezers] may have lower or higher operating costs. Your actual operating costs will depend upon your local utility rates and how you use this product . . . .”<sup>5</sup>

We believe this statement is not a very useful statement for consumers because it fails to alert them to the fact that the range of refrigerator comparisons is very narrowly defined. Instead, we suggest that the ranges for the other refrigerator categories be placed on all refrigerator stickers. Furthermore, as the number of refrigerator types grow and styles change (e.g., bottom-freezers with through-the-door ice & water dispensers, 4-door refrigerators, compartments that can be used as either refrigerated or freezer space, refrigerators with TV screens and internet connections, etc.) many waivers will be sought and today’s categories will appear obsolete.

It is our opinion that the trend of the manufacture and sale of refrigerator-freezers with ice makers, and water dispensers in the door, and with the freezer on the bottom is increasing and will accelerate. We therefore recommend that the Commission create another category taking these appliances into account.

**4. Sections 305.12 & 305.13. “Marking requirements for heating and cooling equipment.”<sup>6</sup>**

The Proposed Rule would require manufacturers to permanently mark heating and cooling equipment (except water heaters) with the model number, and the model’s efficiency rating. CU supports this change in approach, because most consumers do not go to showrooms or retail establishments to compare and purchase these products. However, with this approach, comparative information is now much more difficult for consumers to obtain. We encourage the Commission to require this information be available on line (*i.e.*, how a specific unit’s efficiency compares with the minimum required efficiency and even the most and least efficient products on the market at that time).

**5. Energy Descriptors.<sup>7</sup>**

As stated in story on washers in *Consumer Reports*® in January 2007<sup>8</sup>, CU strongly recommends that the EnergyGuide for washers require the inclusion of the energy required for drying the clothes (derived from the remaining moisture content). This information can be readily ascertained by manufacturers as done by CR, simply by assigning 0.5 kW-hours to every pound of moisture that remains at the end of the rinse cycle. This will align the Energy Star (which uses MEF as its criteria) with the value that consumers will see on the EnergyGuide yellow sticker.

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<sup>5</sup> *Id.* at 6866.

<sup>6</sup> *Id.* at 6867.

<sup>7</sup> *Id.* at 6855.

<sup>8</sup> “Washers and Dryers, Cycles of change,” *Consumer Reports*, January 2007, at 39.

**6. Third Party testing.<sup>9</sup>**

We are concerned that many of the Department of Energy's ("DOE") test procedures are out-of-date. As a result, manufacturers often must extrapolate from the Rule's requirements and decide how to determine and convey the efficiency of new appliances and new appliance features. Therefore, if the Commission does not want to require third party testing, the manufacturers themselves are left as the only ones interpreting how new appliance features are (or are not) accounted for in DOE test procedures. Although there may not be any widespread energy disclosure problems, these problems do exist. Often new features become standard in the marketplace while the outdated DOE test procedure languishes. In our opinion, the best solution would be to have a mandatory review and update cycle for all DOE appliance test procedures.

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Please do not hesitate to contact CU if we can be of any further assistance.

April 16, 2007

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<sup>9</sup> Id. at 6859.