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Federal Trade Commission
Office of the Secretary, Room H-135 (Annex O),
600 Pennsylvania Avenue,
NW., Washington, DC 20580
Via: <http://frwebgate.access.gpo.gov/cgi-bin/leaving.cgi?from=leavingFR.html&log=linklog&to=https://secure.commentworks.com/ftc-energylabeling>

**Comments of Consumers Union of the U.S. Inc.
to the Federal Trade Commission
“Energy Labeling, Project No. R511994”
16 C.F.R. Part 305
“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”)”**

Introduction

Consumers Union (CU), publisher of *Consumer Reports* Magazine, submits the following comments in response to the Federal Trade Commission’s (“FTC” or “Commission”) Advance Notice of Proposed Rulemaking (“ANPR”), entitled “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”)”¹

In this current ANPR, the FTC:

is seeking comments on the effectiveness of the Appliance Labeling Rule and suggestions for improvements to the energy labeling program. The Commission is also requesting comments about the overall costs and benefits of the Rule and its overall regulatory and economic impact as a

¹ See 70 Fed. Reg. 66307 (November 2, 2005).

part of the Commission's systematic review of all its regulations and guides.²

Background

We commend the FTC for initiating this current ANPR. Consumers Union supports the requirement that manufacturers include energy use labeling on their appliances. However, although we comment below on some specific design elements of the current label, we generally are concerned that the current label style does not allow consumers to quickly and easily compare the energy use of appliances and -- in some cases -- may actually steer consumers to choose a less energy-efficient model. In addition, in our experience, the method of calculating the estimated dollar cost must be revised because it often is confusing, as well as inaccurate due to differences in individual consumer energy costs, and the changing energy cost basis over time. CU's recommendations in response to the current ANPR follow.

Consumer Confusion Relating to EnergyStar Designations

In theory, labeling the most efficient refrigerators with the EnergyStar designation (as well as standard EnergyGuide) is a wonderful idea. However, we believe that the current method of determining EnergyStar designations is deeply flawed. A specific example of this flawed application in the labeling of EnergyStar refrigerators is highlighted in the following example:

Assume that the consumer is going to buy a refrigerator with 8 cubic feet of freezer space, and 14 cubic feet of fresh food space.

- Under regulations effective July 1, 2001³ a refrigerator/freezer with the above specifications configured with the freezer on top would be allowed to use 541 kWh/yr;
- A refrigerator configured as a side-by-side model with ice- and water-dispensers would be allowed to use 679 kWh/yr and still retain an EnergyStar designation.
- A top freezer that actually used 466 kWh/yr (14% less than allowed) would not be labeled as an EnergyStar model;
- A side-by-side model that used 578 kWh/yr (15% less than that allowed for side-by-sides) would be labeled as an EnergyStar model.

Thus, a model using 112 kWh/yr (24%) more than another would be labeled EnergyStar while the model with greater actual energy efficiency would not.

² Id.

³ See 10 C.F.R. § 430.32, "Energy and water conservation standards and effective dates."

Annual Dollar Cost

Currently, the EnergyGuide includes an estimated annual dollar cost. This estimate often appears to be confusing, due to changes in the cost basis, as well as differences in energy cost to the consumer. Further, in our opinion, the current implementation of the bar graph is problematic.⁴ CU staff has encountered cases in which the upper and lower limit of the bar is the same, rendering useless the comparison intended by the bar graph. Further, should a bar-graph element be used, all labels should have the same standard upper limit, and a lower limit of zero – both sound elements of good statistical use of charts and analysis based on them.

Consumers trying to select a refrigerator based on energy efficiency must be able to compare across categories, instead of within the current very narrowly defined sub-classes. Specifically, the position of the arrow can be misleading, when comparing refrigerators of different style and/or capacity. If the bar on the labels uses different scales or ranges, the relative positions of the arrow can be inverted, with the lower energy consumption indicated by an arrow to the right of the label's bar, and the higher energy consuming model's arrow positioned to the left of its label's bar. We feel that there is no harm in using a common scale since the consumer can still compare models from within the sub-class while being able to compare energy usage on a universal basis.

We believe the goal of this program should be true energy efficiency. The ratings of energy efficiency of refrigerators published in *Consumer Reports* allow consumers to directly compare refrigerators across types – we even take this scoring method a further step, and measure the usable amount of storage space the refrigerator offers as the basis of our energy efficiency scores. Should we apply our technique to the hypothetical refrigerators in the above example, the side-by-side model would be even less efficient in comparison to the top-freezer model.

Consumers Union's recommendations

We make the following recommendations to address our concerns raised above:

- We recommend that the EnergyGuide label show the energy use of the appliance in kWh/yr, as currently done, but that the label also compare the energy used by the appliance to the most energy consumption allowed by law for any refrigerator of comparable internal volumes -- independent of style. This would allow consumers to see clearly that the top-freezer from our above example is a better energy choice than the side-by-side.
- We recommend that the EnergyGuide also show a rating based upon how much less energy is used by the appliance than allowed. These labels could either be similar to the labels currently in use in Europe (shown as Figure 2 in the proposed rule),⁵ or to include star ratings such as described in the ACEEE's Report Number

⁴ See, e.g., EnergyGuide label from Sears Roebuck refrigerator model 795.755, attached as Appendix A.

⁵ Id. at 66313.

A021, “An Evaluation of the Federal Trade Commission’s EnergyGuide Appliance Label: Final Report and Recommendations.”

We strongly urge the FTC to revise the Appliance Labeling Rule to reduce consumer confusion. We look forward to working with the Commission in the creation of more accurate and consumer friendly labels, and would be happy to share our expertise and discuss our comments further.

Respectfully submitted,

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APPENDIX A

ENERGYGUIDE

Refrigerator-Freezer
With Automatic Defrost
With Bottom-Mounted Freezer
Without Through-The-Door Ice Service



SEARS ROEBUCK & CO
Model: 795.755****
Capacity: 25 Cubic Feet

**Compare the Energy Use of this Refrigerator
with Others Before You Buy.**

**This Model Uses
499kWh/year**



Energy use (kWh/year) range of all similar models

**Uses Least
Energy
499**

**Uses Most
Energy
499**

kWh/year (kilowatt-hours per year) is a measure of energy (electricity) use. Your utility company uses it to compute your bill. Only models with 24.5 to 26.4 cubic feet and the above features are used in this scale.

**Refrigerators using more energy cost more to operate.
This model's estimated yearly operating cost is:**

\$41

Based on a 2001 U.S. Government national average cost of 8.29¢ per kWh for electricity. Your actual operating cost will vary depending on your local utility rates and your use of the product.

Important: Removal of this label before consumer purchase is a violation of Federal law (49 U.S.C. §3292)