

**Before the
FEDERAL TRADE COMMISSION
Washington, D.C. 20580**

In the Matter of) Docket No. FTC-2024-0008
Energy Labeling Rule)
(16 CFR part 305) (Matter No. R611004))
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COMMENTS OF THE CONSUMER TECHNOLOGY ASSOCIATION

The Consumer Technology Association[®] (“CTA”) respectfully submits this response to the Notice of Proposed Rulemaking (“NPRM”) on the Energy Labeling Rule (“Rule”) issued by the Federal Trade Commission (“FTC” or “Commission”).¹ CTA is North America’s largest technology trade association. Our members are the world’s leading innovators – from startups to global brands – helping support more than 18 million American jobs. CTA owns and produces CES[®], the world’s most influential tech event. CTA members operate in a competitive marketplace to produce innovative products that provide enormous benefits to consumers and power the economy. Several CTA members manufacture and sell televisions that are subject to the Rule’s EnergyGuide labeling requirements.

CTA appreciates the FTC’s thoughtful approach to considering whether to modify the display and content requirements for television EnergyGuide labels. In particular, CTA appreciates FTC’s invitation for further comment on label placement and display, and on comparability ranges for television EnergyGuide labels. As the FTC knows well, consumer shopping behavior changes over time, and digital technology has empowered consumers to conduct more research online and directly compare products based on the features that matter

¹ Energy Labeling Rule Notice of Proposed Rulemaking, 89 Fed. Reg. 7566 (Feb. 2, 2024) (“NPRM”).

most to them. To help understand current consumer practices in television shopping, CTA conducted an online quantitative study among U.S. adults who had purchased a television in the past three months to better understand and assess consumers' television purchase criteria. CTA's *Awareness, Use and Value of the EnergyGuide Label for Televisions* study specifically includes questions to consumers about their understanding of the EnergyGuide label as it related to their recent television purchase. As explained further in this comment, these research results support CTA's proposed changes to the Rule as it applies to televisions.²

CTA urges the Commission to amend the Rule to permit, but not require, digital display of the EnergyGuide label, including by display of a QR code that consumers could use to access the label or display of the label itself. Televisions allow the unique opportunity for consumers to access information in a digital manner on a screen, in a way that is not necessarily present for other kinds of appliances. While CTA believes there is sufficient record evidence for the FTC to take this step, in the alternative, CTA believes that the FTC at a minimum should amend the labeling requirements for televisions to align with the proposed label placement amendments for refrigerators/freezers, clothes washers, and dishwashers.

Additionally, CTA urges the Commission to adopt a simplified label for televisions that eliminates comparability ranges. CTA research shows that consumers often do not correctly interpret the comparability information for televisions on the current label, and a simplified label would adequately convey relevant energy use cost information without creating unnecessary confusion.

² "CTA survey results" cite CTA's research report, "*Awareness, Use and Value of the EnergyGuide Label for Televisions*" (2024) ("*CTA Television Study*"), and is available upon request.

I. The FTC should amend labeling display and placement rules for televisions.

Given the current evidence regarding consumer shopping patterns discussed below, CTA believes that the Commission should permit EnergyGuide label information to be displayed digitally, as one potential (but not mandatory) option for conveying the label information. Alternatively, the FTC should adopt a similar amendment for televisions as with refrigerators/freezers, clothes washers, and dishwashers, limiting the requirement to affix labels solely to showroom models, as long as the label is shipped with the product.

Allowing for a digital display option would provide manufacturers and retailers with flexibility as to how to convey EnergyGuide information. Televisions have substantial screen space that can be used in the showroom, and a manufacturer could choose to display the information on the screen, rather than affixing a physical label. Alternatively, the manufacturer could choose to display a clear and conspicuous QR code, that allows consumers to quickly and easily see EnergyGuide information. Or if manufacturers or retailers would prefer to use the display for other purposes, retailers could display a physical label or physical QR code, made available by the manufacturer, for consumers to access.³ Overall, the FTC does not need to mandate a “one-size-fits-all” solution, and should allow for all of these options.

Consumers *already* use digital sources to research televisions for purchase, and they are open to using QR codes to assist with purchasing decisions. CTA survey evidence shows that 93% of consumers who performed pre-purchase research on televisions reported using a website or being open to using a website for research purposes. Additionally, 82% of consumers who

³ In order to allow for the option, a manufacturer would make available the energy labeling information that the retailer would be responsible for physically displaying.

performed pre-purchase research reported that they had used or were open to using QR codes for television purpose research.⁴

In the NPRM, the FTC expressed concern that QR codes “allow only a self-selected portion of shoppers (*i.e.*, those that have mobile internet access and take the extra effort to retrieve the information online)” to access a label, but those factors should not be an impediment to allowing use of QR codes. First, approximately 90% of U.S. adults currently have a smartphone, and about 95% have a mobile phone of some kind.⁵ Indeed, the COVID-19 pandemic greatly accelerated familiarity and common use of QR codes to convey information in many settings such as restaurants, meaning that consumers are more familiar with them than just a few years ago.⁶ QR codes are also routinely used to provide setup instructions for televisions and to offer explanations of specific features, both externally (on the outer carton) and internally in Quick Start Guides and similar manuals.

Second, the effort of scanning a QR code is not significantly greater than other research tasks involved in buying a television, and consumers who value energy use and costs as a consideration are likely to seek out this information. CTA research shows that approximately 91% of consumers conducted pre-purchase research for their recent television purchase. Consumers research factors including price, smart TV features, resolution, and sound quality, in addition to energy cost and environmental impact. At the same time, more consumers overall

⁴ See *CTA Television Study*. Additionally, 90% of consumers who performed pre-purchase research reported that they had used or were open to using apps.

⁵ CTA, *Re-Exploring the Secondary Mobile Device Market: 2023* (September 2023).

⁶ University of South Carolina, *COVID gave QR codes new life* (June 14, 2023), <https://sc.edu/uofsc/posts/2023/04/qr-codes-pandemic.php>; University of Nebraska Omaha, *Guo: QR Code Usage Up 300% Since 2017* (Mar. 17, 2023), <https://www.unomaha.edu/news/2023/03/history-increase-qr-codes.php> (citing Brent Weber, *QR codes growing in popularity in Omaha*, WOWT 6 News (Mar. 10, 2023), <https://www.wowt.com/2023/03/11/qr-codes-growing-popularity-omaha/>).

rank those other factors as important in their purchasing decisions than rank energy cost and environmental impact as important.⁷ And consumers who value energy usage and costs as a consideration seek that information out at three times a higher rate than those who do not.

Additionally, digital labeling options would be consistent with the U.S. Government's overall approach to promoting digital options when engaging with consumers. For example, a recent September 2023 Office of Management and Budget ("OMB") memorandum to federal agencies emphasizes that "[f]orms, services, and associated processes should be designed and modernized with digital service delivery in mind for the public and agencies to fully reap the transformational benefits and promises of a digital government, including increased convenience of online transactions, greater cost savings, and higher levels of public satisfaction with and trust in government."⁸

Digital labeling options also promote alignment with other jurisdictions and potential environmental benefits. As CTA has previously noted, digital labeling is common in comparable countries. Australia and Canada have allowed e-labeling for products with built-in displays since 2010 and 2014, respectively.⁹ In 2022, the Australian Communications and Media Authority ("ACMA") adopted an amendment that allows manufacturers to use a QR code or similar means as an alternative form of label, if the relevant link is to information on a website that prominently

⁷ See *CTA Television Study*. Overall, screen size, smart TV features, price, resolution/image quality, product availability, screen type, and sound quality were all ranked by more than 74% of consumers as important factors in purchasing decisions, all of which were higher than energy cost to operate and environmental impact (46% and 41%, respectively).

⁸ OMB, Memorandum M-23-22: Delivering a Digital-First Public Experience (Sept. 22, 2023), <https://www.whitehouse.gov/omb/management/ofcio/delivering-a-digital-first-public-experience>.

⁹ See, e.g., Australian Communications and Media Authority, *Step 5: label your product* <https://www.acma.gov.au/step-5-label-your-product#when-to-apply-your-label> (last visited April 19, 2024) (explaining under the requirements for electronic labeling that "[i]f a product has a built-in display, you may show it electronically rather than on the surface of your product.").

displays the required Regulatory Compliance Mark (“RCM”).¹⁰ Additionally, in 2019, the European Union began incorporating a QR code element into its energy labeling requirements applicable to electronic displays including television monitors.¹¹ Digital labeling options will also allow manufacturers to reduce the amount of printed material that needs to be included and attached to the television, if they choose to use digital labeling. This option would also promote environmental benefits by potentially reducing unnecessary packaging materials.

If the FTC remains concerned about the practical functioning of digital displays, the FTC could implement, as a backstop, a requirement that retailers display physical energy label information in circumstances where the digital label is not functional for any reason. This backstop would be consistent with the FTC’s proposed approach in the NPRM to refrigerators/freezers, clothes washers, and dishwashers displayed in showrooms, which requires retailers to ensure that labels accompanying the packaging are displayed if the retailers display a non-showroom designated model.¹² In this situation, a manufacturer would make available the energy labeling information that the retailer would be responsible for physically displaying.

In the alternative, the FTC should adopt a version of the showroom-only rule proposed for refrigerators/freezers, clothes washers, and dishwashers, and require labels to be displayed only for showroom models and not require them to be affixed to televisions that are not meant for showroom display. The FTC’s reasoning in the NPRM for modifying the existing rule for these appliances applies to televisions as well:

¹⁰ ACMA, *Changes to the Telecommunications Labelling Notice – December 2022*, <https://www.acma.gov.au/changes-telecommunications-labelling-notice-december-2022#qr-codes> (last updated Dec. 14, 2022).

¹¹ European Commission, *New energy efficiency labels explained* (Mar. 11, 2019), https://ec.europa.eu/commission/presscorner/detail/en/MEMO_19_1596.

¹² NPRM at 7580.

Specifically, manufacturers would no longer have to affix adhesive or hang tag labels on millions of units that consumers will never see until after the unit is purchased. Instead, with the exception of a small number of showroom-designated units (a tiny fraction of units produced), manufacturers will simply include a paper label with the shipped product. This streamlining should greatly reduce the time involved in affixing individual labels and resources used in the form of adhesive materials, special paper, hang tag material, and other similar supplies without interfering with consumers' access to the label.¹³

The FTC also reached this conclusion after considering evidence that consumers greatly rely on digital sources for researching these kinds of appliances, noting “the increasing tendency of consumers to research major appliances online before making a purchase, even when they make the purchase in-store;” “once consumers visit a showroom after conducting preliminary research online, energy efficiency becomes less important to their final in-store decisions;” and “consumers focus on other [non-energy] purchase factors, primarily the product's purchase price.”¹⁴ CTA survey evidence showed similar trends for televisions. In particular, 91% of consumers did some pre-purchase research on televisions, and at least 6 in 10 recent television purchasers (61%) used a digital source for their pre-purchase research.¹⁵ Additionally, as noted above, consumers overall gave more weight to other factors than energy use in their purchasing decisions.

In short, even if the FTC continues to require showroom labeling, there is no need to affix EnergyGuide labels to televisions that are not meant for display, and manufacturers or retailers should have the option to affix them only for designated showroom models. As with the proposed rule for other appliances, if retailers choose to display non-showroom models, they would be required to display a label in a location visible to a consumer examining the product.¹⁶

¹³ NPRM at 7581.

¹⁴ *Id.* at 7577-78.

¹⁵ *See CTA Television Study.*

¹⁶ *See Proposed 16 C.F.R. §305.13(g); NPRM at 7580, 7590.*

II. The FTC should eliminate comparability ranges for televisions.

The FTC should exercise its discretion to remove comparability ranges for televisions and adopt the streamlined television EnergyGuide label proposed by CTA and included in the NPRM.¹⁷ Consumers consider many different factors when shopping for televisions, and they are not primarily seeking to compare energy use across televisions of similar size. In fact, consumers do not understand the current label's comparability range, and they would benefit from a simplified format.

First, as noted above, consumers consider many different factors when shopping for televisions and are not necessarily comparing models with the same screen size. CTA consumer survey evidence shows that consumers consider factors like resolution and smart TV features to be about as important as screen size, with other factors like sound quality also ranking highly, and much higher than energy cost. Comparability ranges based on television size therefore have limited value, as consumers are not necessarily shopping for televisions within predetermined size ranges, and also are shopping on the basis of multiple attributes even when looking at televisions in the same size range.¹⁸

In fact, CTA consumer survey evidence shows that consumers often misunderstand what the current display of the comparability range intends to show. In the survey response, **more than half (55%)** of recent TV purchasers believe the comparison to similar models is based on a combination of screen size, screen tech, and television features rather than screen size alone.¹⁹ This finding is consistent with the evidence showing that consumers evaluate multiple features, not just screen size, in shopping for televisions.

¹⁷ The FTC has discretion whether to mandate comparability ranges for televisions. *See* 42 U.S.C. § 6294(c)(9).

¹⁸ *See CTA Television Study.*

¹⁹ *Id.*

Second, as CTA has noted, the comparability ranges themselves quickly become outdated and are not useful for consumers even within certain screen size ranges. Moreover, product models and features change quickly in the television market.²⁰ CTA therefore agrees with the NPRM statement that “rapid market changes may quickly render disclosed ranges obsolete while imposing compliance burdens on manufacturers.”²¹

Consumers instead would benefit from a simple and direct energy cost estimate without the added confusion of a comparability range. These findings support the NPRM’s suggestion that “eliminating the ranges but maintaining the same font and text size for the other information would simplify the label, thus, making it easier to use.”²² Simplifying the label would also reduce consumer confusion over comparability ranges and benefit consumers who might otherwise misinterpret the meaning of the ranges.²³

CTA recommends that the FTC adopt the proposed simplified label (*see* NPRM at 7575), and that it make the new label effective for products manufactured two years after the effective date of a rule (with requirements tied to date of manufacture, not date of sale).

²⁰ *See, e.g.,* Sony, *Product & Technology Milestones*, <https://www.sony.com/en/SonyInfo/CorporateInfo/History/sonyhistory-c.html> (last visited Apr. 19, 2024); Samsung, *A Timeline of Samsung TV Leadership Over the Years* (Feb. 24, 2021), <https://www.samsung.com/nz/news/global/infographic-a-timeline-of-samsung-tv-leadership-over-the-years/>.

²¹ NPRM at 7574. CTA survey evidence did not show a clear preference for either label. *See CTA Television Study*. However, in light of the results showing that most consumers misunderstand the comparability element of the current label, CTA believes the FTC should adopt the proposed revised label.

²² NPRM at 7574.

²³ The NPRM questions whether comparing energy costs across labels “would be significantly more difficult than reviewing ranges on a label because consumers would have to find the energy usage of all comparable models on their own.” *Id.* However, as the survey evidence corroborates, consumers are already comparing different features of televisions in the shopping process. Consumers are not significantly burdened by consulting multiple EnergyGuide labels as part of that shopping process, and if anything the proposed revised label makes that comparison easier than comparing other features like smart TV functions.

Conclusion

CTA appreciates the FTC's careful attention to this matter, and CTA urges the FTC to revise the applicability of the Rule to televisions to allow for digital labeling and to remove comparability ranges in favor of CTA's proposed revised label. The core disclosure – the annual operating cost for power consumption – may persist over time, but the method of conveying the information to consumers should evolve to meet contemporary consumer expectations and shopping patterns.

Respectfully submitted,

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