



August 18, 2014

*Submitted at <https://public.commentworks.com/ftc/energyguidereview>*

Secretary Donald S. Clark  
Federal Trade Commission  
Office of the Secretary  
600 Pennsylvania Avenue NW  
Suite CC-5610 (Annex B)  
Washington, DC 20580

**RE: Energy Labeling Regulatory Review (16 CFR Part 305) (Matter No. R611004)**

Dear Secretary Clark:

On behalf of the Direct Marketing Association (“DMA”), we appreciate the opportunity to provide comments in response to the Federal Trade Commission’s (“Commission” or “FTC”) request for comment on the Energy Labeling Rule (the “Rule”) published on June 18, 2014.<sup>1</sup> Specifically, the DMA offers comments on section L (Retailer Responsibility) and section M (Marketplace Web Sites) of the request for comment.

DMA is the world’s largest trade association dedicated to advancing and protecting responsible data-driven marketing in the United States and globally.<sup>2</sup> Founded in 1917, DMA represents thousands of companies and nonprofit organizations that use and support responsible data-driven marketing practices and techniques. DMA provides data-driven marketers the voice to shape policy and public opinion, the connections to grow members’ businesses, and the tools to ensure full compliance with responsible and best practices as well as professional development.

Within DMA’s membership are catalogers, marketers, and retailers, both on- and off-line, who appreciate the benefit in communicating every relevant aspect of a product to consumers, including communicating information crucial to potential purchasers about the energy consumption of products covered by the Rule. However, the DMA believes that downstream entities connected with the sale of covered products are not best situated to help ensure that this important information is effectively conveyed to consumers. We discuss this in greater detail below.

**I. Retailer Responsibility**

As set forth in the request for comment, the Commission is revisiting retailer responsibility for physical labeling in an effort to increase the measures calculated to keep labels attached and visible on display models. The current Rule prohibits retailers from removing labels required by the Rule or rendering them illegible, but does not otherwise impose an affirmative duty on retailers to display labels at points-of-sale or to reattach missing or

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<sup>1</sup> Energy Labeling Rule, 79 Fed. Reg. 117, 34642-34668 (June 18, 2014).

<sup>2</sup> [www.thedma.org](http://www.thedma.org).



incomplete labels. The DMA supports the Commission’s current approach to retailer responsibility, and would encourage the Commission to stay the course. It is the DMA’s view that the Commission can best further the goal of increasing information to consumers by pursuing other improvements to label design intended to encourage continued label attachment by manufacturers. Such improvements would help increase the proper display of labels by appropriately targeting the automated process by which labels are attached to covered products during the manufacturing process without imposing new burdens at the point-of-sale.

Imposing liability on a retailer for missing or damaged labels, contrary to the intentions of the Commission, could actually have the effect of increasing inadvertent mislabeling. The retailer is not well-positioned to match labels with display products. Retailers do not have readily available access to a library of substitute or replacement labels. On a busy showroom floor, sales personnel would need to stop customer service in order to verify the correct label for the product, and then try to locate and attach a substitute label whenever a missing label was noticed. This disruptive process could unintentionally increase misinformation to the public, as mismatched labels and products may become commonplace. Retailers would also be penalized for situations beyond their control, such as when labels are damaged while the product is in transit, or when consumers themselves damage the labels on display products. The burdens associated with a change in the Rule would not likely result in the improved or increased information to consumers that the Commission seeks to provide.

## **II. Marketplace Web Sites**

The DMA also supports the Commission’s decision not to propose additional requirements on marketplace Web sites to display or ensure the display of labels on covered products. The Rule’s current structure—which requires retailers, manufacturers, distributors, and private labelers that sell covered products to display labels on products sold on marketplace Web sites, appropriately places responsibility for labeling on the parties with the greatest ability to verify that accurate labeling information is associated with the corresponding products. The amount of information provided to consumers and how it is displayed is often determined by the physical aspects of the webpage listing. As more consumers turn to mobile devices to conduct their shopping, it becomes increasingly important to limit the information required in online product listings.<sup>3</sup> In the experience of DMA’s members, effective messaging must be clear and concise. Moreover, in an online ordering environment, consumers are best placed to quickly locate accurate information they deem relevant to their purchasing decision by visiting the manufacturer’s webpage.

Imposing additional requirements on marketplace Web sites to add the EnergyGuide label to the product listing would prove costly and burdensome to such Web sites while, again, unintentionally increasing misinformation in the consumer marketplace through inadvertent mislabeling. As with brick-and-mortar retailers, marketplace Web sites do not have the product knowledge or access to information to ensure that the correct label is attached to a product listing

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<sup>3</sup> The Commission has repeatedly recognized the importance of consumers’ increasing use of mobile technologies in connection with shopping, most recently in its report, “What’s the Deal?: An FTC Study on Mobile Shopping Apps,” issued on Aug. 1, 2014.



on their site. Marketplace Web sites are incredibly dynamic and can change their displays minute-by-minute to promote different products for sale based on real time data. Ensuring that label hyperlinks move with the product listing and remain accurate would impose a challenge on retailers. In addition, increasing the number of mandatory disclosures connected with a product’s listing in an online marketplace would result in the “cluttering” of the listing, especially in the mobile shopping environment. As the request for comment points out, imposing these additional requirements on marketplace Web sites create “secondary” or duplicate coverage, as this information is already provided to consumers elsewhere. At present, the burdens of imposing the requirement far outweigh any benefit to consumers from providing information that would be, at best, redundant.

The DMA strongly supports the Commission’s proposal to establish a centralized public database with easy access to EnergyGuide labels by requiring that manufacturers submit URL links for covered products to the Department of Energy’s Compliance and Certification Management System (“CCMS”). By giving easy access to an up-to-date collection of EnergyGuide labels in a single location, we believe the database would increase overall industry efficiency by decreasing the time required of retailers to identify and obtain the correct EnergyGuide labels for covered products. This should allow retailers to make new products available to consumers and complete internal compliance audits of their catalogues faster and with less human resources than is possible today. We would also expect the database to encourage general compliance with the Rule, decrease instances of mislabeling and free up valuable internal resources for retailers to focus on other important compliance matters. We agree with the Commission that adopting the proposal would not place an undue burden on manufacturers who already are required to publish EnergyGuide labels on publicly accessible websites and have open lines of electronic communication with CCMS. Adding URL links to CCMS seems like an intuitive next step that should require very little additional effort on the part of manufacturers given their existing EnergyGuide label processes. Accordingly, we encourage the Commission to adopt this common sense proposal.

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DMA appreciates the opportunity to submit these comments. Please do not hesitate to contact me with any questions at (202) 861-2420.

Sincerely,

Peggy Hudson  
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Direct Marketing Association

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