

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

In the Matter of

Rule Concerning Disclosures)	
Regarding Energy Consumption and)	
Water Use of Certain Home Appliances)	
and Other Products Required Under)	
the Energy Policy and Conservation)	16 CFR Part 305
Act (“Appliance Labeling Rule”);)	
Notice of Proposed Rulemaking)	
Consumer Electronics Labeling,)	
Project No. P094201)	
RIN 3084-AB15)	

**COMMENTS OF THE
CONSUMER ELECTRONICS RETAILERS COALITION
ON PROPOSED RULES**

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The Consumer Electronics Retailers Coalition (“CERC”) submits these Comments on the Commission’s Notice of Proposed Rulemaking (“NPRM”) with respect to televisions and other consumer electronics products.¹ CERC, as a public policy organization that includes major specialist and general retailers of consumer electronics products, has participated in this proceeding through the stages of the Advance Notice and the Public Meeting referenced in the NPRM. In these Comments on the NPRM, CERC incorporates by reference its Comments and its Supplemental Comments on the Advance Notice.²

¹ Appliance Labeling Rule, 75 FR 11483 (proposed Mar. 11, 2010) (to be codified at 16 C.F.R. pt. 305). CERC members include Amazon.com, Best Buy, K-Mart, RadioShack, Sears, Target, Walmart, and the leading industry trade associations - National Retail Federation (“NRF”) and Retail Industry Leaders Association (“RILA”).

² *In the Matter of Rule Concerning Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required Under the Energy Policy And Conservation Act*

I. Introduction And Summary

CERC has supported, and continues to support, the Commission's undertaking to require reasonable energy consumption EnergyGuide labels on televisions, and to continue to study the feasibility of requiring such labeling for other consumer electronics products. In CERC's prior filings, and in stakeholder and public interest discussions moderated by the FTC staff, CERC has advised the Commission that, based on CERC members' considerable experience with both mandated and voluntary labeling regimes, and in-store and on-line implementation by sales associates and shoppers, any such program should have these core attributes:

- The labels should include graphic comparative data within product ranges.
- Consumer confusion can be avoided only by application of the label – whether adhesive or cling - at the point of manufacture, because a separate retail label is too susceptible to being based on incomplete or obsolete information, and can too easily become detached, or associated with the wrong product, on display.
- Where the label is mandatory, accurate enforcement is possible only if the label has been applied by the manufacturer.
- Given the dynamism of both product and retail markets, alternative options should be considered where feasible.

CERC appreciates the level of consideration the Commission as given in these Proposed Rules. Below, CERC comments on those Proposed Rules that pertain to CERC's recommendations. Further below, CERC discusses the Proposed Rules and possible additional compliance options, as solicited by the NPRM and as discussed in the Public Meeting.

("Appliance Labeling Rule"), Project No. P094201, Comments of the Consumer Electronics Retailers Coalition ("CERC") (May 14, 2009). *Appliance Labeling Rule*, Project No. P094201, Supplemental Comments of CERC (Oct. 16, 2009).

II. Comments on Proposed Rules

CERC's comments on the proposed text and illustrations are set forth below.

CERC's statements of support for Proposed Rules are in all cases subject to an expectation that CERC will have an opportunity to comment on any changes to any rule proposed by other commenters.³ CERC submits these comments on the Proposed Rule language as additions or amendments to 16 CFR Part 305:

§ 305.17 Television labeling.

CERC supports the Proposed Rule as written and notes these comments as to alternatives or options:

(d) *Label types.*

(1) To the extent additional label types or methods are considered, they should have the same attributes of clarity and predictability of operation, based on initiation and placement of the label by the manufacturer, as do the examples approved in the Proposed Rule. We suggest that the regulatory language relating to the responsibility of the manufacturer to affix be consistent for both the use of the adhesive label and the cling label in §305.17(e)(2).

(2) Multiple labeling obligations (*e.g.*, product *and* box) should be avoided, as they carry the potential for inconsistent or erroneous messaging to consumers.

(3) Options that rely on a particular retail implementation should be avoided for the same reason.

³ Such proposals can be expected based on the discussion at the Public Meeting. However, this discussion, though productive, transcribed, and publicly available, is understood not to be a part of the official record on which Rules will be based. Accordingly, CERC will look forward to an opportunity to comment on any proposed change, on the record, to a Rule for which CERC has expressed support on the record.

(f)(5) Comparability ranges.

CERC understands from the Public Meeting discussion that, based on additional market research, the screen size category groupings may be adjusted. CERC does not expect to have any objection to adjustments made on this basis.

§ 305.20(g) Paper catalogs and websites.

CERC provides the following comments and suggestions regarding the Proposed Rule's requirements for paper catalogs and websites. First, CERC proposes that the regulations in this section be clarified to state that, as with on-ground retail environment, it is the responsibility of the manufacturer to provide the retailer all required energy label information for the purposes of printing catalogs or displaying on the website.

Second, because of the variety of print media utilized by retailers, CERC proposes that the FTC clarify that weekly circulars or flyers used by retailers are not included in the definition of catalog.

Third, for both catalogs and for websites, CERC seeks more clarity and specificity regarding the Proposed Rule. In both catalogs and websites, space is at a premium and there is also an environmental issue associated with the additional print space needed for every disclosure requirement. As proposed, the Rule appears to require a retailer that uses the label to use it in the same size as the label used in a store. This would not be feasible. In addition, it is unclear whether a retailer that opts to instead use the disclosure language provided in the Proposed Rule must repeat that language with every TV shown. If a retailer opts to re-print the label on the website or in a catalogue, CERC proposes that the FTC permit the label to be shown in a catalog or on the website in a size smaller than

that required in the store. As currently drafted, §305.20(g) seems to indicate that the label would be required to comply with the §305.17 size requirements.

If a retailer chooses to use the disclosure language of this section instead of a label, CERC additionally proposes that the retailer be permitted under the rule (1) to print or display the disclosure language in the same font size used with the product's other descriptive language, and (2) to print the disclosure statement once on a page on which TVs are displayed, rather than with each individual product.⁴

In addition, although the FTC's current guide suggests that for appliances, websites may utilize "links" to the Energy Label or descriptive language, the Proposed Rule as drafted does not appear to include that clarification. CERC would like confirmation that a link either to the label, the disclosure statement, or to the manufacturer's site with the information, will be sufficient with regard to television labeling as well.

**Appendix L, Prototype Labels 8, 9, and 10
and Sample Labels 10, 11, and 12.**

CERC supports the Proposed Rule.

III. Discussion

In addition to the Proposed Rules, the Commission has invited discussion on the following subjects:

A. Smallest Sizes

It would not be practical to affix a legible label to a TV with a screen size of nine inches or less. Even if not in the box, i.e., if on display in a store, a label will not fit in the

⁴ The FTC could require the retailer to apply an asterisk next to each TV to guide the consumer to the top or bottom of the page to read the statement.

locations required by the Proposed Rules, given the size of the TV. Any such TV is likely to be brought to checkout, and purchased by the consumer, in its box. Accordingly, the labeling obligation should be considered satisfied by providing the label only on the box.

B. Timing of Proposed Requirements

For the reasons stated in CERC's prior comments and accepted by the Commission in the NPRM, CERC agrees that, as proposed in the NPRM at VI.D., (1) the date as of which a labeling obligation is incurred must be the date of the product's manufacture, and (2) the obligation should attach only to specific products as manufactured on or after that date.⁵ Hence, the stakeholders with the most vital interest in the timing of the proposed requirements are the product manufacturers. While CERC is primarily a representative of retail stakeholder interests, these do include members that are the responsible parties for products manufactured. It is CERC's view that nine months would be an appropriate lead time for commencement of the manufacturers' obligation to include labeling information under these Rules. Six months, as proposed by the Propose Rule will be insufficient to ensure compliance. With regard to retailer obligations, in particular, it takes a significant amount of lead time to change websites and to print catalogs. We also note that the FTC should be careful to avoid any implementation requirements of these regulations during the Holiday Season, i.e., between October 1 and January 1.

C. Products Other Than Televisions

CERC agrees with the NPRM's evaluation – that the data and record are insufficient for rules to be proposed at this time – with respect to potential labeling of

⁵ Otherwise, there would be an obligation to retrofit labeling to products that have already been shipped and are in warehouse. CERC members' experience in other contexts has been that any such labeling would be infeasible, unreliable, and unenforceable.

products other than televisions. CERC will comment specifically on this subject when the Commission addresses it. CERC hopes that the Commission will proceed, as it has with respect to televisions, by means of an Advance Notice and a Public Meeting, and looks forward to its participation in both.

D. Small Entities to Which the Proposed Rule Will Apply

The NPRM's calculation, at XI.C., as to the number of small businesses affected by the Proposed Rules is that fewer than 40 – all retailers – would be so effected. CERC concludes that this calculation is based on the fact that these retailers are the “responsible parties” for products that are manufactured, hence are subject to these rules in their capacities as “manufacturers.” Otherwise, given the number of small (single store, regional, general merchandise, web-based) retailers that sell televisions, this number would be in the thousands or tens of thousands. CERC does not dispute this finding, but notes that in the event the Proposed Rules were to be revised so as to place any obligation on retailers in their retail capacity (*i.e.*, other than as party responsible for manufacture or importation), this finding would need to be revised and the conclusion reconsidered.

E. Significant Alternatives and Options

With respect to the Proposed Rules as set forth in the NPRM, CERC's views as to options and alternatives are set forth above in Part II of these Comments. As to any alternatives and options to be proposed in the Comments of other stakeholders and public interest representatives, CERC trusts that it will have an opportunity to address these before the Proposed Rules are made final.

* * *

CERC and its members appreciate the opportunities for comment, collection and evaluation of data, and exchange of views that have been afforded by the Commission and its staff, and look forward to the conclusion of this proceeding in the public interest.

Respectfully submitted,

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