

# FTC Amends Labeling Requirements for TV and Appliance Marketers; Further Amendments Proposed

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January 2013

After extensive review, the Federal Trade Commission (FTC) has issued amendments to its energy labeling requirements for consumer products. 78 Fed. Reg. 2200 (Jan. 10, 2013). Compliance with many of the amendments is required by February 15. FTC also has issued a Notice of Proposed Rulemaking (NPRM) for additional amendments. 78 Fed. Reg. 1,779 (Jan. 9, 2013). Comments on the NPRM are due by March 1.

Given the wide-ranging coverage of the FTC requirements and the risks entailed in violation, close attention is warranted by potentially affected companies. These companies include manufacturers and marketers of refrigerators, refrigerator-freezers, freezers, dishwashers, water heaters, clothes washers, room air conditioners, central air conditioners, heat pumps, furnaces, plumbing products, lighting products, ceiling fans and televisions.

## Background of FTC Energy Labeling Requirements

Energy labeling is a central element of the federal energy efficiency program and affects a broad range of products. Labeling is viewed as a way to help consumers compare energy consumption attributes of products.

The Energy Policy and Conservation Act (EPCA), 42 U.S.C. § 6291, *et seq.*, provides for energy efficiency labeling of appliances and other consumer products. Labeling is administered by FTC. FTC is to follow Department of Energy (DOE) test procedures. (DOE also administers efficiency standards.)

FTC has issued its Appliance Labeling Rule, 16 C.F.R. Part 305, requiring labeling, including EnergyGuide labels, catalogs and websites, and imposing reporting requirements. The Rule is now amended to be titled the "Energy Labeling Rule."

## Amendments to the FTC Labeling Rule

The FTC's January 10 amendments streamline data reporting, clarify testing requirements and enforcement provisions, and amend online energy label disclosures. Most of the provisions become effective on February 15, 2013; others become effective on July 15, 2013, or January 15, 2014. In brief:

- The Rule previously required reporting to FTC information that is largely duplicative of information required to be reported to DOE. The amendments streamline this process by requiring that most reports be submitted only to DOE. FTC is to obtain the information from DOE and place it on FTC's public record.
- The amendments harmonize FTC reporting requirements with DOE certification rules by generally requiring the same report content as DOE. The exception is for ceiling fans.
- The amendments clarify that manufacturers must test their products for FTC labeling purposes in accordance with all DOE testing requirements, including sampling, testing accreditation and testing waiver procedures.
- FTC states that it concurs with DOE guidance that manufacturers may rate their products more conservatively than the products' tested performance.
- FTC will continue to allow manufacturers to submit data through certification bodies or other entities acting on the manufacturers' behalf.
- The amendments require sellers to display the full EnergyGuide or Lighting Facts labels on the product page or through a hyperlink, establish website format requirements and require manufacturers to post labels on a publicly available website. Manufacturers must continue posting their labels online for six months after discontinuing production of the model.
- Abbreviated text disclosures are allowed for paper catalogs.
- The Rule's title is changed from "Appliance Labeling Rule" to "Energy Labeling Rule" in recognition that the Rule now covers more products than appliances.
- The amendments clarify that civil penalties for various violations are calculated on a per-model, per-day basis.

### **Proposed Amendments to FTC Labeling Rule**

In addition to the new rule provisions, the FTC has proposed a number of amendments. These include:

- FTC proposes updating comparability ranges and national average cost figures.
- FTC proposes revisions and updates to the label's content. This includes rounding to the nearest cent national electricity and natural gas cost figures. FTC also seeks comment on whether to retain rate information on television labels. In addition, it seeks comment on whether to update range and cost information more often than every five years.
- FTC proposes granting the request by the Association of Home Appliance Manufacturers (AHAM) for an exemption relating to labeling for refrigerators, refrigerator-freezers, freezers and clothes washers to address recent DOE test procedure changes.
- FTC asks for comments on certain other issues, including:
  - Comparability range categories for refrigerators, refrigerator-freezers, and freezers;

- Labeling for icemaker energy consumption; and
- Labeling for clothes washer capacity.

FTC requests comment on the NPRM by March 1.