

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

In the Matter of)	Energy Labeling Rule ANPR, Matter
)	No. R611004
Energy Labeling Rule)	
)	Docket No. FTC-2022-0061
)	

COMMENTS OF THE CONSUMER TECHNOLOGY ASSOCIATION

The Consumer Technology Association® (“CTA”) submits this response to the Federal Trade Commission’s (“FTC” or “Commission”) Advance Notice of Proposed Rulemaking (“ANPR”) on potential amendments to the Energy Labeling Rule (the “Rule”).¹ CTA is North America’s largest technology trade association. CTA’s members are the world’s leading innovators—from startups to global brands—helping support more than 18 million American jobs. CTA also owns and produces CES®—the most influential tech event in the world. CTA members operate in a competitive marketplace to produce innovative products that provide enormous benefits to consumers and power the economy.

The Rule covers a subset of consumer electronics products offered by CTA members, and CTA is committed to working with the FTC and other agencies on measures to effectively promote energy efficiency and sustainability for those products. In response to the ANPR, these comments provide information and recommendations on (1) potential updates to the Rule's label content and format requirements for televisions and other products with displays; and (2) potential new requirements related to repair instructions for covered products. CTA encourages the FTC to remove comparability requirements for televisions and allow electronic labeling for

¹ *Energy Labeling Rule*, Advance Notice of Proposed Rulemaking, 87 Fed. Reg. 64,399 (Oct. 25, 2022) (“ANPR”).

products that include displays such as televisions, and to avoid proposing amendments related to repair instructions for covered products, given existing online access to repair guidance and the FTC’s limited authority to address repair instructions in the Rule.

I. THE COMMISSION SHOULD UPDATE THE RULE’S LABELING REQUIREMENTS.

The Rule currently contains labeling requirements related to televisions, and CTA has in the past urged the FTC to modify its requirements applicable to televisions and other devices with displays.² The ANPR asks for further input on whether the FTC should amend requirements applicable to label format and location for products including televisions, and any improvements that could be made or requirements removed from existing labels.³ In light of changing technology and online availability of information to consumers, CTA encourages the FTC to adopt the changes outlined below.

A. The FTC Should Eliminate Ranges of Comparability for Televisions.

Under the Energy Policy and Conservation Act (“EPCA”), the FTC has discretion over whether to include a range of comparability requirement for television labels in the Rule. Given developments in television technology, that requirement should be removed as it is not helpful for consumers for that product category.

The FTC should eliminate this requirement for television models for three reasons. *First*, television models constantly evolve and improve, so attempts to estimate ranges for TVs are futile because the data becomes quickly outdated almost as soon as it is set. The pace of product innovation and improvement in the market for televisions is especially rapid, and product models

² See Comments of the Consumer Technology Association, RIN 3084-AB15, at 3 (filed July 11, 2022).

³ ANPR at 64,402-03.

and feature sets change quickly. In this dynamic product market, the validity and relevancy of product comparisons among television models in any given moment is relatively brief, making the range of comparability unreliable and misleading. Consumers do not benefit from a range of comparability disclosure if the end points on the comparability scale are outdated and irrelevant.

Second, there are already well-established resources for product comparisons of televisions by consumers, including consumer and trade publications and product reviews. Having energy use disclosure requirements for televisions itself enables various consumer-oriented publications and organizations to compare television models based on power consumption and cost of operation, as well as other factors.

Third, consumers are in a good position to make energy use comparisons between television models based on the most significant element of the EnergyGuide label, the estimated yearly energy cost. Given the difficulty of maintaining a relevant and helpful range of comparability for television models, the Commission should no longer require this element of the label for televisions.

B. The FTC Should Allow the Option of Electronic Labeling for Products Incorporating Displays.

Given that information about energy use and cost is widely available online, and consumers readily access this kind of information for comparison shopping purchases, the requirement to physically display a label on a television no longer appears to be necessary. If the FTC concludes that a product label is warranted, however, CTA's longstanding view is that, for products that include displays such as televisions, the FTC should allow an option for electronic labeling. This may involve the presentation of the EnergyGuide disclosure on the product's display or screen retrievable on command. Providing flexibility for electronic labeling would be more beneficial to consumers and remove burdens for manufacturers.

First, consumers would benefit because electronic labeling could allow a consumer or researcher to retrieve a TV model's energy use information long after a product is sold. At the same time, consumers can easily find the information online when making purchasing decisions.

Second, the flexibility is important for businesses. It would support the industry's ongoing environmental sustainability efforts to reduce the printed and physical materials associated with a product and its packaging. It is also consistent with U.S. and global approaches to electronic labeling, or e-labeling, in other contexts. For example, the Federal Communications Commission ("FCC") has adopted electronic labeling options,⁴ and other countries have implemented similar approaches as well.⁵

⁴ See *Amend. of Parts 0, 1, 2, 15 & 18 of the Commission's Rules regarding Authorization of Radiofrequency Equip.*, First Report and Order, 32 FCC Rcd 8746, ¶ 28 (2017) (adopting, pursuant to the Enhance Labeling, Accessing, and Branding of Electronic Licenses Act, regulations to allow radiofrequency device manufacturers to electronically display any labels required by FCC rules, and explaining that the agency's permissive approach was "was designed to ... provide flexibility to manufacturers while enabling consumers to continue to receive the information required by [FCC] rules"); 47 C.F.R. § 2.935(a) ("Any radiofrequency device equipped with an integrated electronic display screen, or a radiofrequency device without an integrated screen that can only operate in conjunction with a device that has an electronic display screen, may display on the electronic display the FCC Identifier, any warning statements, or other information that the Commission's rules would otherwise require to be shown on a physical label attached to the device.").

⁵ Australia, Canada and China have allowed e-labeling for products with built-in displays since 2010, 2014 and 2015, respectively. See, for example, the Australian Communications and Media Authority's Regulatory Compliance Mark requirements option for electronic labeling. Australian Communications and Media Authority, *Step 5: label your product*, <https://www.acma.gov.au/step-5-label-your-product> (last updated Dec. 15, 2022) ("If a product has a built-in display, you may show it electronically rather than on the surface of your product.").

II. THE COMMISSION SHOULD AVOID MANDATES RELATED TO REPAIR INSTRUCTIONS.

The ANPR asks a number of questions about whether the FTC should amend the Rule to include requirements related to repair instructions for covered products.⁶ CTA encourages the FTC not to address repair-related matters in the context of the Rule. Consumers currently have access to extensive information on repair of consumer electronics, and manufacturers have been making efforts to expand repair options. Additionally, the FTC has limited statutory authority to address repair instructions in the Rule. Therefore, CTA's view is that the FTC does not need to and should not add repair-related mandates to the Rule.

A. Consumers Currently Can Access Repair-Related Information, and Consumer Electronics Manufacturers Continue to Expand Repair Options.

Consumer technology devices are essential and integral to everyday life, and enormously popular with consumers. Manufacturers in the industry recognize the importance of helping consumers maintain and fix these devices, promoting energy efficiency, and avoiding unnecessary waste. Many manufacturers have established extensive networks of authorized repair and independent manufacturer-affiliated facilities and services with multiple options for consumers, including walk-in and mail-in options. Many have also expanded self-repair options.

The ANPR asks whether lack of access to repair instructions is a problem for consumers.⁷ Manufacturers offer repair-related information in owner's manuals and other technical

⁶ The repair-related provisions of the Energy Policy and Conservation Act appear at 42 U.S.C. § 6294(c)(5), and apply to "covered products." Covered products are those specified in 42 U.S.C. § 6292. *See* 42 U.S.C. § 6291(2) (definition of "covered product").

⁷ ANPR at 64,403.

documentation that is routinely made available for consumer electronics products. This information is often also available online for ease of consumer access and use.⁸

Manufacturers also offer a range of self-service repair options tailored to specific kinds of products, which include even more detailed instructions. For example, Apple offers “Self-Service Repair,” which is intended for individuals with the knowledge and experience to repair electronic devices, and which provides consumers with access to repair manuals and genuine parts and tools to perform out-of-warranty repairs.⁹ As another example, Samsung offers a self-repair program, partnering with an independent repair provider to offer additional solutions for fixing many common device issues, with links to user-friendly repair guides.¹⁰ Likewise, Microsoft offers self-repair guides for its Surface products, enabling technically inclined individuals to perform self-service repairs.¹¹ These examples are not exhaustive, and often go beyond the limited product categories covered by the Rule.

Additionally, manufacturers’ authorized repair networks provide further repair options for consumers. Consumers can be sure that a manufacturer’s authorized repair network will conduct repairs using properly trained and vetted professionals that have the necessary skills to

⁸ As just some examples from CTA members, see Samsung, *Support*, <https://www.samsung.com/us/support/downloads/> (last visited Jan. 26, 2023); Apple, *Manuals*, https://support.apple.com/en_US/manuals/mac%2520repair%2520manual (last visited Jan. 26, 2023); Sony, *Sony Support: Manuals & Warranty*, <https://www.sony.com/electronics/support/manuals> (last visited Jan. 26, 2023); Microsoft, *Surface Service Guides*, <https://www.microsoft.com/en-us/download/100440> (last visited Jan. 26, 2023).

⁹ See Apple, *Self Service Repair*, <https://support.apple.com/self-service-repair> (last visited Jan. 26, 2023).

¹⁰ See Samsung, *Repair Services: Take Care with Self-Repair*, <https://www.samsung.com/us/support/self-repair/> (last visited Jan. 26, 2023).

¹¹ See Stephanie Savell & John Kaiser, *Customer self-serve repair for Surface devices*, Microsoft (Jan. 03, 2023), <https://learn.microsoft.com/en-us/surface/surface-customer-self-repair-surface>.

safely and reliably repair products to manufacturer specifications and standards with manufacturer quality parts. Most consumer technology products are comprised of complex electronics and some types of repair can pose safety concerns when done by individuals without proper training – particularly for repair attempts involving lithium-ion batteries.¹²

Manufacturers have collaborated with stakeholders from all facets of the repair ecosystem to develop a series of independently managed industry standards that are open to all technicians and repair providers (e.g., the CTIA Wireless Industry Service Excellence program).¹³ These changes advance consumer protections, as many devices are complex and could create risks if not repaired properly. Additionally, manufacturer-affiliated repair networks help to ensure customer privacy and data security by contractually limiting personnel access to view, store, or use customer data for any purpose other than repairing the customer’s product. Consumers also have online access to information about these repair networks and can make informed decisions about repair options at the time of purchase. As just one example, CTA’s Greener Gadgets online resource lists a wide range of repair options provided by device manufacturers.¹⁴

¹² See, e.g., Consumer Product Safety Commission, *CPSC Issues Consumer Safety Warning: Serious Injury or Death Can Occur if Lithium-Ion Battery Cells Are Separated from Battery Packs and Used to Power Devices* (Jan. 8, 2021), <https://www.cpsc.gov/Newsroom/News-Releases/2021/CPSC-Issues-Consumer-Safety-Warning-Serious-Injury-or-Death-Can-Occur-if-Lithium-Ion-Battery-Cells-Are-Separated-from-Battery-Packs-and-Used-to-Power-Devices>.

¹³ See WISE, <https://www.wisecertification.com/> (last visited Jan. 26, 2023).

¹⁴ See CTA, *Greener Gadgets: Repair Locations*, <https://www.cta.tech/Landing-Pages/Greener-Gadgets/Repair-Locations> (last visited Jan. 26, 2023).

Overall, the repair market is rapidly evolving, including since 2019 when the FTC requested comments in connection with the “*Nixing the Fix*” workshop.¹⁵ The consumer technology industry has significantly expanded repair options over the past few years. This evolution toward providing more repair options is good for consumers, good for manufacturers in expanding repair networks, and good for the environment. Repair instructions and options are also *currently* visible to consumers, without the need for any affirmative disclosure requirements. CTA does not believe there is a need for additional repair disclosure mandates given the extensive repair-related information currently in the marketplace.

B. The Commission’s Authority to Address Repair Instructions in the Energy Labeling Rule is Limited.

The EPCA gives the FTC a narrow statutory basis for requiring manufacturers to provide repair instructions for covered products. The EPCA includes a single provision that allows the FTC to require that the manufacturer of a covered product provide “additional information relating to energy consumption, including instructions for the maintenance, use, or repair of the covered product, if the Commission determines that such additional information would assist consumers in making purchasing decisions or in using such product, and that such requirement would not be unduly burdensome to manufacturers.”¹⁶ Under the statute, this information could be included on the label, separately attached to the product, or shipped with the product.¹⁷

In considering whether to propose Rule requirements related to repair instructions, the FTC must take account of four significant limits on its authority in this area. *First*, any new

¹⁵ Federal Trade Commission, *Nixing the Fix: A Workshop on Repair Restrictions* (July 16, 2019), <https://www.ftc.gov/news-events/events/2019/07/nixing-fix-workshop-repair-restrictions> (comments on the Workshop closed September 16, 2019).

¹⁶ 42 U.S.C. § 6294(c)(5)(C).

¹⁷ *Id.* § 6294(c)(5).

requirement must involve disclosure of repair instructions. Unlike other parts of the EPCA, the provision mentioning “repair” is limited to “instructions,” and it does not authorize the FTC to mandate comparability ranges or other assessments of product performance.¹⁸ Under the EPCA, the FTC could not, for example, mandate assessments related to repairability of covered products. Nor does this provision allow the FTC to require manufacturers to *create additional options* for self-repair, which may not be feasible in cases where consumers are not practically or safely able to repair products themselves – for example, in cases where repair involves dealing with lithium-ion batteries or other components that are not safe for consumers to handle without training. The FTC’s authority in this area is limited to the factual disclosure of instruction information.

Second, any new requirement to provide repair instructions must be related to “energy consumption.” While some repair-related information can assist consumers with managing energy consumption, not every aspect of product repair is related to energy consumption. Requiring disclosure of repair information about components unrelated to energy use would be outside the proper scope of the Rule.

Third, any new requirement must assist consumers in making purchasing decisions or in using the product. Notably, the statute is focused on assisting consumers in making decisions and using the product, *not* assisting repair providers in obtaining access to information from the manufacturer. Additionally, given that consumers can already access repair-related instructions online, as discussed above, the inclusion of instructions with the product itself would not necessarily help consumers in a meaningful way.

¹⁸ See, for example, the more detailed labeling requirements outlined in 42 U.S.C. § 6294(c)(1)-(2).

Fourth, any new requirement must “not be unduly burdensome to manufacturers.” Even within its limited authority to require distribution of repair instructions, the FTC must be careful not to create unnecessarily specific or prescriptive labeling or disclosure requirements related to repair, given the lack of evidence that the current disclosure practices are insufficient.

Indeed, the FTC should be mindful of a number of additional potential burdens on manufacturers and negative consequences for consumers:

- Disclosure requirements must not expose trade secrets and other sensitive information subject to intellectual property protection. For example, certain kinds of repairs of electronic devices can involve software or other proprietary tools that are designed to safeguard information on the device. The FTC’s *Nixing the Fix* report notes manufacturers’ important interests in IP and trade secret protection and flags those as an important consideration in evaluating repair-related proposals.¹⁹
- New requirements on top of the existing EnergyGuide labels could undermine the effectiveness of the existing label and create consumer confusion about the labels. The likelihood of consumer confusion may be increased because repair instructions do not necessarily relate to other energy-related information included on the labels.
- New requirements that attempt to mandate certain kinds of repair instructions would – in addition to exceeding the FTC’s limited authority as discussed above – potentially expose consumers to safety risks and manufacturers to liability risks, if they encourage consumers to attempt to undertake repairs of sophisticated electronic products under situations which are not safe.

In light of these significant limitations, and the lack of need for additional repair-related disclosures in the marketplace, the FTC should not add repair-related mandates to the Rule.

¹⁹ Federal Trade Commission, *Nixing the Fix: An FTC Report to Congress on Repair Restrictions*, at 24-25, 53-54 (May 2021), https://www.ftc.gov/system/files/documents/reports/nixing-fix-ftc-report-congress-repair-restrictions/nixing_the_fix_report_final_5521_630pm-508_002.pdf.

III. CONCLUSION

CTA encourages the FTC to remove comparability requirements for televisions and allow electronic labeling for products that include displays such as televisions. Additionally, the FTC should avoid proposing any additional requirements related to repair instructions.

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