

**Supporting Statement
Appliance Labeling Rule
16 C.F.R. Part 305
(OMB No. 3084-0069)**

As explained in the Final Rule document for the Appliance Labeling Rule (“Rule”), 16 C.F.R. Part 305, under the direction of Congress, the Federal Trade Commission (“FTC” or “Commission”) has conducted a rulemaking to examine the effectiveness of the Rule. As part of that proceeding, the Commission is issuing final amendments to change the design for the EnergyGuide labels required by the Rule and to make a variety of other changes.

In accordance with the Paperwork Reduction Act (“PRA”), 44 U.S.C. 3501-3520, FTC staff sought approval from the Office of Management and Budget (“OMB”) on January 30, 2007 for the proposed Rule amendments. OMB responded on March 29, 2007 by requesting that the FTC resubmit at the final Rule stage.

(1) Necessity for Collecting the Information

Section 324 of Title III of the Energy Policy and Conservation Act of 1975 (“EPCA”)¹ requires the FTC to prescribe labeling rules for the disclosure of estimated annual energy cost or alternative energy consumption information for at least thirteen categories of appliances. The statute also requires the Department of Energy (“DOE”) to develop test procedures that measure how much energy the appliances use. In addition, the EPCA directs the DOE to determine the representative average cost a consumer pays for the different types of energy available.

On November 19, 1979, the Commission issued the Rule.² The purpose of the Rule is to help consumers conserve energy by enabling them to compare the energy usage of competing models when purchasing appliances, which benefits both the environment and consumers. This purpose is advanced by making information available to buyers by means of required disclosures at the point of sale. Absent these disclosures, consumers could not compare effectively the energy or water usage of competing models of products covered by the Rule and the incentive for manufacturers to produce more efficient models would be diminished. Records must be maintained for at least two years after production of relevant products has been terminated. Without such records, it would be difficult to ensure that the required labeling and other disclosures are properly derived and accurate.

When issued, the Rule applied to eight appliance categories: refrigerators, refrigerator-freezers, freezers, dishwashers, water heaters, clothes washers, room air conditioners, and furnaces. Since then, the Commission has extended the coverage of the Rule five times: in 1987

¹ 42 U.S.C. § 6294.

² 44 Fed. Reg. 66,466, 16 C.F.R. Part 305.

Dated: August 2007

(central air conditioners, heat pumps, and certain new types of furnaces);³ 1989 (fluorescent lamp ballasts);⁴ in 1993 (certain plumbing fixtures (effective Oct. 25, 1994));⁵ twice in 1994 (pool heaters and certain other water heater types (effective Dec. 29, 1994) and certain lamp products (effective May 15, 1995));⁶ and in 2006 (ceiling fans (effective Jan. 1, 2009)).⁷ In addition, on July 1, 1994, the Commission amended the Rule comprehensively to make certain improvements, including making the label format more “user-friendly,” changing the energy usage descriptors required on labels, and adopting new product sub-categories for ranges of comparability purposes.⁸

Section 137 of the Energy Policy Act of 2005 (“EPACT 2005”) (Pub. L 109-58) amends the EPCA⁹ to require the Commission to initiate a rulemaking to consider “the effectiveness of the consumer products labeling program in assisting consumers in making purchasing decisions and improving energy efficiency.” As part of this effort, the Act directs the Commission to consider “changes to the labeling rules (including categorical labeling) that would improve the effectiveness of consumer product labels.” Accordingly, as directed by Congress, the Commission has considered the effectiveness of existing requirements, published a Notice of Proposed Rulemaking (72 FR 3686 (Feb. 13, 2007)), and is now issuing final amendments to the Rule’s label design requirements and to other components of the Rule.

(2) Use of the Information

As indicated above, the primary purpose of the Rule is to encourage consumers to comparison shop for energy-efficient household appliances. Commission staff will use the information from the final amendments to compile and publish a range of comparability data for industry members to use on the required labels. In some cases, Commission staff also will use submissions for enforcement purposes to ensure that energy usage claims are accurate. The Rule’s recordkeeping requirement is designed to preserve evidence of how the required test

³ 52 Fed. Reg. 46,888 (Dec. 10, 1987).

⁴ 54 Fed. Reg. 28,031 (July 5, 1989).

⁵ 58 Fed. Reg. 54,955 (Oct. 25, 1993). The Energy Policy Act of 1992 (“EPA 92”) amended EPCA, adding showerheads, faucets, water closets, and urinals to EPCA’s list of covered products. EPA 92 established national standards for maximum permissible water usage rates for each of these four plumbing product categories.

⁶ 59 Fed. Reg. 25,176 (May 13, 1994): and 59 Fed. Reg. 49,556 (Sept. 28, 1994).

⁷ 71 Fed. Reg. 78057 (Dec. 28, 2006).

⁸ 59 Fed. Reg. 34,014.

⁹ 42 U.S.C. 6291 *et seq.*

procedures were followed in arriving at the energy usage claims made on labels and fact sheets,¹⁰ as well as, in catalogs and the required submissions.

(3) Consideration of Using Improved Technology to Reduce Burden

The Rule permits the use of any technologies that covered firms may wish to employ and that may reduce the burden of information collection and submission to the Commission. The Rule's reporting requirement is tailored to take maximum advantage of existing industry practices in order to minimize the compliance burden. For example, HVAC manufacturers may fulfill the reporting requirement by submitting trade association directories instead of individual company reports if trade association directories are published. In addition, under the final Rule, heating and cooling equipment manufacturers will be able to provide required information through websites in addition to traditional paper catalogs and fact sheets. The Commission also allows manufacturers to fulfill reporting requirements through the submission of data in electronic format, consistent with the objectives of the Government Paperwork Elimination Act ("GPEA"), Pub. L. No. 105-277, Title XVII, 112 Stat. 2681-749. Disclosing energy usage information to consumers, however, entails labeling on products or their packaging; as such, electronic disclosure pursuant to the GPEA is impracticable.

(4) Efforts to Identify Duplication

Under EPCACT 2005, the FTC does not have discretion to forgo this rulemaking proceeding. Nonetheless, the Commission staff has not identified any other federal statutes, rules, or policies that would duplicate the Rule.

(5) Efforts to Minimize Burden on Small Organizations

Although the EPCA requires the Rule to apply to all manufacturers of covered products, the Commission sought comments in the original rulemaking about minimizing impact on small businesses. It received no specific comments responding to that request. While some manufacturers subject to the Rule's requirements may be small businesses, staff believes that everything consistent with the requirements of EPCA has been done to minimize compliance burden. For example, the fact that manufacturers of HVAC equipment have the option of listing the energy usage of their products in an approved industry directory (which virtually all manufacturers exercise) instead of preparing fact sheets significantly reduces their paperwork burden and that of retailers (the latter must also have fact sheets or directories available), many of whom may be small businesses. Moreover, while the proposed reporting and recordkeeping requirements for the plumbing fixtures category involve the "collection of information," the burden incurred is *de minimis* due to the type of information sought -- the manufacturer's name

¹⁰ Manufacturers of furnaces, boilers, central air conditioners, and heat pumps ("HVAC equipment") also must either provide fact sheets showing additional cost information or list this information in an industry directory.

and address and the trade names, model numbers, and water usage rates of its covered products. Indeed, manufacturers already are required by state plumbing and/or building codes to include this information in their reports to state authorities. Finally, the Commission has established an effective date for the amendments of six months after publication for the new requirements that will ensure manufacturers will have ample time to implement the new requirements.

(6) Consequences of Conducting the Collection Less Frequently

The primary disclosure the Rule requires is the placing of a single label on each appliance when it is manufactured or imported. There is no opportunity within the framework of EPCA to “collect” the information contained in this public disclosure requirement less frequently. Moreover, the statute requires manufacturers of all covered products to submit test data annually.

(7) Circumstances Requiring Collection Inconsistent With Guidelines

The Rule’s information collection requirements are consistent with all applicable guidelines contained in 5 C.F.R. § 1320.5(d)(2).

(8) Consultation Outside the Agency

In developing the final Rule amendments, the Commission has conducted extensive consultation outside the agency. The Commission has sought comments from the public and other agencies through the publication of an Advance Notice of Proposed Rulemaking in 2005 (70 FR 66307 (Nov. 2, 2005)) and a public workshop in May 2006 (71 FR 18023 (April 10, 2006)). The FTC staff also conducted consumer research on various label designs in the fall of 2006 (see 72 FR 3686 (Feb. 13, 2007) and 71 FR 36088 (June 23, 2006)). Finally, the Commission sought public comment on the proposed Rule amendments (72 FR 3686 (Feb. 13, 2007)) to modify the label design and make other miscellaneous changes to the Rule. The Commission did not receive any comments that addressed PRA burden in response to its February 13, 2007 Notice of Proposed Rulemaking.

(9) Payments and Gifts to Respondents

Not applicable.

(10) & (11) Assurances of Confidentiality/Matters of a Sensitive Nature

The information to be disclosed is of a routine business nature. It is collected and disseminated by the industry among its membership and made available to the public. No personal or sensitive information is involved nor is any commercially confidential information included. To the extent that information covered by a recordkeeping requirement is collected by the Commission for law enforcement purposes, the confidentiality provisions of Sections 6(f)

and 21 of the Federal Trade Commission Act, 15 U.S.C. §§ 46(f) and 57b-2, would apply. See also 16 C.F.R. §§ 4.10-4.11.

(12) Estimated Annual Hours Burden and Associated Labor Cost

Annual Hours Burden Under the Existing Rule: 488,345 hours

Annual Hours Burden Attributed to the Final Rule Amendments: 18,000 hours¹¹

Total Hours Burden Under the Final Rule: 506,345 hours (506,000 hours, rounded to the nearest thousand)

OMB has approved the Rule's information collection requirements through August 31, 2009 (OMB Control No. 3084-0069). The final Rule amendments make minor changes in the current Rule's existing recordkeeping, labeling, and reporting requirements. As explained above, FTC staff submitted the proposed Rule and corresponding Supporting Statement to OMB on January 30, 2007. In accordance with OMB's March 29, 2007 request, FTC staff is resubmitting this material for approval at the final Rule stage.

The Commission's burden estimates for the final Rule amendments are based on data submitted by manufacturers to the FTC under current requirements and the staff's general knowledge of manufacturing practices.

The final Rule requires manufacturers to change the EnergyGuide labels to the new design. Under the current Rule, manufacturers routinely change labels to reflect new range and cost data. The new label design will require a one-time drafting change for the manufacturers. The Commission estimates that this one time change will take 40 hours per manufacturer. The Commission further estimates that there are approximately 450 manufacturers of affected covered products.¹² Therefore, the label design change will result in a one-time burden of 18,000 hours (450 manufacturers x 40 hours).

The Commission is amending the Rule to require refrigerator, refrigerator-freezer, and freezer manufacturers to report the adjusted volume of their models. Adjusted volume data is essential for determining whether a refrigerator or freezer model meets DOE minimum efficiency standards, and thus whether it should be considered in updating range information for refrigerator labels. Refrigerator manufacturers' providing adjusted volume information to the FTC will not significantly affect the burden of complying with the amended Rule. The adjusted volume rating

¹¹ This is an increase of 6,000 hours from staff's previous estimate at the proposed Rule stage. The increase is due to staff's revised estimate of the number of affected manufacturers as explained further below in footnote 12.

¹² The proposed Rule sought comment on the elimination of labeling requirements for heating and cooling equipment. The final Rule retains these requirements. Therefore, FTC staff has increased its previous estimate of 300 manufacturers to 450 manufacturers in order to account for the continued labeling requirements for heating and cooling equipment.

of their refrigerators will readily be available to manufacturers because they use it to determine compliance with DOE conservation standards. Accordingly, the Commission has not adjusted its previous burden estimate due to this change in the data reporting that the Rule already requires.

The final Rule also requires retailers who sell through catalogs to disclose information about annual operating cost instead of the annual energy consumption for certain products and provide an explanatory statement in the catalog similar to that which appears on the label. The Rule also eliminates the requirement for catalog sellers to list the range of comparability information. The Commission’s previous estimate of the Rule’s burden on catalog sellers (including Internet sellers) has assumed conservatively that catalog sellers must enter their data for each product into the catalog each year (*see* 71 FR 78057, 78062 (Dec. 28, 2006)). The rule change does not alter that assumption because the amendments require a one-time change of all products in affected catalogs. This one-time change is consistent with previous burden estimates. Accordingly, the Commission does not believe any change is required to the existing burden estimates for catalog sellers.

Thus, the Commission estimates that the total annual hours burden under the final Rule will be 506,000 hours, rounded to the nearest thousand (488,345 hours + 18,000 hours).

Labor Cost Under the Existing Rule: \$12,522,754

Labor Cost Attributed to the Final Rulemaking: \$262,620

Total Labor Cost Under the Final Rule: \$12,785,374 (\$12,785,000 rounded to the nearest thousand)

The labor cost estimate for the existing Rule (\$12,522,754) is illustrated as follows:

Estimated Annual Labor Cost Under Existing Rule

Activity	Burden Hours Per Year	Wage Category/ Hourly Rate	Total Annual Labor Cost
Testing	364,470	Skilled technical/\$29.40	\$10,715,418
Reporting	1,407	Clerical/\$14.59	\$20,528
Recordkeeping	809	Clerical/\$14.59	\$11,803
Labeling, marking, and fact sheet preparation	111,459	Clerical/\$14.59	\$1,626,187
Catalog disclosures	10,200	Clerical/\$14.59	\$148,818
			\$12,522,754

One-Time Incremental Increase Attributed to Final Rulemaking: In calculating the associated labor cost estimate, the Commission assumes that the label design change will be implemented

by clerical workers at an hourly wage rate of \$14.59 per hour based on Bureau of Labor Statistics information. Thus, the Commission estimates that the proposed label design change will result in a one-time labor cost of approximately \$262,620 (18,000 hours x \$14.59 per hour). Accordingly, the total estimated labor cost under the final Rule will be \$12,785,000, rounded to the nearest thousand (\$12,522,754 + \$262,620).

(13) Estimated Annual Capital or Other Non-labor Costs

The estimated annual capital or other non-labor costs for the existing Rule is \$5,801,422. The Commission does not expect that final Rule amendments will create any additional capital or other non-labor costs.

(14) Estimated Cost to Federal Government

Staff estimates that the cost to the FTC for administering the final Rule amendments will be *de minimis*. Accordingly, Commission staff retains the previous estimate of \$90,000 per year as the cost to the Government for implementing the Rule. This estimate is based on the assumption that one-half attorney work year and one-half legal technician work year will be expended.

(15) Program Changes/Adjustments

Commission staff estimates that the final Rule amendments will result in a 18,000 hour increase in total annual burden (resulting in a program increase from 488,345 hours to 506,345 hours).

(16) Plans for Tabulation and Publication

Not applicable.

(17) & (18) Failure to Display the OMB Expiration Date/Exceptions to Certification

Not applicable.