

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

As explained in the Notice of Proposed Rulemaking (“NPRM”) for the Appliance Labeling Rule (“Rule”), under the direction of Congress, the Federal Trade Commission (“FTC” or “Commission”) is proposing to expand the coverage of the Rule to require the labeling of metal halide lamp fixture packages and the ballasts contained within those fixtures. The Commission is not proposing to amend the substantive requirements of the Rule. Unless otherwise specified, references herein to the “proposed Rule” pertain to both the existing Rule and the proposed amendments.

(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.

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.² Since then, the Commission has extended the coverage of the Rule five times: in 1987 (central air conditioners, heat pumps, and certain new types of furnaces);³ 1989

¹ 42 U.S.C. § 6294.

² 44 Fed. Reg. 66,466 (Nov. 19, 1979), 16 C.F.R. Part 305.

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

(fluorescent lamp ballasts);⁴ twice in 1993 (certain plumbing fixtures (effective Oct. 25, 1994)⁵ and certain lamp products (effective May 15, 1995));⁶ in 1994 (pool heaters and certain other water heater types (effective Dec. 29, 1994)),⁷ and ceiling fans (effective Jan. 1, 2009).

(2) Use of the Information

The primary purpose of the EPCA and the proposed Rule is to promote energy conservation by permitting and encouraging consumers to compare the energy efficiency or consumption (or water use) of competing products and to weigh such factors with other product features when making purchasing decisions. 42 U.S.C. § 6201. Commission staff will use the information the proposed Rule requires 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 proposed Rule's recordkeeping requirement is designed to preserve evidence of how the required test procedures were followed in arriving at the energy usage claims made on labels and fact sheets,⁸ as well as, in catalogs and the required submissions.

(3) Consideration of Using Improved Technology to Reduce Burden

The proposed Rule permits the use of any technologies that covered firms, including ceiling fan manufacturers, may wish to employ and that may reduce the burden of information collection and submission to the Commission. The proposed 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. 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 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).

⁷ 59 Fed. Reg. 49,556 (Sept. 28, 1994).

⁸ Manufacturers of furnaces, boilers, central air conditioners, and heat pumps ("HVAC equipment") also must either provide fact sheets showing additional cost information or be listed in an industry directory that shows the cost information for their products.

(4) Efforts to Identify Duplication

The Energy Independence and Security Act of 2007 (“EISA” or “Act”) (Pub. L. 110-140) directs the Commission to issue labeling requirements for metal halide lamp fixture packages and ballasts contained within those fixtures. Under the statute, the FTC does not have discretion to forgo the promulgation of labeling requirements for metal halide lamp fixtures and labeling in lieu of existing state or federal requirements. Nonetheless, the Commission staff has not identified any other federal state statutes, rules, or policies that would duplicate the proposed Rule.

(5) Efforts to Minimize Burden on Small Organizations

Although the EPCA requires the Commission's Rule to cover 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 do) 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 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.

(6) Consequences of Conducting the Collection Less Frequently

The primary disclosure the proposed Rule requires is the placing of a single label on each covered product when it is manufactured or imported. Thus, 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 proposed 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

When the Appliance Labeling Rule went into effect on May 19, 1980, the Commission began to monitor the Rule’s impact, gauge compliance burden, and consider possible

improvements to the Rule. During the next eight years, Commission staff gathered information suggesting that it would be useful to consider modifying the Rule and additionally sought public comment on ways to improve it. In 1988, after considering the input received, the Commission proposed several specific changes to the Rule, and sought comment on several other parts of it that may have warranted changes. In 1993, the Commission again sought further comment on proposed changes to the Rule and, on July 1, 1994, amended it comprehensively by, among other things, 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.⁹

Finally, in conjunction with this current request, the Commission is seeking public comment on its proposal to expand the coverage of the Rule, in particular on the proposed Rule’s recordkeeping, reporting, testing and disclosure requirements as applied to metal halide lamp fixture manufacturers and catalog sellers of these products.

(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: 160 hours (re: proposed Rule amendments alone)

Recordkeeping: Consistent with past estimates for fluorescent ballast manufacturers, staff estimates that yearly recordkeeping burden for metal halide manufacturers will be no more than 2 hours each; thus, 40 hours, cumulatively, for an estimated 20 such manufacturers.

Disclosure: The proposed requirements for package, product labels, as well as point of sale materials and catalog disclosures do not constitute a “collection of information” under the Paperwork Reduction Act of 1995 (44 U.S.C. §§ 3501-3521) because they are a “public disclosure of information originally supplied by the government to the recipient for the purpose

⁹ 59 Fed. Reg. 34,014.

of disclosure to the public” as indicated in Office of Management and Budget regulations.¹⁰ The proposed data reporting for metal halide lamp ballast manufacturers, however, would constitute a “collection of information.”¹¹ Consistent with past estimates for fluorescent ballast manufacturers, staff expects such reporting would require six hours per manufacturer. Allowing for an estimated 20 manufacturers of metal halide lamp fixtures,¹² cumulative reporting burden would thus be 120 hours.

Annual Labor Cost: \$2,300

Staff derived labor costs by applying appropriate estimated hourly cost figures to the burden hours described above. In calculating the cost figures, staff assumes that recordkeeping and reporting, and labeling, marking, and preparation of fact sheets, generally are performed by clerical personnel at an hourly rate of \$14.35.¹³ Based on the above estimates and assumptions, disclosure and recordkeeping labor costs for the metal halide lamp fixture package labeling would be: \$1,722 and \$574, respectively, and approximately \$2,300, cumulatively.

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

Staff believes that there are no current start-up costs associated with the proposed amendments.

(14) Estimated Cost to Federal Government

Staff estimates that the cost to the Federal Trade Commission of administering the requirements of the entire Rule will be \$90,000 per year. This estimate is based on the assumption that one-half attorney work year and half of a legal technician work year will be expended.

(15) Program Changes/Adjustments

As detailed above, Commission staff estimates that the Rule amendments will result in an increase of 160 hours.

¹⁰ 5 C.F.R. § 1320.3(c)(2).

¹¹ The proposed Rule would impose no reporting requirements on catalog sellers.

¹² This estimate follows that applied by staff’s for fluorescent lamp ballasts manufacturers. See 69 FR 64289, 64291 (Nov. 4, 2004). U.S. Economic Census data indicate that there are approximately 80 electric lamp bulb and part manufacturers, 473 Residential Electric Lighting Fixture Manufacturers and 356 Commercial, industrial, and institutional electric lighting fixture manufacturers in the U.S. Staff estimates that only a small fraction of those companies manufacture metal halide lamp fixtures. See <http://www.census.gov/econ/census02/guide/INDRPT31.HTM> (Codes 335110, 335121, and 335122).

¹³ National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2006, “Correspondence Clerks,” Table 1.

(16) Plans for Tabulation and Publication

Not applicable.

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

Not applicable.