

Supporting Statement
Proposed Amendments to the Appliance Labeling Rule
16 C.F.R. Part 305
(OMB No. 3084-0069)

(1) Necessity for Collecting the Information

The Federal Trade Commission (“Commission” or “FTC”) is proposing lamp labeling amendments to the Appliance Labeling Rule (“Proposed Rule”), 16 CFR Part 305, in response to Congressional direction in the Energy Independence and Security Act of 2007, Pub. L. 110-140 (“EISA”). Among other things, EISA directs the Department of Energy (“DOE”) to issue stringent energy efficiency standards for lighting products. These standards will eliminate low efficiency incandescent light bulbs from store shelves. The remaining high efficiency light bulbs will include products widely available now, such as compact fluorescent lamps (“CFLs”), as well as products that are likely to become increasingly available in the future such as improved incandescent bulbs and very high efficiency solid-state lighting, *e.g.*, light-emitting diode (LED) products.

Given these changes, Congress directed the FTC to consider the effectiveness of its current light bulb disclosure requirements and possible alternative labeling disclosures that could help consumers understand new high-efficiency bulbs and help them choose bulbs that meet their needs.¹ In particular, the law directs the Commission to consider labeling disclosures that address consumer needs for information about lighting level, light quality, lamp life, and total lifecycle cost. The Commission must complete this effort by June 2010.² Section 321(c) of the EISA requires DOE, in cooperation with the FTC and other agencies, to conduct a “proactive national program of consumer awareness, information, and education” to help consumers understand new light bulb labels and make energy-efficient lighting choices that meet their needs.

To begin fulfilling this mandate, the Commission published an Advance Notice of Proposed Rulemaking (“ANPR”) on July 18, 2008 (73 FR 40988) seeking comment, and then held a public roundtable on September 15, 2008. Commenters and roundtable participants discussed the effectiveness of current labeling requirements, as well as whether labeling alternatives would help consumers in their purchasing decisions. Using this information, the

¹ Section 321(b) of EISA amends section 324(a)(2)(C) of the Energy Policy and Conservation Act (EPCA) (42 U.S.C. 6294(a)(2)(C)). Additional amendments in EISA redesignate 6294(a)(2)(C) as 6294(a)(2)(D) (see section 324(d) of EISA).

² Section 321(b) of EISA (42 U.S.C. 6294(a)(2)(D)) also gives the Commission the discretion to “consider reopening the rulemaking not later than 180 days before the effective dates of the standards for general service incandescent lamps [implemented by DOE], if the Commission determines that further labeling changes are needed to help consumers understand lamp alternatives.”

Commission conducted a consumer research study to aid in determining what revisions, if any, it should make to existing labeling requirements.³

The Commission has considered the effectiveness of current requirements and alternative approaches for labeling lamps, commonly referred to as light bulbs.⁴ After reviewing public comments and conducting consumer research, the Commission now proposes amendments to the Rule that would require light bulb packages to display brightness and energy cost information on the front panel and a detailed “Lighting Facts” label on the side or rear. The proposed amendments also would require certain disclosures on the bulbs. These new labeling requirements should help consumers choose energy efficient bulbs that meet their lighting needs. The Commission is seeking comments on these proposed changes.

(2) Use of the Information

The primary purpose of the Rule is to encourage consumers to comparison shop for energy-efficient household products. Consumers will use the required labeling to help them purchase light bulbs.

(3) Consideration of Using Improved Technology to Reduce Burden

The proposed amendments permit the use of any technologies that covered firms may wish to employ and that may reduce the burden of information collection. Disclosing energy usage information to consumers, however, entails labeling on products or their packaging; as such, electronic disclosure pursuant to the Government Paperwork Elimination Act, 44 U.S.C. § 3504 note, is impracticable.

(4) Efforts to Identify Duplication

Under the EPCA (see footnote 1), the FTC does not have discretion to forgo this rulemaking proceeding. Nonetheless, for most issues covered by the proposed Rule, the Commission staff has not identified any other federal statutes, rules, or policies that would duplicate the proposed Rule. The Commission understands, however, that some states have mercury disclosure rules that apply to light bulb packages. The Commission intends to ensure that its mercury disclosure requirements⁵ are consistent with existing state requirements.

³ See 73 FR 72800 (Dec. 1, 2008); 74 FR 7894 (Feb. 20, 2009). See comments at <http://www.ftc.gov/os/comments/lampstudypra2/index.shtm>.

⁴ This Notice uses the terms lamp, light bulb, and bulb interchangeably.

⁵ The Commission proposes requiring disclosures for light bulbs containing mercury. The EISA amendments provided the Commission with general authority to consider “alternative labeling approaches that will help consumers to understand new high efficiency lamp products” including CFLs. See 42 U.S.C. 6294(a)(2)(D)(iii)(I)(bb). The proposed language of those disclosures, which would appear on product

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(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 ANPR 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. The Commission will consider establishing an effective date for the new requirements that will ensure affected companies have adequate time to comply with the Rule.

(6) Consequences of Conducting the Collection Less Frequently

Not applicable; there is no flexibility within the framework of EPCA to “collect” less frequently the information contained in the proposed new labeling requirements.

(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

In developing the proposed requirements, the Commission has conducted extensive consultation outside the agency. The Commission has sought comments from the public and other agencies through its July 2008 ANPR and a public workshop in September 2008. The FTC staff also conducted consumer research on various label designs in 2009. Finally, in conjunction with the instant clearance request, the Commission is seeking public comment on its proposal to modify the label design and make other miscellaneous changes to the Rule.

(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

⁵ (...continued)

packaging, is consistent with that which already appears on many packages given existing ENERGY STAR criteria and language recommended by the National Electronic Manufacturers Association to its members. In addition, the proposed amendments require a mercury disclosure on the bulbs themselves to help consumers properly dispose of CFLs.

personal or sensitive information is involved nor is any commercially confidential information included.

(12) Estimated Annual Hours Burden and Associated Labor Cost⁶

Total Incremental Burden of the Proposed Rulemaking: 2,384

Total Associated Labor Cost: \$72,062

Burden estimates for the proposed Rule are based on data previously submitted by manufacturers to the FTC under the Rule's existing requirements and on the staff's general knowledge of manufacturing practices.

Package and Product Labeling: The proposed Rule requires manufacturers to change their light bulb packages and light bulbs to include new disclosures. The new requirements would require a one-time change for manufacturers. The Commission estimates that this one-time change will take 80 hours per manufacturer. Annualized for a single year reflective of a prospective 3-year clearance, this averages to 26.67 hours per year. Based on past estimates, the Commission further estimates that there are approximately 50 manufacturers of affected covered products. Therefore, the label design change will result in a cumulative burden of 1,334 hours (50 manufacturers x 26.67 hours). In estimating the associated labor cost, the Commission assumes that the label design change will be implemented by graphic designers at an hourly wage rate of \$22.70 per hour based on Bureau of Labor Statistics information.⁷ Thus, the Commission estimates that the labor cost for this new label design change will \$30,282 (1,334 hours x \$22.70 per hour).

Catalog Disclosures: The proposed Rule also requires retailers who sell through catalogs to disclose information that is required on package labels for lamps. The Commission's previous estimates of the rule's burden on catalog sellers (including Internet sellers) have assumed conservatively that catalog sellers must enter their data for each product into the catalog each year (see, e.g., 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.

⁶ As detailed in section IV.D. of the associated notice of proposed rulemaking, the proposed amendments include lifting a current stay on implementation of reporting provisions under the Rule;. The current PRA clearance for the Rule's information collection requirements, however, includes prior burden estimates for those requirements. Accordingly, the instant burden analysis accounts solely for information collection provisions not previously implemented or otherwise accounted for in previously cleared PRA submissions.

⁷ See http://www.bls.gov/ncs/ncswage2008.htm#Wage_Tables (National Compensation Survey: Occupational Earnings in the United States 2008, U.S. Department of Labor (August 2009), Bulletin 2720, Table 3 ("Full-time civilian workers," mean and median hourly wages), at 3-12).

Color Temperature: The proposed Rule may require additional testing for correlated color temperature, if such testing has not already been conducted in the normal course of business. Although the Commission expects that many manufacturers conduct such testing for other purposes (*e.g.*, ENERGY STAR criteria), the Commission assumes, based on past estimates of basic models, that manufacturers will have to test 2,100 basic models at 0.5 hours for each model for a total of 1,050 hours. In calculating the associated labor cost estimate, the Commission assumes that the label design change will be implemented by electrical engineers at an hourly wage rate of \$39.79 per hour based on Bureau of Labor Statistics information (see footnote 7). Thus, the Commission estimates that the new label design change will result in associated labor cost of approximately \$41,780 (1,050 hours x \$39.79 per hour).

Accordingly, the estimated total burden of the proposed amendments is 2,384 hours (1,334 hours for packaging and labeling + 1,050 hours for additional testing for correlated color temperature).

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

The Commission does not expect that these amendments will create any capital or other non-labor costs.

(14) Estimated Cost to Federal Government

Staff believes that the cost to the FTC for administering the proposed Rule changes 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 half of a legal technician work year will be expended.

(15) Program Changes/Adjustments

The proposed additional labeling disclosures will result in an estimated additional 2,384 hours, cumulative of all affected manufacturers, at an estimated labor cost of \$72,062, with no anticipated additional capital or other non-labor costs.

(16) Plans for Tabulation and Publication

Not applicable.

(17) Failure to Display the OMB Expiration Date

Not applicable.

(18) Exceptions to Certification

Not applicable.