

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

(1) Necessity for Collecting the Information

In late 2007, Congress amended the Energy Policy and Conservation Act (“EPCA”) (42 U.S.C. 6294) to authorize the Federal Trade Commission (“FTC” or “Commission”) to prescribe labels for televisions and certain other consumer electronics, subject to specific provisions.¹ If DOE publishes applicable test procedures for those specified consumer electronics, the Commission must issue disclosure requirements within 18 months of DOE’s publication. Absent those procedures, the EPCA amendments give the Commission discretion to require disclosures if it identifies adequate non-DOE testing procedures and finds that disclosures will likely assist consumers in making purchasing decisions. The amended law authorizes the FTC to consider other types of energy disclosures in lieu of traditional product labels for these consumer electronics.² The amendments also provide the FTC with authority to require labeling or other disclosures for any other consumer product if the Commission determines such labeling is likely to assist consumers in making purchasing decisions.³

In response to these amendments, on March 16, 2009, the Commission published an Advance Notice of Proposed Rulemaking (“ANPR”) seeking comment on the need for energy disclosures for televisions and other consumer electronics.⁴ Given the absence of a DOE test procedure for modern televisions, the Commission also sought comment on the adoption of non-DOE test procedures currently used by the ENERGY STAR program. In addition, the Notice requested comment on the appropriate format for any television energy disclosures, specifically asking whether such disclosures should be made using the yellow EnergyGuide label or whether the disclosures should have alternative formats and locations. Finally, the Notice invited comment about the need for energy disclosures for personal computers, cable or satellite set-top boxes, stand-alone digital video recorder boxes, personal computer monitors, and other consumer electronic products.

¹ 42 U.S.C. 6294(a)(2)(I).

² Specifically, the EPCA empowers the Commission to “prescribe labeling *or other disclosure requirements* for the energy use of” the covered consumer electronic products. 42 U.S.C. 6294(a)(2)(I)(i) (emphasis added).

³ Under EPCA, a “consumer product” means any article which consumes, or is designed to consume energy and which, to any significant extent, is distributed in commerce for personal use or consumption by individuals. 42 U.S.C. 6291(1). As with the five consumer electronic categories specifically listed in the EISA amendments, the FTC may identify a non-DOE test procedure for labeling such additional consumer products (in the absence of a DOE test procedure) and has discretion to require comparative information on the label.

⁴ 74 Fed. Reg. 11,045 (Mar. 16, 2009).

The Commission now is proposing to require energy disclosures for televisions. Disclosures are appropriate because they likely will help consumers in making purchasing decisions, the disclosures are technologically and economically feasible, and there is an adequate energy test procedure. Given these preliminary findings, the proposed Rule would require manufacturers to measure energy use using test procedures recently adopted by the ENERGY STAR program. The television's estimated annual energy cost would appear on a newly designed EnergyGuide label. Finally, the proposed amendments would require Internet and paper catalog sellers to provide consumers with the information that appears on the label.

(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 televisions.

(3) Consideration of Using Improved Technology to Reduce Burden

The proposed amendments permit the use of any technologies that covered firms may choose to reduce the burden of information collection. Disclosing energy usage information to consumers at the point of sale involves labeling on products or their packaging. In this context, electronic disclosure as contemplated by as contemplated by the Government Paperwork Elimination Act, 44 U.S.C. § 3504 note, is impracticable.

(4) Efforts to Identify Duplication

The Commission staff has not identified any other federal statutes, rules, or policies that would duplicate the proposed Rule. The Commission understands, however, that California has recently issued marking requirements for televisions.⁵ The Commission's rule would apply nationally and, consistent with EPCA's requirements, is likely to preempt California's requirements.

(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 in its ANPR comments about minimizing impact on small businesses. It received no specific comments responding to that request. While some retailers 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

⁵ On November 18, 2009, the California Energy Commission approved final regulations for televisions that included energy efficiency standards and energy disclosures. Beginning in 2011, the regulations require manufacturers to mark units permanently with the "on" mode power consumption in watts and to disclose a model's watts wherever the product's dimensions appear in any "publication, website, document, or retail display that is used for sale or offering for sale of a television."

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 ANPR. FTC staff consulted with staff at the Department of Energy, Environmental Protection Agency, and the California Energy Commission to gather information about efforts by those agencies related to the energy efficiency standards, test procedures, and labeling for televisions and other consumer electronics.

In conjunction with the instant clearance request, the Commission is seeking further public comment on its proposal to modify 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 personal or sensitive information is involved nor is any commercially confidential information included.

(12) Estimated Annual Hours Burden and Associated Labor Cost

Total Incremental Burden of the Proposed Rulemaking: 57,450
Total Associated Labor Cost: \$834,222

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

Testing: Manufacturers need not subject each basic model to testing annually; they must retest only if the product design changes in such a way as to affect energy consumption. Staff believes that the frequency with which models are tested every year ranges roughly between 10% and 50%. It is likely that only a small portion of the tests conducted is attributable to the Rule's requirements. Nonetheless, given the lack of specific data on this point, the Commission conservatively assumes that all of the tests conducted would be attributable to the Rule's requirements and will apply to that assumption the high-end of the range noted above for frequency of testing. Staff estimates that there are approximately 2,000 basic models, two units per model, and that testing per unit would require one hour per unit tested. Given these estimates and the above-noted assumption that 50% of these basic models would be tested annually, testing would require 2,000 hours per year. Assuming further that this testing will be implemented by electrical engineers, and applying an associated hourly wage rate of \$39.79 per hour,⁶ labor costs for testing would total \$79,580.

Recordkeeping: Pursuant to section 305.21 of the Rule, manufacturers must keep test data on file for a period of two years after the production of a covered product model has been terminated. Assuming one minute per model and 2,000 basic models, the recordkeeping burden would total 33 hours. Assuming further that these filing requirements will be implemented by data entry workers at an hourly wage rate of \$13.53 per hour,⁷ the associated labor cost for recordkeeping would approximate \$450 per year.

Disclosures (Product Labeling): The proposed Rule requires manufacturers to create and affix labels on televisions. The Rule specifies the content, format, and specifications of the required labels. Manufacturers would add only the energy consumption figures derived from testing and other product-specific information. Consistent with past assumptions regarding appliances, FTC staff estimates that it will take approximately six seconds per unit to affix labels. Staff also estimates that there are 33,000,000 television units distributed in the U.S. per year.⁸ Accordingly, the total disclosure burden for televisions would be 55,000 hours (33,000,000 x 6 seconds). Assuming that product labels will be affixed by electronic equipment

⁶ See <http://www.bls.gov/ncs/ncswage2007.htm> "National Compensation Survey: Occupational Earnings in the United States, 2008", U.S. Department of Labor, August 2009, Bulletin 272004, Table 3 ("Full-time civilian workers," mean and median hourly wages), at 3-4 (http://www.bls.gov/ncs/ncswage2008.htm#Wage_Tables).

⁷ See "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 3-24 (http://www.bls.gov/ncs/ncswage2008.htm#Wage_Tables).

⁸ See "ENERGY STAR Unit Shipment and Market Penetration Report Calendar Year 2008 Summary," at 5 (approximately 26 million television units shipped in 2008, constituting 79% market penetration; $26,000,000 \div .79 = 33,000,000$) (http://www.energystar.gov/ia/partners/downloads/2008_USD_Summary.pdf).

assemblers at an hourly wage of \$13.61 per hour,⁹ cumulative associated labor cost would total \$748,550 per year.

Catalog Disclosures: The proposed Rule would require sellers offering covered products through retail sales catalogs (*i.e.*, those publications from which a consumer can actually order merchandise) to disclose energy use for each television model offered for sale. Because this information is supplied by the product manufacturers, the burden on the retailer consists of incorporating the information into the catalog presentation.

Commission staff estimates that there are 50 online and paper catalogs for televisions that would be subject to the Rule's catalog disclosure requirements. Staff additionally estimates that the average catalog contains approximately 500 televisions and that entry of the required information takes one minute per covered product. The cumulative disclosure burden for catalog sellers is thus 417 hours (50 retailer catalogs x 500 televisions per catalog x one minute each per television shown). Assuming that the additional disclosure requirement will be implemented by data entry workers at an hourly wage rate of \$13.53 per hour,¹⁰ associated labor cost would approximate \$5,642 per year. [The associated notice of proposed rulemaking contains slightly varying figures as a result of less precise rounding; thus, cumulative disclosure there appears as 450 hours, with the estimated \$13.53 per hour applied to it resulting in cumulative labor cost of \$6,100. Our clearance request, however, reflects the more precise estimates appearing in this Supporting Statement.]

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

Manufacturers are not likely to require any significant capital costs to comply with the Rule. Industry member, however, will incur the cost of printing labels for each covered unit. The estimated label cost, based on estimates of 33,000,000 units and \$.03 per label, is \$990,000 (33,000,000 x \$.03).

(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.

⁹ See 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 3-30 (http://www.bls.gov/ncs/ncswage2008.htm#Wage_Tables).

¹⁰ See <http://www.bls.gov/ncs/ncswage2007.htm> "National Compensation Survey: Occupational Earnings in the United States, 2008," 7 U.S. Department of Labor, August 2009, Bulletin 272004, Table 3 ("Full-time civilian workers," mean and median hourly wages), at 3-24 (http://www.bls.gov/ncs/ncswage2008.htm#Wage_Tables).

(15) Program Changes/Adjustments

The proposed additional labeling disclosures will result in an estimated additional 57,450 hours, cumulative of all affected manufacturers, at an estimated labor cost of \$834,222 with anticipated additional non-labor costs of \$990,000.

(16) Plans for Tabulation and Publication

Not applicable.

(17) Failure to Display the OMB Expiration Date

Not applicable.

(18) Exceptions to Certification

Not applicable.