

Supplemental Supporting Statement
Final Lamp Labeling 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 promulgating lamp labeling amendments to the Appliance Labeling Rule (“Rule”), 16 C.F.R. 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. Congress required the Commission to complete this effort by June 19, 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 Fed. Reg. 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

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.” The Commission publicly posted the final rule and issued a related press release on June 18, 2010 (<http://www.ftc.gov/opa/2010/06/lightbulbs.shtm>). Publication in the *Federal Register* occurred on July 19, 2010 (75 Fed. Reg. 41696).

alternatives would help consumers in their purchasing decisions. Finally, the Commission conducted consumer research to assess potential revisions to its 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 the ANPR and Roundtable comments, as well as the consumer research, the Commission published a Notice of Proposed Rulemaking (“NPRM”) on November 10, 2009. The NPRM presented 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 amendments also require certain disclosures on the bulbs. These new labeling requirements should help consumers choose energy efficient bulbs that meet their lighting needs.

(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 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 amended Rule, the Commission staff has not identified any other federal statutes, rules, or policies that would duplicate the amended 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 Fed. Reg. 72800 (Dec. 1, 2008); 74 Fed. Reg. 7894 (Feb. 20, 2009). Study results are available at <http://www.ftc.gov/os/comments/lightbulbs/index.shtm>.

⁴ This document 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 amended language of those disclosures, which would appear on product

(continued...)

(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 has set an effective date for the new requirements that will ensure affected companies have adequate time to comply with the Rule. Specifically, the final requirements will become effective one year from their publication in the Federal Register except for the amendments to § 305.8,⁶ which will become effective 30 days after publication in the Federal Register.

(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 new labeling requirements.

(7) Circumstances Requiring Collection Inconsistent With Guidelines

The amended 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 revised 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 sought public comment on its proposal to modify the label design and make other miscellaneous changes to the Rule.

The Commission received 24 comments in response to the NPRM.⁷ As discussed in more detail in the final rule preamble (*see* 75 Fed. Reg. at 41698 - 41699), the comments

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 amendments require a mercury disclosure on the bulbs themselves to help consumers properly dispose of CFLs.

⁶ Section 305.8 of the Rule requires manufacturers to submit data reports for covered products to the Commission.

⁷ The comments are available at <http://www.ftc.gov/os/comments/lamplabeling/index.shtm>.

addressed the proposed product coverage, the proposed package label format and content, “off label” claims on the package, labeling on the product, reporting and testing requirements, consumer education, and the compliance burden.⁸

Two comments addressed the compliance costs of the proposed amendments. One commenter explained that the proposal “grossly underestimates” the cost of labeling changes but did not provide any specific details.⁹ Another commenter provided cost estimates based on past FDA studies of food label changes, including capital cost estimates for administration, graphic design, and printing changes on a per product basis.¹⁰

In response to the comments, the Commission has revised significantly its burden estimates, as detailed below under items (12) - (13). In particular, it has added estimated capital costs associated with package and product label design changes and has increased the time estimate for manufacturers to add the new disclosures to their product packaging and labeling.

(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 Cost¹¹

Incremental Hours Burden for the Rule amendments: 3,150

Incremental Labor Cost for the Rule amendments: \$97,140

⁸ The comments did not address the issue of lifecycle cost. As explained in section V.B.2.h of the final rule preamble (*see* 75 Fed. Reg. at 41707), the Commission is not requiring a lifecycle cost disclosure. *See also* 74 Fed. Reg. at 57959.

⁹ *See* National Electrical Manufacturers Association (Hansen, Dain) (#545052-00026) (<http://www.ftc.gov/os/comments/lamlabeling/545052-00026.pdf>).

¹⁰ *See* Vranich, John (#545052-00015) (<http://www.ftc.gov/os/comments/lamlabeling/545052-00015.pdf>).

¹¹ As detailed in the associated NPRM, the now final amendments include lifting a current stay on implementation of reporting provisions under the Rule. *See* 74 Fed. Reg. at 57960. 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.

Burden estimates for the amended 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 amendments require manufacturers to change their package and product labeling to include new disclosures. The new requirements will require a one-time adjustment for manufacturers. The Commission estimates that there are 50 manufacturers making approximately 6,000 covered products.¹² This adjustment will require an estimated 100 hours per manufacturer.¹³ Annualized for a single year reflective of a prospective 3-year PRA clearance, this averages to 33 hours per year. Thus, the label design change will result in cumulative burden of 1,650 hours (50 manufacturers x 33 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.¹⁴ Thus, the Commission estimates labor cost for this adjustment will total \$37,455 (1,650 hours x \$22.70 per hour).

Catalog Disclosures: The amended 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 Fed. Reg. 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.

Color Temperature: Although the Commission expects that many manufacturers already conduct testing for correlated color temperature in the normal course of business (e.g., to meet ENERGY STAR criteria), the final amendments may require manufacturers to conduct additional testing. The Commission assumes that manufacturers will have to test about half of

¹² Based on a review of ENERGY STAR data for products covered under that program, the Commission now estimates that there are 6,000 basic models covered by the Rule. This is an increase from the FTC's prior estimate of 2,100 basic models in the NPRM. See 74 Fed. Reg. at 57963.

¹³ The Commission has increased its estimate of the hours required to make this change from 80 hours per manufacturer, as stated in the NPRM, to 100 hours per manufacturer. This change was made in response to comments from industry members or their representatives that the Commission's burden estimates were too low.

¹⁴ 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).

the basic models (or 3,000 basic models) at 0.5 hours for each model for a total of 1,500 hours.¹⁵ In calculating the associated labor cost estimate, the Commission assumes that this work will be implemented by electrical engineers at an hourly wage rate of \$39.79 per hour based on Bureau of Labor Statistics information.¹⁶ Thus, the Commission estimates that the new label design change will result in associated labor costs of approximately \$59,685 (1,500 hours x \$39.79 per hour). The Commission does not expect that the final amendments will create any capital or other non-labor costs for such testing.

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

The Commission estimates that the one-time capital cost of changing lightbulb package and product labeling will be \$6,540,000, determined as follows. Using the cost estimates suggested by a commenter, the estimate for the one-time capital cost of the package label change is \$5,340,000. This estimate is based on the assumptions that manufacturers will have to change 4,000 of the total 6,000 model packages due to the new requirements¹⁷ and that package label changes for each product will cost \$1,335.¹⁸ As for product labeling, no commenter provided specific estimates for the cost involved. Manufacturers place information on products in the normal course of business. In the absence of cost data, the Commission assumes that the one-time labeling change will cost \$200 per model for an estimated total of \$1,200,000 (6,000 models x \$200). Annualized in the context of a 3-year PRA clearance, these non-labor costs would average \$2,180,000.

(14) Estimated Cost to Federal Government

Staff believes that the cost to the FTC for administering the amended 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 The Commission assumes conservatively that manufacturers will conduct new testing for 3,000 out of the 6,000 estimated covered products.

¹⁶ 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 3-4).

¹⁷ Over the course of a year, manufacturers are likely to change approximately 1/3 of their labels during the normal course of business. The one year compliance period and the notice provided by this proceeding should minimize the likelihood that manufacturers will have to discard package inventory. See, e.g., Revised January 2003 FDA Labeling Cost Model Final Report, at 4-3 (http://www.foodrisk.org/exclusives/FDA_LCM/downloads/labeling_cost_model.pdf). In addition, manufacturers may use stickers in lieu of discarding inventory.

¹⁸ See Vranich, John comment (#545052-00015) at p. 1.

(15) Program Changes/Adjustments

The revised estimated total hour burden of the amendments is 3,150 hours (1,650 hours for packaging and labeling + 1,500 hours for additional testing for correlated color temperature) with associated labor costs of \$97,140 and annualized capital or other non-labor costs totaling \$2,180,000.¹⁹

(16) Plans for Tabulation and Publication

Not applicable.

(17) Failure to Display the OMB Expiration Date

Not applicable.

(18) Exceptions to Certification

Not applicable.

¹⁹ The estimates included in the NPRM were 2,384 hours, \$72,062 (labor costs), and \$0 (capital costs). *See* 74 Fed. Reg. at 57963.