

Supporting Statement
Federal Trade Commission
Final 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 EPCA 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 statutory amendments, 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 ANPR 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.

Based on the comments received on the ANPR, the Commission proposed requiring the labels on televisions sold in the United States.⁵ After considering the ensuing public comments

¹ 42 U.S.C. § 6294(a)(2)(I).

² 42 U.S.C. § 6294(a)(2)(I)(i).

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).

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

⁵ 75 Fed. Reg. 11,483 (Mar. 11, 2010) (Notice of proposed rulemaking and public meeting announcement).

on the notice of proposed rulemaking (“NPRM”), the Commission is requiring televisions manufactured after May 10, 2011 to bear a label with two main disclosures: (1) the television’s estimated annual energy cost; and (2) a comparison with the annual energy cost of other televisions with similar screen sizes in the form of a comparison scale. The final rule requires that the new labels be visible from the front of the televisions. Manufacturers can use either a triangular label or a rectangular label.

Beginning in July 11, 2011, the amended rule will require websites and paper catalogs that sell televisions to disclose energy information about televisions. The amendments require different disclosures for websites and paper catalogs. Websites will be required to display or link to the full EnergyGuide label. For paper catalogs, the final amendments allow sellers to either display the full EnergyGuide label, or an abbreviated statement of the television’s annual energy cost and a generic explanation that energy costs will depend on utility rates and use. Catalogs that display the text statement rather than the full label do not need to include the comparison scale. EPCA does not mandate that the Commission require comparative information in the catalog; rather, it gives the Commission discretion to decide the catalog disclosure’s content.⁶ Print catalogs have space constraints and formats different from websites which may make it difficult to display the full label or the comparison scale. The Commission, therefore, exercised its discretion to give paper catalogs the option of stating the annual energy cost and not including the comparison scale. For both paper catalogs and websites, the disclosure must appear clearly and conspicuously on each page displaying a television and its price, in close proximity to the price. These requirements should help ensure that consumers can find the energy information.

More generally, the required disclosures for all covered entities 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.

(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 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.

⁶ 42 U.S.C. § 6296(a) (The catalog disclosure “shall contain all information required to be displayed on the label, except as otherwise provided by rule of the Commission.”).

(4) Efforts to Identify Duplication

The Commission staff has not identified any other federal statutes, rules, or policies that would duplicate the final Rule. California has recently issued marking requirements for televisions.⁷ The California legislature recently voted to delay the effective date of its television energy labeling rule until July 1, 2011, apparently to allow the Commission to finalize its labels.⁸ Moreover, the FTC's Rule would apply nationally and, consistent with EPCA's requirements, preempt California's requirements.⁹

(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 and NPRM comments about minimizing impact on small businesses. It received no specific comments responding to that inquiry. While some retailers subject to the Rule's requirements might be small businesses, the Commission believes that everything consistent with the requirements of EPCA has been done to minimize compliance burden. The Commission has established effective dates for the new requirements that will ensure affected companies have adequate time to comply with the Rule.¹⁰

(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 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."

⁸ S.B. 1198, 2009-2010 Sess. (Cal. 2010). California's regulations would require television manufacturers to permanently mark units with their power consumption in watts and disclose that information in publications offering televisions for sale.

⁹ See 42 U.S.C. § 6297.

¹⁰ Several manufacturers requested that the effective date occur before the beginning of their production cycle, which for most was the summer. With the exception of catalog sellers, the Commission has set a six-month effective date to accomplish that goal and expeditiously provide consumers the benefits of the label. Because catalog sellers must receive labels from manufacturers and reformat their materials, the Commission is providing them an additional two months to comply with the final amendments.

(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/Public Comments**

The FTC has conducted extensive outside consultation in developing the amended labeling requirements. It has sought comments from the public and other agencies through its ANPR and NPRM. Moreover, 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 its NPRM, the Commission explained that television disclosures are likely to assist consumers in their purchasing decisions because televisions consume large amounts of electricity, energy use varies considerably among competing models, and consumers are likely to use energy information in their purchasing decisions.¹¹ No commenter challenged these assertions or opposed a disclosure requirement. Indeed, although there were disagreements on implementation details, such as where to place the label and the type of label, commenters from all sectors supported disclosure, including manufacturers, retailers, private individuals, utilities, consumer groups, and environmental groups.

(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 Hours Burden: 58,867

Total Associated Labor Cost: \$874,179

The following burden estimates for the final 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.

¹¹ 75 Fed. Reg. at 11,484-11,485.

Testing: Manufacturers need not test each basic model 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 will be tested every year ranges roughly between 10% and 50%. It is likely that only a small portion of the tests conducted will be 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, that manufacturers will test two units per model, and that testing 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 \$39.72 per hour,¹² labor costs for testing would total \$79,440.

Recordkeeping: Pursuant to section 305.21 of the amended 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 \$13.73 per hour,¹³ the associated labor cost for recordkeeping would total \$450 per year.

Disclosures (Product Labeling): The final amendments required manufacturers to create and affix labels on televisions. The amendments specify 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.¹⁴ 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 assemblers at an hourly wage of \$13.66 per hour,¹⁵ cumulative associated labor cost would total \$751,300 per year.

¹² See Bureau of Labor Statistics, U.S. Department of Labor, National Compensation Survey: Occupational Earnings in the United States, 2009, Bulletin 2738, Table 3, at 3-4 (Aug. 2010), available at <http://www.bls.gov/ncs/ocs/sp/nctb1346.pdf> (National Compensation Survey).

¹³ See *id.* at 3-24.

¹⁴ See ENERGY STAR Unit Shipment and Market Penetration Report Calendar Year 2008 Summary, http://www.energystar.gov/ia/partners/downloads/2008_USD_Summary.pdf, at 5 (approximately 26 million television units shipped in 2008, constituting 79% of televisions sold; $26,000,000 \div 0.79 = 33,000,000$).

¹⁵ See National Compensation Survey, *supra* note 12 at 3-30.

Catalog Disclosures: The final amendments would require sellers offering covered products through catalogs (both online and print) 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.

FTC staff estimates that there are 200 online and paper catalogs for televisions that would be subject to the Rule's catalog disclosure requirements.¹⁶ 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 1,667 hours (200 retailer catalogs x 500 televisions per catalog x 1 minute each per television shown). In addition, the final Rule requires manufacturers to post images of their EnergyGuide labels on their websites. Given approximately 2,000 total models at five minutes per model, the staff estimates that this requirements will entail a burden of 167 hours, for a total of 1,834 hours associated with the catalog requirement.¹⁷ Assuming that the additional disclosure requirement will be implemented by graphic designers at an hourly wage rate of \$23.44 per hour,¹⁸ associated labor cost would total \$42,989 per year.

(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 final Rule amendments will be *de minimis*. Accordingly, Commission staff retains its preceding estimate of \$90,000 per year as the cost to the Government to implement 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.

¹⁶ The number of catalog dealers has increased from the estimate in the NPRM due to revised staff estimates of online sellers.

¹⁷ Unlike retail websites that already have established webpages for the products they offer, some manufacturers may have to create new webpages for posting these requirements. Accordingly, the burden estimate for manufacturers is higher (five minutes per model) than that for catalog sellers (one minute per model).

¹⁸ See National Compensation Survey, *supra* note 12 at 3-12.

(15) Program Changes/Adjustments

The additional labeling disclosures will result in an estimated additional 58,867 hours, cumulative of all affected manufacturers, at an estimated labor cost of \$874,179, with anticipated additional non-labor costs of \$990,000.¹⁹

(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 In the Supporting Statement for the NPRM, these estimates were, respectively: 57,450 hours; \$834,222; and \$990,000 (unchanged here). The differences in the instant analysis are due to the following factors: (1) the modifications to website and paper catalog requirements, including the requirement that manufacturers post copies of their EnergyGuide labels online; (2) a staff-initiated increase in the estimated of the number of online sellers offering covered products through catalogs; and (3) updated Bureau of Labor Statistics labor cost inputs.