

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”) proposes several amendments to improve the Appliance Labeling Rule (“Rule”) by streamlining requirements for manufacturers, increasing the availability of labels for consumers, and clarifying various aspects of the Rule. Specifically, the proposed amendments would require labels on manufacturers websites, introduce a uniform method for attaching adhesive labels to appliances, place EnergyGuide labels on room air conditioner boxes instead of on the products themselves, improve clothes washer labels, revise ceiling fan labels, and improve current website disclosures. The proposed amendments also would clarify certain enforcement rules. In addition, as a part of the Commission’s systematic review of its regulations and guides, the Commission seeks comments on the Rule’s overall costs and benefits and regulatory and economic impact.

The Rule, issued pursuant to the Energy Policy and Conservation Act (EPCA),¹ requires energy labeling for major household appliances and other consumer products to help consumers compare competing models.² When first published in 1979,³ the Rule applied to eight appliance categories: refrigerators, refrigerator-freezers, freezers, dishwashers, water heaters, clothes washers, room air conditioners, and furnaces. Subsequently, the Commission expanded the Rule’s coverage to include categories such as central air conditioners, heat pumps, plumbing products, lighting products, ceiling fans, and televisions.⁴

The Rule requires manufacturers to attach yellow EnergyGuide labels to certain covered products.⁵ It prohibits retailers from removing these labels or rendering them illegible.⁶ In

¹ 42 U.S.C. 6291 *et seq.*

² For more information about the Rule, *see* <http://www.ftc.gov/appliances>.

³ 44 Fed. Reg. 66,466 (Nov. 19, 1979).

⁴ *See* 52 Fed. Reg. 46,888 (Dec. 10, 1987) (central air conditioners and heat pumps); 54 Fed. Reg. 28,031 (Jul. 5, 1989) (fluorescent lamp ballasts); 58 Fed. Reg. 54,955 (Oct. 25, 1993) (certain plumbing products); 59 Fed. Reg. 25,176 (May 13, 1994) (lighting products); 59 Fed. Reg. 49,556 (Sep. 28, 1994) (pool heaters); 71 Fed. Reg. 78,057 (Dec. 26, 2006) (ceiling fans); and 76 Fed. Reg. 1038 (Jan. 6, 2011) (televisions).

⁵ *See* 42 U.S.C. § 6302(a)(1); 16 C.F.R. § 305.4(a)(1). The Rule requires an energy disclosure or label on all covered products or on their packages. The EnergyGuide label must appear on refrigerators, refrigerator-freezers, freezers, room air conditioners, clothes washers, dishwashers, pool heaters, central air conditioners, heat pumps, furnaces, and televisions. *See* 16 C.F.R. §§ 305.11, 305.12, 305.14, and 305.17. The EnergyGuide label constitutes a visually uniform “brand” for all these products, but it has different dimensions and disclosures based on the nature and energy use of the product. *See* 16 C.F.R. § 305 Appx. L (label prototypes). Ceiling fans must bear labels somewhat similar to EnergyGuide labels, but visually distinct. 16

(continued...)

addition, the Rule directs sellers, including retailers, to post label information on websites and in paper catalogs from which consumers can order covered products.⁷

EnergyGuide labels for appliances and televisions contain three key disclosures: (1) estimated annual operating cost (for most products); (2) a “range of comparability” showing the highest and lowest energy consumption or efficiencies for all similar models; and (3) a product’s energy consumption or energy efficiency rating as determined from standard Department of Energy (DOE) tests. The Rule specifies this content as well as the label’s format. Manufacturers cannot place any information on the label other than that specifically allowed by the Rule. Finally, the Rule contains reporting requirements for most products. Under these requirements, manufacturers must submit data to the FTC both when they begin manufacturing new models and annually.⁸ These reports must contain, among other things, estimated annual energy consumption or energy efficiency ratings.

(2) Use of the Information

The primary purpose of the Rule is to encourage consumers to comparison shop for energy-efficient household products.

(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

The Commission staff has not identified any other federal statutes, rules, or policies that would duplicate the proposed Rule. In fact, the proposed amendments should reduce duplication between FTC and DOE reporting requirements.

⁵ (...continued)

C.F.R. § 305.13. The remainder of the Rule’s covered products bear other types of labels or disclosures related to energy or water use (for plumbing products), rather than the EnergyGuide brand. For example, common consumer light bulbs manufactured beginning in 2012 must bear a “Lighting Facts” label.

⁶ See 16 C.F.R. § 305.4(a)(2); 42 U.S.C. § 6302(a)(2).

⁷ See 16 C.F.R. § 305.20; 42 U.S.C. § 6296(a).

⁸ See 16 C.F.R. § 305.8; 42 U.S.C. § 6296(b).

(5) Efforts to Minimize Burden on Small Organizations

Although the EPCA requires the Rule to apply to all manufacturers of covered products, the Commission seeks comment on minimizing impact on small businesses. 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. In the notice of proposed rulemaking associated with this clearance request, the Commission suggested that it could delay the effective date of the amendments to provide additional time for small business compliance. The Commission also posited that it could consider different compliance dates, reporting requirements, or exemptions for small entities.

(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 amendments' 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 consulted with DOE staff. Additionally, the Commission has invited public comment on the proposed amendments.

(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: 1,250 hours

Total Associated Labor Cost: \$29,300

Manufacturer EnergyGuide Images Online: The proposed Rule requires manufacturers to post images of their EnergyGuide and Lighting Facts labels on their websites. Given

approximately 15,000 total models⁹ at five minutes per model,¹⁰ this requirement will entail a cumulative estimated burden of 1,250 hours yearly for manufacturers as a group.¹¹ Assuming that the additional disclosure requirement will be implemented by graphic designers at a mean hourly wage of \$23.42 per hour,¹² the associated labor cost would approximate \$29,300 per year.

Adhesive EnergyGuide Labels: The proposed amendments would require manufacturers of products with the EnergyGuide label to change information on the label and, in some cases, convert their labels from hang tags to adhesive labels. Under the current Rule, manufacturers routinely change labels to reflect new range and cost data, which is already accounted for by previous burden analyses for the Rule. Thus, such a change should not impose any additional burden.

Ceiling Fan, Clothes Washer, and Room Air Conditioner Labels: Changes to ceiling fan, clothes washer, and room air conditioner labels should impose no additional burden. Because the amendments will provide manufacturers with ample time to make such changes, manufacturers should be able to incorporate these changes into their normal schedules for package and label printing.

Catalog Disclosures: The Commission's existing estimate of the Rule's burden on catalog sellers (including Internet sellers) conservatively assumes that catalog sellers must enter their data for each product into the catalog each year (*see, e.g.*, 71 Fed. Reg. 78,057, 78,062 (Dec. 28, 2006)).¹³ The proposed amendments would require a one-time entry to improve current website disclosures. Since the assumption for existing burden estimates already accounts for yearly entered disclosures, it effectively incorporates this modification to websites and any incremental burden. Likewise, any burden associated with later additions of manufacturer models to websites under the proposed amendments would also be captured by the existing burden estimate.

⁹ This is an FTC staff estimate based on data submitted by manufacturers to the Commission pursuant to the current Rule.

¹⁰ This estimate is based on FTC staff's general knowledge of industry practices.

¹¹ Unlike retail websites that already have established webpages for the products they offer, some manufacturers may have to create new webpages to post these requirements. Accordingly, the burden estimate for manufacturers is higher (five minutes per model) than that for catalog sellers (one minute per model).

¹² *See* U.S. Department of Labor, National Compensation Survey: Occupational Earnings in the United States 2010 (May 2011), Bulletin 2753, Table 3 at 3-13 ("Full-time civilian workers," mean and median hourly wages), available at <http://www.bls.gov/ncs/ncswage2010.htm>.

¹³ This assumption is conservative because the number of incremental additions to the catalog and their frequency is likely to be much lower after initial start-up efforts have been completed.

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

Any capital costs associated with the amendments are likely to be minimal.

(14) Estimated Cost to Federal Government

Commission staff believes that there should be little to no added cost to the FTC to administer the proposed Rule changes. Thus, staff retains its prior estimate of \$90,000 per year as the cost to the agency 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.

(15) Program Changes/Adjustments

The proposed amendments will result in an estimated additional 1,250 burden hours per year, cumulative of all affected manufacturers, at an estimated annual labor cost of \$29,300 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.

