

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

(1) Necessity for Collecting the Information

As part of its regulatory review of the Energy Labeling Rule, the Federal Trade Commission (“FTC” or “Commission”) proposes several improvements to current labeling requirements. These include expanded light bulb label coverage, URL links for labels, more durable labels for appliances, room and portable air conditioner box labels, ceiling fan labels, consolidated refrigerator ranges, updates to furnace labels, and labels for portable air conditioners.¹

The Energy Labeling Rule requires manufacturers to attach yellow EnergyGuide labels to certain covered products.² It prohibits retailers from removing these labels or rendering them illegible.³ In addition, the Rule directs sellers, including retailers, to post label information on websites and in paper catalogs from which consumers can order covered products.⁴ When first published in 1979,⁵ 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.⁶

EnergyGuide labels for appliances contain three key disclosures: (1) estimated annual operating cost (for most products); (2) a “range of comparability” showing the highest and

¹ Several proposed changes, including changes to label attachment methods, refrigerator ranges, URL links for labels, ceiling fan labels, and room air conditioners, should impose no additional burden beyond existing estimates because such changes either impose no or de minimis additional burdens or manufacturers should be able to incorporate the proposed changes into their normally scheduled package or label revisions.

² 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 A-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 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.

³ See 16 C.F.R. 305.4(a)(2); 42 U.S.C. 6302(a)(2).

⁴ See 16 C.F.R. 305.20; 42 U.S.C. 6296(a).

⁵ 44 Fed. Reg. 66466 (Nov. 19, 1979).

⁶ See 52 Fed. Reg. 46888 (Dec. 10, 1987) (central air conditioners and heat pumps); 54 Fed. Reg. 28031 (Jul. 5, 1989) (fluorescent lamp ballasts); 58 Fed. Reg. 54955 (Oct. 25, 1993) (certain plumbing products); 59 Fed. Reg. 25176 (May 13, 1994) (lighting products); 59 Fed. Reg. 49556 (Sep. 28, 1994) (pool heaters); 71 Fed. Reg. 78057 (Dec. 26, 2006) (ceiling fans); and 76 Fed. Reg. 1038 (Jan. 6, 2011) (televisions).

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.⁷ 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.

(5) Efforts to Minimize Burden on Small Organizations

Although the EPCA requires the Rule to apply to all manufacturers of covered products, the Commission is seeking comment about 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. The Commission has proposed an effective date for the new requirements that will ensure affected companies have adequate time to comply with the Rule.

⁷ See 16 C.F.R. 305.8; 42 U.S.C. 6296(b).

(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.

(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 Rulemaking: 54,875 hours

Total Associated Labor Cost: \$2,185,955

Package and Product Labeling (expanded light bulb coverage): The proposed amendments require manufacturers to label several new bulb types. Accordingly, manufacturers will have to amend their package and product labeling to include new disclosures. The new requirements impose a one-time adjustment for manufacturers. The Commission estimates that there are 50 manufacturers making approximately 3,000 of these newly covered products. This adjustment will require an estimated 600 hours per manufacturer on average.⁸ Annualized for a single year reflective of a prospective 3-year PRA clearance, this averages to 200 hours per year. Thus, the label design change will result in cumulative annualized burden of 10,000 hours (50 manufacturers x 200 hours). In estimating the associated labor cost, the Commission assumes that the label design change will be implemented by graphic designers at

⁸ The Commission has increased its estimate of the hours required to make this change from earlier estimates given recent concerns raised about the burden of implementing label changes. See 75 Fed. Reg. 81943 (Dec. 29, 2010).

an hourly wage rate of \$23.85 per hour based on Bureau of Labor Statistics information.⁹ Thus, the Commission estimates annual labor cost for this adjustment will total \$238,500 (10,000 hours x \$23.85 per hour).

Labeling (portable air conditioners): The proposed amendments require manufacturers to create and affix labels on these portable products.¹⁰ 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 1,000,000 portable air conditioner units distributed in the U.S. per year. Accordingly, the total disclosure burden per year for refrigeration products would be 1,667 hours (1,000,000 x 6 seconds). Assuming that product labels will be affixed by electronic equipment installers at an hourly wage of \$23.50 per hour, cumulative associated labor cost would total \$39,175 per year.

Testing (expanded light bulb coverage): The Commission assumes conservatively that manufacturers will have to test 3,000 basic light bulb models out of an estimated 6,000 covered products. The Commission also assumes conservatively that testing will require 14 hours for each model for a total of 42,000 hours. 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 \$44.89 per hour. Thus, the Commission estimates that the proposed label design change will result in associated labor costs of approximately \$1,885,380 (42,000 hours x \$44.89 per hour).

Testing (portable air conditioners): 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 proposed 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. Based on an informal review of products offered on websites as well as consultation with DOE staff, staff estimates that there are approximately 150 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 150

⁹ The above mean hourly wage and those that follow are drawn from Bureau of Labor Statistics, U.S. Department of Labor, Occupational Employment and Wages – May 2013, Table 1 (National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2013), available at: <http://www.bls.gov/news.release/ocwage.t01.htm>.

¹⁰ Though the Rule allows manufacturers to incorporate the label onto their packaging (a less expensive labeling method), the Commission, for the purposes of this analysis, assumes conservatively that manufacturers will affix individual labels to packaging.

hours per year. Assuming further that this testing will be implemented by electrical engineers, and applying an associated hourly wage rate of \$44.89 per hour, labor costs for testing would total \$6,734.

Recordkeeping (expanded light bulb coverage): Pursuant to Section 305.21 of the proposed 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 3,000 basic models, the recordkeeping burden would total 50 hours. Assuming further that these filing requirements will be implemented by data entry workers at an hourly wage rate of \$15.28 per hour, the associated labor cost for recordkeeping would be approximately \$764 per year.

Recordkeeping (portable air conditioners): Pursuant to Section 305.21 of the proposed 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 150 basic models, the recordkeeping burden would total 3 hours, rounded upward. Assuming further that these filing requirements will be implemented by data entry workers at an hourly wage rate of \$15.28 per hour, the associated labor cost for recordkeeping would be approximately \$46 per year.

Reporting Requirements (portable air conditioners): In addition, the proposed labeling for these products would increase the Rule's reporting requirements. Staff estimates that the average reporting burden for these manufacturers is approximately two minutes per basic model to enter information into DOE's online database. Based on this estimate, multiplied by an estimated total of 150 basic portable air conditioners models, the annual reporting burden for manufacturers is an estimated 5 hours (2 minutes x 150 models). Assuming further that these filing requirements will be implemented by data entry workers at an hourly wage rate of \$15.28 per hour, the associated labor cost for recordkeeping would be approximately \$76 per year. Any non-labor costs associated with the reporting amendments are likely to be minimal. The Commission does not expect that the proposed amendments for portable air conditioners will create any capital or other non-labor costs for such testing.¹¹

Catalog Disclosures (expanded light bulb coverage and portable air conditioners): The proposed amendments would require sellers offering covered products through catalogs (both online and print) to disclose energy use for each light bulb and portable air conditioner 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 these products that would be subject to the Rule's catalog disclosure requirements. Staff additionally estimates that the average catalog contains approximately 100 such products and that entry of the required information takes one minute per covered product. The cumulative disclosure burden for catalog sellers is thus 1,000 hours (200 retailer catalogs x 300 products per catalog x 1 minute each per product shown).

¹¹ There are no proposed reporting requirements for the expanded light bulb coverage.

Assuming that the additional disclosure requirement will be implemented by data entry workers at an hourly wage rate of \$15.28, associated labor cost would approximate \$15,280 per year.

Accordingly, the revised estimated total hour burden of the proposed amendments is 54,875 with associated labor costs of \$2,185,955.

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

Any capital costs associated with the amendments are likely to be minimal. Estimated non-labor costs (\$1,565,000) are as follows:

Estimated annual non-labor cost burden (expanded light bulb coverage): The Commission estimates that the annualized capital cost of expanding the light bulb label coverage is \$1,535,000. This estimate is based on the assumptions that manufacturers will have to make a one-time labeling change to 3,000 model packages over an approximate three-year period to meet the new requirements¹² and that package label changes for each product will cost \$1,335.¹³ Manufacturers place information on products in the normal course of business. Annualized in the context of a 3-year PRA clearance, these non-labor costs would average \$1,335,000 (3,000 model packages x \$1,335 each over 3 years). As for product labeling, the Commission assumes that the one-time labeling change will cost \$200 per model for an annualized estimated total of \$200,000 (3,000 models x \$200 over 3 years). Annualized in the context of a 3-year PRA clearance, these non-labor costs would average \$1,535,000.

Estimated annual non-labor cost burden (portable air conditioners): Manufacturers are not likely to require any significant capital costs to comply with the proposed portable air conditioner amendments. Industry members, however, will incur the cost of printing labels for each covered unit. The estimated label cost, based on estimates of 1,000,000 units and \$.03 per label, is \$30,000 (1,000,000 x \$.03).

¹² This assumes that manufacturers will change packages for one third of their products in the normal course of business each year. The multi-year compliance period (two and a half years) and the notice provided by this proceeding should minimize the likelihood that manufacturers will have to discard package inventory. In addition, manufacturers may use stickers in lieu of discarding inventory.

¹³ See 75 Fed. Reg. at 41712 n. 149 and accompanying text.

(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 amendments will result in an estimated additional 54,875 hours burden hours, annualized, and cumulative of all affected manufacturers, \$2,149,495 in associated labor costs and \$1,565,000 in 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.