

Amended Supplemental Supporting Statement
Final Regulatory Review Amendments to the Energy Labeling Rule
16 C.F.R. Part 305
(OMB No. 3084-0069)

(1) Necessity for Collecting the Information

The Energy Labeling Rule (“Rule”) requires manufacturers to attach yellow EnergyGuide labels to certain covered products.¹ It prohibits retailers from removing these labels or rendering them illegible.² 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.³ When first published in 1979,⁴ 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.⁵

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 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.

Additionally, the Rule contains reporting requirements for most products. Under these requirements, manufacturers must submit data to the FTC both when they begin manufacturing

¹ 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 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.

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

³ See 16 C.F.R. 305.20; 42 U.S.C. 6296(a).

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

⁵ 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).

new models and annually.⁶ These reports must contain, among other things, estimated annual energy consumption or energy efficiency ratings.

To improve access to energy labels, the final amendments require manufacturers to provide links to their online EnergyGuide labels as part of the Rule's reporting requirements.⁷ Additionally, the final amendments improve labels for refrigerators, ceiling fans, central air conditioners, and water heaters.⁸

(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 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 final Rule. In issuing its own reporting requirements under section 305.8, the FTC has allowed manufacturers to submit data through DOE's existing online database to avoid duplication and complication.⁹

⁶ See 16 C.F.R. 305.8; 42 U.S.C. 6296(b).

⁷ This requirement takes effect September 15, 2017. See 81 Fed. Reg. 63,634, at 63,646 (Sept. 15, 2016).

⁸ The ceiling fan amendments will be effective September 17, 2018. The other label requirements take effect June 12, 2017. See 81 Fed. Reg. at 63,634. These particular amendments exclude large-diameter and high-speed small diameter ceiling fans, portable air conditioners ("PACs"), and instantaneous electric water heaters. Those product models are addressed in separate proposed amendments. See 81 Fed. Reg. 62,681 (Sept. 12, 2016). The Commission excluded large-diameter fans (i.e., greater than 84 inches) and high-speed small-diameter (HSSD) fans from the instant final amendments because the new DOE test procedure prescribes significantly different operating assumptions (hours per day) for those models. Likewise, the Commission excluded PACs because of new issues raised by the timing and content of DOE's new test procedure. Instantaneous electric water heaters are excluded from these final amendments because they do not fall into an existing labeling category, and no range of comparability exists. In addition, these final amendments do not affect the marking requirements for plumbing products. The Commission has issued separate proposed amendments that would eliminate certain marking requirements for plumbing products. See 81 Fed. Reg. at 62,684.

⁹ Prior to 2013, FTC collected energy data on covered products separate from DOE through paper and email submissions to the Commission itself. This arrangement required manufacturers to submit nearly duplicative reports

(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 provided effective dates 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 new labeling requirements.

(7) Circumstances Requiring Collection Inconsistent With Guidelines

The 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/Public Comments

The Commissions sought comments on these amendments in a November 2, 2015 Notice of Proposed Rulemaking (“NPRM”) (80 Fed. Reg. 67,351). The comments received¹⁰ and the Commission’s response to them are discussed, in part, below and in expanded detail in the final Rule associated with this submission for the final Rule. See 81 Fed. Reg. at 63,634 – 63,645. Additionally, FTC staff consulted extensively with Department of Energy staff in developing the amended requirements.

to DOE and FTC. However, on January 10, 2013, the Commission streamlined and harmonized the reporting requirements by giving manufacturers the option to report FTC-required data through DOE’s CCMS, in lieu of the traditional practice of submitting directly to FTC. 78 Fed. Reg. 2200. The present amendments follow the same approach.

¹⁰ The comments received in response to the 2015 NPRM appear at <https://www.ftc.gov/policy/public-comments/initiative-601>. The comments included: A. O. Smith Corporation (#00008); American Lighting Association (ALA) (#00013); Association of Home Appliance Manufacturers (AHAM) (#00016); Air Conditioning, Heating and Refrigeration Institute (AHRI) (#00015); Amazon (#00017); Bradford White Corporation (BWC) (#00010); CSA Group (#00007); California Investor Owned Utilities (California IOUs) (#00019); Earthjustice (“Joint Commenters”) (#00018); GE Appliances (GEA) (#00012); Goodman Global, Inc. (#00020); International Association of Plumbing and Mechanical Officials (IAPMO) (#00022); Lochinvar, LLC (#00009); NSF International (#00005); Plumbing Manufacturers International (PMI) (#00006); Rheem Manufacturing Company (#00014); Tyler Prough (#00003); and Whirlpool Corporation (#00011).

A. Online Label Database (in re: Reporting)

In the NPRM, the Commission sought comments on the development of a centralized label database to provide retailers and consumers with convenient access to energy labels.¹¹ To create such a comprehensive database, the Commission specifically proposed requiring manufacturers to submit links to their EnergyGuide and Lighting Facts labels through their routine report to the DOE's Compliance Certification Management System (CCMS) pursuant to 16 C.F.R. § 305.8. The NPRM explained that this proposal would give online retailers access to digital labels for advertising or label replacement, obviating the need to obtain labels from individual manufacturers. The Commission explained that access to a single comprehensive database containing all the covered labels would benefit both consumers and retailers. Retailers could use the data for advertising and replacing missing labels for their display models, and consumers could use it to easily research comparative efficiency.

In the NPRM, the Commission predicted this proposal was unlikely to create undue burdens on manufacturers. The pre-existing Rule already required manufacturers to post product labels on their own sites.¹² It also requires manufacturers of most covered products to submit annual reports, although such reporting requirements are largely harmonized with DOE's. The new FTC requirements would allow manufacturers to submit their label links through DOE's CCMS. Under the amendments, manufacturers would submit the label links prior to distributing their products in commerce, consistent with labeling requirements pre-existing the amendments. The Commission explained in the NPRM that it planned to give industry members ample time to make any necessary changes to their websites to facilitate compliance.

The commenters split in their support of the proposed reporting requirements. Appliance and ceiling fan manufacturers objected, asserting it would create burdens, questioning its utility, and raising several legal concerns. Conversely, energy efficiency and consumer groups, retail sellers, and heating and cooling equipment manufacturers generally supported the proposal.

Critics argued that the proposal's costs outweigh its benefits. AHAM, representing appliance manufacturers, asserted that the label link submissions would increase manufacturer burdens while providing little benefit to consumers and retailers. Similarly, ALA, which represents ceiling fan manufacturers, added that the proposal would complicate existing requirements and pose significant added burdens. Additionally, AHAM, ALA, and Whirlpool indicated that frequent website changes would pose additional compliance burdens, particularly if

¹¹ The Commission also sought comments on this issue in a June 18, 2014 Supplemental Notice of Proposed Rulemaking, 79 Fed. Reg. 34,642. As explained in an earlier final Rule, this requirement would not apply to private labelers, but manufacturers would be allowed to arrange with third parties, including private labelers, to display the labels and to submit the required links to CCMS. *See* 78 Fed. Reg. 2,200, 2,205 (Jan. 10, 2013).

¹² 16 C.F.R. 305.6.

manufacturers had to change their certification reports every time they change labels on their website.

In contrast, many commenters supported the proposal. The Joint Commenters argued that the benefits of a centralized label database greatly exceed the burden imposed on manufacturers. Amazon, an online retailer that sells covered products, explained that the “database would allow consumers to easily research the comparative efficiency of covered products” and will help increase Rule compliance and decrease mislabeling. According to Amazon, the proposal would not impose undue burdens on manufacturers because the Rule already directs them to have the labels available on a website. Other industry commenters offered qualified support for the proposal, as elaborated upon in the final Rule.

The final Rule contains several changes and clarifications to address commenters’ concerns. First, the amendments allow manufacturers to submit their links when they certify their models to DOE or at the next subsequent annual report date. This eliminates concerns about posting labels prior to DOE certification and will ensure that labels are available online within a reasonable time period. Second, the final Rule provides manufacturers three options for submitting label information: (1) through direct URL links to the labels themselves; (2) through links to a PDF download; or (3) through a link to a website from which users can obtain labels by searching through model number. If manufacturers use the third approach, the link must take the user directly to the search function on the manufacturer’s website. These three options strike a balance between ensuring the labels are available from a central location and giving manufacturers flexibility in managing their own websites.

Contrary to one suggestion, the final Rule does not grandfather existing labels. Because some models remain in production for many years, the requested exemption would permanently exclude long-lived models from the database. However, to ensure manufacturers have ample time to comply, the final Rule will not become effective for one year after publication. Accordingly, manufacturers must begin submitting label links for existing models at the first applicable annual reporting date (see section 305.8) following this one-year period.

The final amendments do not include lighting products in the reporting requirements. Current law prohibits DOE from spending funds for the enforcement of DOE efficiency standards related to several types of light bulbs, including many currently subject to FTC labeling requirements. Therefore, to avoid potential DOE issues related to this prohibition, the Commission has not included lighting products in the new reporting requirement. It may revisit this issue later should circumstances warrant.

B. Remaining Final Amendments

In the final rule notice, the Commission provided several provisions to reduce burden, including several in response to the comments. As discussed above, the Commission created three options for submitting label information. In addition, some industry commenters said that

the yellow background for ceiling fan labels would impose unnecessary costs. The Commission addressed this comment by noting that the rule does not mandate a yellow background and that the label can be printed on a yellow or other contrasting background. In addition, several aspects of the final rule were aimed at reducing or minimizing burden (e.g., setting reasonable compliance dates for various products, allowing manufacturer names to be optional on HVAC labels, allowing multiple model numbers on labels to reduce the number of labels manufacturers must produce, and allowing for a combined label on rooftop systems). See 81 Fed. Reg. at 63,637 – 63,645.

(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: 250 hours

Total Associated Labor Cost: \$3,948

Reporting Requirements (label images): As noted above, the amendments would require manufacturers to furnish links to images of their EnergyGuide labels.¹³ Given approximately 15,000 total models at an estimated 1 minute per model,¹⁴ this requirement will entail a burden of 250 hours. Assuming further that these reporting requirements will be implemented by data entry workers at an hourly wage rate of \$15.79 per hour,¹⁵ the associated labor cost for reporting

¹³ As indicated in the NPRM (80 Fed. Reg. at 67,363, n. 54), several labeling changes, including changes to dual mode refrigerators, heating and cooling equipment, consolidated comparability ranges for refrigerators, ceiling fan labels, and water heaters 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 changes into their normally scheduled package or label revisions without incurring additional burdens beyond those already accounted for.

¹⁴ The amendment requires manufacturers to include a link to their labels as part of their routine reports, which are already accounted for under the Rule's burden and must include various model characteristics (e.g., capacity, energy use, fuel type, etc.). Commission staff estimated that the addition of the weblink would add no more than one minute per model to this existing requirement.

¹⁵ This is an increase from the labor cost estimate in the NPRM, attributable to an intervening annual release from the Bureau of Labor Statistics. Within it, the mean hourly wage for "Data entry and information processing workers" rose from the previously shown amount of \$15.48 to \$15.79. See

would be approximately \$3,948 per year. Any non-labor costs associated with the reporting amendments are likely to be minimal.

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

Commission staff does not estimate that there will be capital or other non-labor costs.

(14) Estimated Cost to Federal Government

Staff believes that the incremental cost to the FTC for administering the Rule changes will be *de minimis*. Accordingly, Commission staff retains its prior estimate of \$90,000 per year as the cost to the Government for implementing the overall 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 amendments will result in an estimated additional 250 hours burden hours, annualized, \$3,948 in associated labor costs, and no additional capital/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.

<http://www.bls.gov/news.release/ocwage.t01.htm> "Occupational Employment and Wages–May 2015," Bureau of Labor Statistics, U.S. Department of Labor, released March 30, 2016, Table 1 ("National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2015").