

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

Overview

This is a request for approval of a proposed revision to an existing clearance. On February 2, 2024, the Federal Trade Commission (“FTC” or “Commission”) issued a Notice of Proposed Rulemaking (“NPRM”) that would amend the Energy Labeling Rule (“the Rule”). The proposed amendments include new labeling requirements for air cleaners, clothes dryers, miscellaneous refrigerator products, and portable electric spas (collectively referred below as “new labeled products”) that constitute information collections under the PRA. The proposed amendments also contain requirements which reduce the manufacturers’ burden associated with labeling certain appliances and increase the burden for retailers by requiring them to ensure displayed products bear labels. Accordingly, the Commission is seeking OMB clearance specific to the Rule amendments.

(1-2) Necessity for and Use in Collecting the Information

The Rule, which was 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. When first issued in 1979, 44 FR 66466 (1979), the Rule applied to eight product categories: refrigerators, refrigerator-freezers, freezers, dishwashers, water heaters, clothes washers, room air conditioners, and furnaces. The Commission has since expanded the Rule’s coverage to include central air conditioners, heat pumps, plumbing products, lighting products, ceiling fans, certain types of water heaters, and televisions.²

EPCA mandates energy labeling to help consumers conserve energy by comparing the energy usage of competing models when purchasing appliances, which benefits both the environment and consumers. The Rule implements EPCA’s mandate by making information available to buyers by means of required disclosures at the point of sale. Absent these disclosures, consumers could not effectively compare the energy or water usage of competing models of products covered by the Rule, and the incentive for manufacturers to produce more efficient models would be diminished. Records must be maintained for at least two years after production of relevant products has been terminated. Without such records, it would be difficult to ensure that the required labeling and other disclosures are properly derived and accurate.

¹ 42 U.S.C. 6291 et seq.

² See 52 FR 46888 (Dec. 10, 1987) (central air conditioners and heat pumps); 54 FR 28031 (Jul. 5, 1989) (fluorescent lamp ballasts); 58 FR 54955 (Oct. 25, 1993) (certain plumbing products); 59 FR 25176 (May 13, 1994) (lighting products); 59 FR 49556 (Sep. 28, 1994) (pool heaters); 71 FR 78057 (Dec. 26, 2006) (ceiling fans); 76 FR 1038 (Jan. 6, 2011) (televisions); and 80 FR 67285 (Nov. 2, 2015) (certain decorative and specialty light bulbs).

On October 25, 2022 (87 Fed. Reg. 64399), the Commission published an ANPRM (or Advance Notice of Proposed Rulemaking) seeking comment on potential improvements to the Energy Labeling Rule, including whether the Commission should add new consumer product categories to the labeling program, change the Rule's label location to match consumer shopping patterns, and streamline existing requirements. In addition, the ANPR sought comment on several specific issues including whether the Commission should amend the Rule to: (1) modify label content and format, (2) require links to online Lighting Facts labels consistent with current EnergyGuide requirements, (3) update the electricity cost figure on the Lighting Facts and ceiling fan labels, (4) update the refrigerator and clothes washer labels to remove dated information about test procedures, and (5) ensure the Rule's consistency with DOE requirements. Finally, the ANPR sought comment on potential requirements related to repair instructions. In response, the Commission received 48 comments.

Among other items, the NPRM proposes new labels for several new product categories; and revisions to the current requirements for affixing labels on showroom models.

The NPRM proposes creating new EnergyGuide label requirements for the following previously-unlabeled product categories: air cleaners, clothes dryers, miscellaneous refrigerator products, and portable electric spas (i.e., hot tubs). Typically, energy labels are most likely to help consumers when the labeled products use a substantial amount of household energy and generate a range of annual energy costs across models. These proposed product categories generally fit this description. Therefore, the proposed labels should aid consumers by providing relevant energy information to compare models. Commenters, including energy efficiency organizations and industry representatives, generally supported labeling for air cleaners, MREFs, and portable electric spas.

In response to comments, the NPRM proposes several amendments for products frequently displayed on showrooms such as refrigerators, freezers, clothes washers, clothes dryers, and dishwashers. Under the proposal, manufacturers would continue to ship all units with a physical label. However, the current requirements for affixing adhesive labels and hang tags to the product itself would only apply to units designated by the manufacturer for showroom display. According to their comments, manufacturers state that they prepare specific units at the factory for showroom display by attaching point-of-purchase information and then identify such units to retailers. For all other units, the Rule would require manufacturers to include a paper label with the unit in some fashion (e.g., in the literature bag or another location a retailer or consumer can easily see when opening the product's packaging). Additionally, the proposal requires retailers to ensure any refrigerator, freezers, dishwasher, clothes washer, or dryer unit they choose to display in a showroom has a label in a location visible to a consumer examining the product.

The proposed changes ensure appliances typically displayed in a showroom will continue to have an EnergyGuide label. Moreover, even those consumers who never go to a store would continue to benefit from the label, which will still come shipped with their appliances. While accomplishing these goals, the proposal reduces manufacturers' burden by eliminating costly placement, attachment, and cardstock requirements for units that are never displayed on a

showroom floor.

(3) Consideration of Using Improved Technology to Reduce Burden

The Rule's reporting requirements have been tailored to take maximum advantage of existing industry practices in order to minimize the compliance burden. The Commission allows manufacturers to fulfill reporting requirements through the submission of data in electronic format, consistent with the objectives of the Government Paperwork Elimination Act ("GPEA"), Pub. L. No. 105-277, Title XVII, 112 Stat. 2681-749. Disclosing energy usage information to consumers, however, entails labeling on products or their packaging; as such, electronic disclosure pursuant to the GPEA is impracticable.

(4) Efforts to Identify Duplication

The proposed information collection requirements do not duplicate any other information collection requirements imposed by the Commission. During this proceeding, FTC staff has consulted with Department of Energy staff and other agencies on the issues addressed in this NPRM.

(5) Efforts to Minimize Burden on Small Organizations

The Commission has already taken steps to reduce the economic impact of the Rule in this NPRM. The Commission solicited comments on alternatives to the current "showroom-ready" approach for affixing labels. Further, in proposing new requirements, the Commission considered ways to minimize retailer burden, including providing flexibility for label materials and attachment methods, requiring manufacturers to ship labels in a "showroom ready" state for designated floor models, allowing retailers to use existing electronic labels accessed through DOE's website, and ensuring retailers have adequate time to comply with any new requirements. The Commission considered electronic labeling. The Commission is also seeking comment on how with DOE, the agencies might create online consumer resources to provide full fuel cycle and/or greenhouse gas emissions information for individual covered products, in lieu of requiring such information on the EnergyGuide labels.

The Commission is currently unaware of the need to adopt any special provisions for small entities. However, if such issues are identified, the Commission could consider alternative approaches such as extending the effective date of these amendments for online and retail sellers to allow them additional time to comply beyond the labeling deadline set for manufacturers. If the comments filed in response to this Notice identify small entities that are affected by the proposed Rule, as well as alternative methods of compliance that would reduce the economic impact of the Rule on such entities, the Commission will consider the feasibility of such alternatives and determine whether they should be incorporated into the final Rule.

(6) Consequences of Conducting the Collection Less Frequently

The primary disclosure the proposed amendments requires is the placing of a single label on each covered product when it is manufactured or imported. Thus, there is no opportunity within the framework of EPCA to collect the information contained in this public disclosure

requirement less frequently. Moreover, EPCA requires manufacturers of all covered products to submit test data annually.

(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

Staff frequently consults with staff from DOE and, where appropriate, other federal and state agencies (e.g., the Environmental Protection Agency) on rulemaking and other aspects related to FTC's role under EPCA. As noted in section #1-2 above, in 2022, the Commission published an ANPRM seeking comment on potential improvements to the Rule, including whether the Commission should add new consumer product categories to the labeling program, change label location to match consumer shopping patterns, and streamline existing requirements.³ In response, the Commission received 48 comments, covering the following four areas: (1) potential new product categories; (2) existing product categories; (3) label placement requirements; and (4) miscellaneous issues. Sections IV-VII of the NPRM extensively analyze the comments. The Commission is providing a second opportunity for public comment with the NPRM.

(9) Payments and Gifts to Respondents

Not applicable. The Rule contains no provisions for payments or gifts to respondents.

(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. To the extent that information covered by an information collection requirement is collected by the Commission for law enforcement purposes, the confidentiality provisions of Sections 6(f) and 21 of the Federal Trade Commission Act, 15 U.S.C. §§ 46(f) and 57b-2, would apply. See also 16 C.F.R. 4.10-4.11. In such proceedings, records would be protected by law from mandatory public disclosure.⁴

(12) Estimated Annual Hours Burden and Associated Labor Cost

Burden estimates below are based on Census data, DOE figures and estimates, public comments, the agency's general knowledge of manufacturing practices, and trade association advice and figures. FTC staff estimates that there are 100 manufacturers producing 5,000 basic

³ 87 Fed. Reg. 64,399 (Oct. 25, 2022).

⁴ See, e.g., Exemption 7(A) of the Freedom of Information Act, 5 U.S.C. § 552(b)(7)(A).

models (*i.e.*, units with essentially identical physical and electrical characteristics) of the proposed new products (air cleaners—700; clothes dryers—1,700; miscellaneous refrigeration products—1,100; portable electric spas—1,500).

Reporting: The Rule requires manufacturers of covered products to annually submit a report for each current model containing the same information that must be submitted to the DOE pursuant to 10 CFR part 429. In lieu of submitting the required information to the Commission, manufacturers may submit such information to DOE directly via the agency’s Compliance Certification Management System, available at <https://regulations.doe.gov/ccms>, as provided by 10 CFR 429.12. Because manufacturers are already required to submit these reports to DOE, FTC staff estimates any additional burden associated with providing the information to the FTC is minimal. FTC staff estimates the average reporting burden for manufacturers of the proposed new products will be approximately 15 hours per manufacturer. Based on this estimate, the annual reporting burden for manufacturers of new labeled products is 1,500 hours (15 hours × 100 manufacturers). Staff estimates that information processing staff, at an hourly rate of \$18.97,⁵ will typically perform the required tasks, for an estimated annual labor cost of \$28,455.

Manufacturer Labeling: The amendments require that manufacturers create labels for the four new labeled product categories. Since EPCA and the Rule specify the content and format for the required labels, and FTC staff provide online label templates, manufacturers need only input the energy consumption figures and other product-specific information derived from testing. FTC staff estimates the time to incorporate the required information into labels and label covered products is five hours per basic model. Accordingly, staff estimates the approximate annual burden involved in creating labels for covered products is 25,000 hours [5,000 basic models × 5 hours]. Staff estimates that information processing staff, at an hourly rate of \$18.97,⁶ will typically perform the required tasks, for an estimated annual labor cost of \$474,250.

The proposed Rule would also require manufacturers to affix labels to shipped clothes dryers, miscellaneous refrigeration products (“MREFs”), and portable electric spas (estimates include MREFs at 3,000,000; dryers at 8,000,000).⁷ For dryers and MREFs (11,000,000 units), the burden would only apply to units designated as showroom models, which FTC estimates will account for about 0.2% of shipped models. Consistent with past estimates, the FTC estimates it takes 4 seconds for a manufacturer to affix a label for showroom display. Accordingly, staff estimates the burden for affixing labels on these new products will be 24 hours (22,000 units × 4

⁵ These labor cost estimates are derived from the Bureau of Labor Statistics (“BLS”) figures in “Table 1. National employment and wage data from the Occupational Employment and Wage Statistics survey by occupation, May 2022,” available at: <https://www.bls.gov/news.release/ocwage.t01.htm>.

⁶ *Id.*

⁷ As discussed in this Notice, the Commission has not proposed a specific labeling method for portable electric spas and is seeking comment on that issue. The estimate here assumes spa labels will appear on packaging and thus will not create the type of incremental burden posed by labels affixed separately to the product (e.g., labels for appliances such as refrigerators). Staff estimates annual shipments of these products are about 500,000. Should labeling for these products be finalized and impose a different burden, estimates will be updated depending on the final labeling method.

seconds). Staff estimates that information processing staff, at an hourly rate of \$18.97, will typically perform the required tasks, for an estimated annual labor cost of \$455.

In addition, the proposal would relax label attachment requirements for refrigerators and freezers, dishwashers, and clothes washers by allowing manufacturers to ship an unaffixed label with most units (about 24 million units). The FTC estimates the reduction in burden from this proposed change to be 26,667 hours ($24,000,000 \times 4$ seconds).

Thus, the estimated burden on manufacturers from the proposed amendments would be a net reduction of 143 hours ($[1,500$ (reporting) $+ 25,000$ (labeling) $+ 24$ (affixing labels)] - 26,667]).

Retailer Showroom Labeling: The proposed Rule would require retailers to ensure that refrigerator products, dishwashers, clothes washers, and clothes dryers displayed in showrooms bear a label. FTC staff estimates there are about 14,000 showroom appliance stores in the U.S. and that stores on average display about 50 labeled products per year. Out of these, the FTC estimates 20% of those showroom models will require retailers to locate the label in the box and affix it to a product, which will take about five minutes per display model. Most showroom units will already be labeled by manufacturers and thus require no action by the retailer. Accordingly, the estimated total burden is 11,667 hours (50 units $\times .20 \times 14,000 \times 5$ minutes). Staff estimates that retail sales staff, at an hourly rate of \$15.62,⁸ will typically perform the required tasks, for an estimated annual labor cost of \$182,239.

Testing: Manufacturers of the new labeled products must test each basic model they produce to determine energy usage, but the majority of tests conducted are required by DOE rules. As a result, it is likely only a small portion of the tests conducted are attributable to the Rule's requirements. In addition, manufacturers need not subject each basic model to testing annually; they must retest only if the product design changes in such a way as to affect energy consumption. FTC staff estimates that 25% of all basic models are tested annually because of the Rule's requirements. Accordingly, the estimated annual testing burden for new labeled products is 15,400 hours.⁹ Staff estimates that engineering technicians, at an hourly rate of \$30.95, will typically perform the required tasks, for an estimated annual labor cost of \$476,630.

Online Label Posting: The proposal would require manufacturers to post images of their EnergyGuide labels online for the new labeled products. Staff estimates the burden associated with this requirement based on the number of models of covered products. Given approximately 5,000 total models at an estimated five minutes per model, staff estimates that this requirement entails a burden of 417 hours ($5,000$ basic models $\times 5$ minutes). Staff estimates that information

⁸ BLS, *supra* n.108.

⁹ The FTC has applied different test hour burdens depending on the product: air cleaners—700 basic models $\times 0.25 \times 40$ hours = 7,000 hours; clothes dryers—1,700 basic models $\times 0.25 \times 4$ hours = 1,700 hours; portable electric spas—1500 basic models $\times 0.25 \times 12$ hours = 4,500 hours; MREFs—1,100 basic models $\times 0.25 \times 8$ hours = 2,200 hours.

processing staff, at an hourly rate of \$18.97,¹⁰ will typically perform the required tasks, for an estimated annual labor cost of \$7,910.

Recordkeeping: The Rule also requires manufacturers of covered products to retain records of test data generated in performing the tests to derive information included on labels.¹¹ The FTC estimates the annual recordkeeping burden for manufacturers of new labeled products will be approximately one minute per basic model to store relevant data. Accordingly, the estimated annual recordkeeping burden would be approximately 83 hours (5,000 basic models × one minute). Staff estimates that information processing staff, at an hourly rate of \$18.97, will typically perform the required tasks, for an estimated annual labor cost of \$1,575.

Online and Retail Catalog Disclosures: Staff estimates there are approximately 400 sellers of new labeled product categories who are subject to the Rule's catalog disclosure requirements. Staff has previously estimated covered online and catalog sellers spend approximately 17 hours per year to incorporate relevant product data for products that are currently covered by the Rule. Staff estimates the requirements for new labeled product categories will add an additional 4 hours per year in incremental burden per seller. Staff estimates these additions will result in an incremental burden of 1,600 hours (400 sellers × 4 hours annually). Staff estimates that information processing staff, at an hourly rate of \$18.97,¹² will typically perform the required tasks, for an estimated incremental annual labor cost of \$30,352.

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

Staff anticipates that manufacturers are not likely to require any significant capital costs to comply with the amendments.

(14) Estimated Cost to Federal Government

Staff does not anticipate that the NPRM will affect cost to the government of administering the Rule. Staff estimates that the cost to the Federal Trade Commission in FY 2025 of administering the reporting requirements of the Rule will be approximately \$200,000 including operational expenses. This estimate is based on the assumption that one-half attorney work year and one-half of a legal technician work year will be expended.

(15) Program Changes or Adjustments

The Commission is proposing a program change that will reduce the estimated burden on manufacturers by 143 hours annually. It is expected to increase annual burden by 11,667 hours for retailer showroom labeling, 15,400 hours for testing, 417 hours for online label posting, 83 hours for recordkeeping, and 1,600 hours for online and retail catalog disclosures.

¹⁰ BLS, supra n.108.

¹¹ See 16 CFR 305.28.

¹² BLS, supra n.108.

(16) Plans for Tabulation and Publication

Not applicable.

(17-18) Failure to Display the OMB Expiration Date/Exceptions to Certification

Not applicable. The FTC certifies that this collection of information is consistent with the requirements of 5 C.F.R. 1320.9, and the related provisions of 1320.8(b)(3) and is not seeking an exemption to these certification requirements.