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FEDERAL TRADE COMMISSION

16 CFR Part 305

[3084-AB15]

ENERGY AND WATER USE LABELING FOR CONSUMER PRODUCTS UNDER THE ENERGY POLICY AND CONSERVATION ACT (“ENERGY LABELING RULE”)

AGENCY: Federal Trade Commission (FTC or Commission).

ACTION: Proposed rule.

SUMMARY: The Commission proposes conforming amendments to the Energy Labeling Rule (“Rule”) to require a new Department of Energy (DOE) test procedure for televisions and establish data reporting requirements for those products.

DATES: Comments must be received by [INSERT DATE 45 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Interested parties may file a comment online or on paper by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write “Television Labels, Matter No. R611004” on your comment, and file your comment online at <https://ftcpublic.commentworks.com/ftc/televisionlabels> by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H-113 (Annex F), 600 Pennsylvania Avenue, NW, Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Hampton Newsome, (202) 326-2889, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Room M-8102B, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION:

I. Background

The Commission's Energy Labeling Rule (Rule) (16 CFR Part 305), issued pursuant to the Energy Policy and Conservation Act (EPCA), requires energy labeling for major household appliances and other consumer products to help consumers compare competing models. When first published in 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.

The Rule requires manufacturers to attach yellow EnergyGuide labels on many of these products, and prohibits retailers from removing the labels or rendering them illegible. In addition, the Rule directs sellers, including retailers, to post label information on websites and in paper catalogs from which consumers can order products. EnergyGuide labels for covered appliances must contain three key disclosures: estimated annual energy cost (for most products); a product's energy consumption or energy efficiency rating as determined from Department of Energy (DOE) test procedures; and a comparability range displaying the highest and lowest energy costs or efficiency ratings for all similar models.¹ For energy cost calculations, the Rule specifies national average costs for applicable energy sources (*e.g.*, electricity, natural gas, oil)

¹ Where no "applicable" DOE test exists for televisions, EPCA authorizes the Commission to use "adequate non-Department of Energy test procedures" to obtain information for energy disclosures. 42 U.S.C. 6294(a)(2)(I)(ii). During FTC's television labeling proceeding, DOE announced plans to develop a new test procedure. 74 FR 53640, 53641 (Oct. 20, 2009).

as calculated by DOE. The Rule sets a five-year schedule for updating range of comparability and average unit energy cost information.² The Commission updates the range information based on manufacturer data submitted pursuant to the Rule's reporting requirements.

II. Proposed Amendments

The Commission now proposes conforming amendments to revise the Rule's television testing and reporting requirements in response to a new DOE television test procedure published on October 25, 2013 (78 FR 63823). These amendments will ensure the Rule's television labeling requirements are consistent with EPCA, which mandates that FTC labels reflect applicable DOE test procedures when available.³

When the Commission first issued labeling requirements for televisions in 2011 (76 FR 1038 (Jan. 6, 2011)), no DOE test procedure existed for such products. Accordingly, the FTC required manufacturers to use the Environmental Protection Agency's (EPA's) ENERGY STAR test procedure to measure television energy use. However, as discussed in several previous Federal Register Notices, the Commission has anticipated that amendments would be necessary after completion of the DOE test procedure.⁴ DOE's recently completed test procedure supersedes the ENERGY STAR procedure and triggers EPCA's directive for manufacturers to

² 16 CFR 305.10.

³ 42 U.S.C. 6294(c).

⁴ For example, the Commission explained in 2011 that "[w]hen DOE completes its own rulemaking to develop a television test procedure for use in that agency's efficiency standards program, the Commission will issue conforming amendments consistent with EPCA's requirements that the labels use information from DOE test procedures when such procedures are available." 76 FR 1038, 1040 (Jan. 6, 2011). *See also* 78 FR 43974, 43975 (July 23, 2013); 78 FR 1779, 1780 (Jan. 9, 2013).

begin using the new procedure 180 days after its issuance.⁵

To conform the labeling rule to the new DOE test procedure, the Commission proposes three amendments. First, consistent with EPCA's mandate requiring DOE test procedures for labeling, the Commission plans to remove the Rule's reference to the ENERGY STAR test in section 305.5 and replace it with the DOE procedure.⁶ Second, the Commission proposes a new reporting requirement for televisions consistent with requirements for most other labeled products, such as refrigerators and clothes washers.⁷ Manufacturers may submit their new television data through the DOE's web-based reporting tool, the Compliance and Certification Management System (CCMS).⁸ To ensure that EPCA's 180-day period (*i.e.*, April 23, 2014) is complete before requiring the first round of data reports, the Commission proposes a May 1 date for annual submissions pursuant to the Rule's reporting schedule (section 305.8). After the Commission reviews the new data, it will consider issuing updated comparability ranges for

⁵ Any energy representation, including those made on a label, for a covered product must fairly reflect the results of a new DOE test procedure 180 days after that test's issuance. *See* 42 U.S.C. 6293(c)(2). In its October 25, 2013 Notice, DOE identified April 23, 2014 as the date for revised representations.

⁶ EPCA gives Commission no discretion to retain the ENERGY STAR procedure. 42 U.S.C. 6294(a)(2)(I).

⁷ The new DOE test procedure triggers EPCA's reporting provisions, which require manufacturers to submit energy reports to the Commission derived from DOE test procedures for all new models and annually for models in current production. 42 U.S.C. 6296(b)(1) and (4). Consistent with the Rule's required reports for other covered products, the content for the television reports in the proposed amendments include brand name; model number; screen size (diagonal in inches); power (in watts) consumed in on mode, standby-passive mode, in standby-active mode, low mode, and off mode; and annual energy consumption (kWh/year) for each basic model in current production.

⁸ *See* <https://www.regulations.doe.gov/ccms>.

television labels.⁹ Finally, the proposed amendments update the definition of “television” in section 305.3 to incorporate DOE’s definition of that term as well as limit labeling coverage to the scope of DOE’s test procedure. For the most part, DOE’s definition of “television” and the coverage of its test procedure are consistent with FTC’s current rule. However, DOE determined not to cover very small models with screen sizes of 15 inches or fewer in its procedure because consumers often do not use such devices as typical televisions.¹⁰

III. Paperwork Reduction Act

The current Rule contains recordkeeping, disclosure, testing, and reporting requirements that constitute information collection requirements as defined by 5 CFR 1320.3(c), the definitional provision within the Office of Management and Budget (OMB) regulations that implement the Paperwork Reduction Act (PRA). OMB has approved the Rule’s existing information collection requirements through February 29, 2016 (OMB Control No. 3084 0069). The Commission accounted for the burden of testing and labeling televisions when it first issued the labeling requirements (76 FR 1038 (Jan. 6, 2011)). However, the new DOE test procedure triggers EPCA’s requirement that manufacturers retest their televisions for any energy representations made 180 days after DOE publishes the test, including those on the FTC label. This creates an additional, one-time burden. In issuing the television labels, FTC staff estimated that 2,000 basic models exist in the marketplace, that manufacturers test two units per model,

⁹ Section 305.17 contains the television ranges.

¹⁰ See 10 CFR 430.2 and App. H, sec. 1; 78 FR at 63825-63826. The proposed amendments also would delete obsolete § 305.17(h), which contains specific labeling directions for televisions of nine inches or fewer. The Commission will consider revisions to the ranges in § 305.17 once data based on the DOE test procedure becomes available.

and that testing requires one hour per unit tested. Using these estimates, the Commission expects the new testing will require a one-time burden of 4,000 additional hours of burden. Annualized over a 3-year PRA clearance cycle, this one-time burden amounts to 1,333 hours. Assuming further that this testing will be implemented by electrical engineers, and applying an associated hourly wage rate of \$44.14 per hour, labor costs for testing would annualized total of \$58,839.¹¹ In addition, the amendments 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 2,000 basic television models, the annual reporting burden for manufacturers is an estimated 67 hours (2 minutes X 2,000 models ÷ 60 minutes per hour). Assuming further that these filing requirements will be implemented by data entry workers at an hourly wage rate of \$15.11 per hour, the associated labor cost for recordkeeping would be approximately \$1,012 per year.¹² Any non-labor costs associated with the amendments are likely to be minimal.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612, requires that the Commission provide an Initial Regulatory Flexibility Analysis (IRFA) with a Proposed Rule and a Final Regulatory Flexibility Analysis (FRFA), if any, with the final Rule, unless the Commission

¹¹ See Bureau of Labor Statistics, U.S. Department of Labor, Occupational Employment and Wages – May 2012, Table 1 (National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2012), available at: <http://www.bls.gov/news.release/ocwage.t01.htm>.

¹² See *id.*

certifies that the Rule will not have a significant economic impact on a substantial number of small entities.¹³

The Commission does not anticipate that the Proposed Rule will have a significant economic impact on a substantial number of small entities. Consistent with past analysis (76 FR at 1049), the Commission estimates that these new requirements will apply to about 30 product manufacturers. Out of these companies, the Commission expects that no manufactures qualify as small businesses.¹⁴ Furthermore, the Commission does not expect that the requirements specified in the Proposed Rule will have a significant impact on these entities. In addition, the Commission does not expect that the label design and other requirements specified in the Proposed Rule will have a significant economic impact on these entities.

Accordingly, this document serves as notice to the Small Business Administration of the FTC's certification of no effect. To ensure the accuracy of this certification, however, the Commission requests comment on whether the Proposed Rule will have a significant impact on a substantial number of small entities, including specific information on the number of entities that would be covered by the Proposed Rule, the number of these companies that are "small entities," under the RFA, and the average annual burden for each entity. Although the Commission certifies under the RFA that the Rule proposed in this Notice would not, if promulgated, have a significant impact on a substantial number of small entities, the Commission has determined, nonetheless, that it is appropriate to publish an IRFA in order to inquire into the impact of the Proposed Rule on small entities. Therefore, the Commission has prepared the following

¹³ 5 U.S.C. 603-605.

¹⁴ *See also* 78 FR at 63838 (DOE's conclusion that no television manufacturers qualify as small

analysis:

A. Description of the Reasons That Action by the Agency Is Being Taken

The Commission is proposing amendments to conform the Rule to a recently published DOE test procedure for televisions.

B. Statement of the Objectives of, and Legal Basis for, the Proposed Rule

The objective of the Proposed Rule is to provide television energy use information to consumers. EPCA provides the Commission with authority to require energy disclosures for televisions and other consumer electronics.

C. Small Entities to Which the Proposed Rule Will Apply

Under the Small Business Size Standards issued by the Small Business Administration, television manufacturers qualify as small businesses if they have fewer than 1,000 employees (for other household appliances the figure is 500 employees) or if their sales are less than \$8.0 million annually. The Commission estimates that no manufacturers subject to the Proposed Rule qualify as small businesses. The Commission seeks comment and information with regard to the estimated number or nature of small business entities for which the Proposed Rule would have a significant economic impact

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The Commission recognizes that the proposed rule will involve some increased costs related to reporting these products, and maintaining test records. All of these burdens and the skills required to comply are discussed in the previous section of this document, regarding the Paperwork Reduction Act, and there should be no difference in that burden as applied to small

businesses).

businesses. The Commission invites comment and information on these issues.

E. Duplicative, Overlapping, or Conflicting Federal Rules

The Commission has not identified any other federal statutes, rules, or policies that would duplicate, overlap, or conflict with the Proposed Rule. The Commission invites comment and information on this issue.

F. Significant Alternatives to the Proposed Rule

The Commission seeks comment and information on the need, if any, for alternative compliance methods that would reduce the economic impact of the Rule on such small entities. As one alternative to reduce burden, the Commission could delay the proposed Rule's reporting date to provide additional time for small business compliance. If the comments filed in response to this Notice identify small entities that would be affected by the 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.

V. Request for Comments

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before [INSERT 45 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]. Write "Television Labels, Matter No. R611004" on your comment. Your comment – including your name and your state – will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Website, at <http://www.ftc.gov/os/publiccomments.shtm>. As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the

Commission Website.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, such as anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, do not include any "[t]rade secret or any commercial or financial information which is . . . privileged or confidential," as discussed in § 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c). Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublic.commentworks.com/ftc/televisionlabels>, by following the instruction on the web-based form. If this Notice appears at <http://www.regulations.gov>, you also may file a comment

through that website.

If you file your comment on paper, write “Television Labels, Matter No. R611004” on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H-113 (Annex F), 600 Pennsylvania Avenue, NW, Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Website at <http://www.ftc.gov> to read this NPRM and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before [INSERT 45 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]. You can find more information, including routine uses permitted by the Privacy Act, in the Commission’s privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

Because written comments appear adequate to present the views of all interested parties, the Commission has not scheduled an oral hearing regarding these proposed amendments. Interested parties may request an opportunity to present views orally. If such a request is made, the Commission will publish a document in the Federal Register stating the time and place for such oral presentation(s) and describing the procedures that will be followed. Interested parties who wish to present oral views must submit a hearing request, on or before [INSERT DATE 20 DAYS AFTER PUBLICATION IN FEDERAL REGISTER], in the form of a written comment that describes the issues on which the party wishes to speak. If there is no oral hearing, the Commission will base its decision on the written rulemaking record.

VI. Communications by Outside Parties to the Commissioners or Their Advisors

Written communications and summaries or transcripts of oral communications respecting the merits of this proceeding, from any outside party to any Commissioner or Commissioner's advisor, will be placed on the public record. See 16 CFR 1.26(b)(5).

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, reporting and recordkeeping requirements.

Proposed Rule Language

For the reasons set out above, the Commission proposes to amend 16 CFR Part 305 as follows:

PART 305 --ENERGY AND WATER USE LABELING FOR CONSUMER PRODUCTS UNDER THE ENERGY POLICY AND CONSERVATION ACT ("ENERGY LABELING RULE")

1. The authority citation for Part 305 continues to read as follows:

AUTHORITY: 42 U.S.C. 6294.

2. In § 305.3, revise paragraph (y) and add paragraph (z) to read as follows:

§ 305.3 Description of covered products.

* * * * *

(y) *Television* means a product that is designed to produce dynamic video, contains an internal TV tuner encased within the product housing, and is capable of receiving dynamic visual content from wired or wireless sources including but not limited to:

(1) Broadcast and similar services for terrestrial, cable, satellite, and/or broadband transmission

of analog and/ or digital signals; and/or

(2) Display-specific data connections, such as HDMI, Component video, Svideo, Composite video; and/or

(3) Media storage devices such as a USB flash drive, memory card, or a DVD; and/or

(4) Network connections, usually using Internet Protocol, typically carried over Ethernet or Wi-Fi.

(z) The requirements of this part are limited to those televisions for which the Department of Energy has adopted and published test procedures for measuring energy use.

3. In § 305.5, remove paragraph (d), redesignate paragraph (e) as paragraph (d), and revise newly redesignated paragraph (d) to read as follows:

§305.5 Determinations of estimated annual energy consumption, estimated annual operating cost, and energy efficiency rating, water use rate, and other required disclosure content.

* * * * *

(d) Representations for ceiling fans under section 305.13 and televisions under § 305.17 must be derived from applicable procedures in 10 CFR parts 429, 430, and 431.

4. In § 305.8, revise paragraph (a)(1); redesignate paragraph (a)(3) as paragraph (a)(4); add new paragraph (a)(3), and revise newly redesignated paragraph (a)(4) and paragraph (b)(1) to read as follows:

§ 305.8 Submission of data.

(a)(1) Except as provided in paragraphs (a)(2) through (4) of this section, each manufacturer of a covered product subject to the disclosure requirements of this part and subject to Department

of Energy certification requirements in 10 CFR part 429 shall submit annually a report for each model in current production containing the same information that must be submitted to the Department of Energy pursuant to 10 CFR part 429 for that product, and that the Department has identified as public information pursuant to 10 CFR part 429. In lieu of submitting the required information to the Commission as required by this section, manufacturers may submit such information to the Department of Energy via the Compliance and Certification Management System (CCMS) at <https://regulations.doe.gov/ccms> as provided by 10 CFR 429.12.

* * * * *

(3) Manufacturers of televisions shall submit annually a report containing the brand name; model number; screen size (diagonal in inches); power (in watts) consumed in on mode, standby-passive mode, in standby-active mode, low mode, and off mode; and annual energy consumption (kWh/year) for each basic model in current production. The report should also include a starting serial number, date code, or other means of identifying the date of manufacture with the first submission for each basic model. In lieu of submitting the required information to the Commission as required by this section, manufacturers may submit such information to the Department of Energy via the Compliance and Certification Management System (CCMS) at <https://regulations.doe.gov/ccms> as provided by 10 CFR 429.12.

(4) This section does not require reports for general service light-emitting diode (LED or OLED) lamps.

(b)(1) All data required by § 305.8(a) except serial numbers shall be submitted to the Commission annually, on or before the following dates:

Product category	Deadline for data
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	submission
Refrigerators	Aug. 1
Refrigerators-freezers	Aug. 1
Freezers	Aug. 1
Central air conditioners	July 1
Heat pumps	July 1
Dishwashers	June 1
Water heaters	May 1
Room air conditioners	July 1
Furnaces	May 1
Pool heaters	May 1
Clothes washers	Oct. 1
Fluorescent lamp ballasts	Mar. 1
Showerheads	Mar. 1
Faucets	Mar. 1
Water closets	Mar. 1
Ceiling fans	Mar. 1
Urinals	Mar. 1
Metal halide lamp fixtures	Sept. 1
General service fluorescent lamps	Mar. 1
Medium base compact fluorescent lamps	Mar. 1
General service incandescent lamps	Mar. 1
Televisions	May 1

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§ 305.17 [Amended]

5. In § 305.17, remove paragraph (h).

By direction of the Commission.

Donald S. Clark,
Secretary

