

financial attributes of a customer as of the current or a previous date, such as account balance as of a particular date, lines of credit as of a particular date, past financial performance of the customer, and verification of customer relationship with the bank as of a particular date.

(c) When a national bank issues a digital certificate relating to financial capacity under this section, the bank shall include in that certificate an express disclaimer stating that the bank does not thereby promise or represent that funds will be available or will be advanced for any particular transaction.

#### **§ 7.5006 Data processing.**

(a) *Eligible activities.* It is part of the business of banking under 12 U.S.C. 24(Seventh) for a national bank to provide data processing, and data transmission services, facilities (including equipment, technology, and personnel), data bases, advice and access to such services, facilities, data bases and advice, for itself and for others, where the data is banking, financial, or economic data, and other types of data if the derivative or resultant product is banking, financial, or economic data. For this purpose, economic data includes anything of value in banking and financial decisions.

(b) *Other data.* A national bank also may perform the activities described in paragraph (a) of this section for itself and others with respect to additional types of data to the extent convenient or useful to provide the data processing services described in paragraph (a), including where reasonably necessary to conduct those activities on a competitive basis. The total revenue attributable to the bank's data processing activities under this section must be derived predominantly from processing the activities described in paragraph (a) of this section.

#### **§ 7.5007 Correspondent services.**

It is part of the business of banking for a national bank to offer as a correspondent service to any of its affiliates or to other financial institutions any service it may perform for itself. The following list provides examples of electronic activities that banks may offer correspondents under this authority. This list is illustrative and not exclusive; the OCC may determine that other activities are permissible pursuant to this authority.

(a) The provision of computer networking packages and related hardware;

(b) Data processing services;

(c) The sale of software that performs data processing functions;

(d) The development, operation, management, and marketing of products and processing services for transactions conducted at electronic terminal devices;

(e) Item processing services and related software;

(f) Document control and record keeping through the use of electronic imaging technology;

(g) The provision of Internet merchant hosting services for resale to merchant customers; (h) The provision of communication support services through electronic means; and

(i) Digital certification authority services.

#### **§ 7.5008 Location of a national bank conducting electronic activities.**

A national bank shall not be considered located in a State solely because it physically maintains technology, such as a server or automated loan center, in that state, or because the bank's products or services are accessed through electronic means by customers located in the state.

#### **§ 7.5009 Location under 12 U.S.C. 85 of national banks operating exclusively through the Internet.**

For purposes of 12 U.S.C. 85, the main office of a national bank that operates exclusively through the Internet is the office identified by the bank under 12 U.S.C. 22(Second) or as relocated under 12 U.S.C. 30 or other appropriate authority.

#### **§ 7.5010 Shared electronic space.**

National banks that share electronic space, including a co-branded web site, with a bank subsidiary, affiliate, or another third-party must take reasonable steps to clearly, conspicuously, and understandably distinguish between products and services offered by the bank and those offered by the bank's subsidiary, affiliate, or the third-party.

Dated: May 8, 2002.

**John D. Hawke, Jr.,**

*Comptroller of the Currency.*

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## **FEDERAL TRADE COMMISSION**

### **16 CFR Part 305**

#### **Rule Concerning Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act ("Appliance Labeling Rule")**

**AGENCY:** Federal Trade Commission.

**ACTION:** Final rule.

**SUMMARY:** The Federal Trade Commission ("Commission") is amending the Appliance Labeling Rule to require dishwasher manufacturers to submit their annual energy data for dishwashers this year on June 17 (rather than June 1 as currently required) to ensure that the data reflects the results of a new Department of Energy ("DOE") test procedure, which will become effective on June 17, 2002 (*see* 66 FR 65094 (December 18, 2001)). In addition, the Commission is amending the Rule to require a 60-day effective date for any new ranges of comparability for standard size dishwashers published this year. The Commission is also providing manufacturers with information about their responsibilities for re-labeling these products this year.

**EFFECTIVE DATE:** May 17, 2002.

**FOR FURTHER INFORMATION CONTACT:** Hampton Newsome, Attorney, Division of Enforcement, Federal Trade Commission, Washington, DC. 20580 (202-326-2889); [hnewsome@ftc.gov](mailto:hnewsome@ftc.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

The Commission issued the Appliance Labeling Rule in 1979, 44 FR 66466 (Nov. 19, 1979), in response to a directive in the Energy Policy and Conservation Act of 1975 ("EPCA").<sup>1</sup> The Rule covers, among other things, eight categories of major household appliances: refrigerators and refrigerator-freezers, freezers, dishwashers, clothes washers, water heaters, room air conditioners, furnaces, and central air conditioners.

The Rule requires manufacturers of all covered appliances to disclose specific energy consumption or efficiency information (derived from the DOE test procedures) at the point of sale in the form of an "EnergyGuide" label and in catalogs. The Rule requires

<sup>1</sup> 42 U.S.C. 6294. The statute also requires the Department of Energy to develop test procedures that measure how much energy the appliances use, and to determine the representative average cost a consumer pays for the different types of energy available.

manufacturers to include, on labels, an energy consumption or efficiency figure and a "range of comparability." This range shows the highest and lowest energy consumption or efficiencies for all comparable appliance models so consumers can compare the energy consumption or efficiency of other models similar to the labeled model.

The Rule requires manufacturers, after filing an initial report, to report annually (the due date for dishwashers is June 1) the estimated annual energy consumption or energy efficiency ratings for the appliances derived from tests performed pursuant to the DOE test procedures. 16 CFR 305.8(b). Because manufacturers regularly add new models to their lines, improve existing models, and drop others, the data base from which the ranges of comparability are calculated is constantly changing. Under § 305.10 of the Rule, to keep the required information on labels consistent with these changes, the Commission publishes new ranges (but not more often than annually) if an analysis of the new information indicates that the upper or lower limits of the ranges have changed by more than 15%. Otherwise, the Commission publishes a statement that the prior ranges remain in effect for the next year.

#### Recent DOE Test Procedure for Dishwashers

On December 18, 2001 (66 FR 65094), DOE published amendments to the test procedure that manufacturers must use to determine the energy use of their dishwashers. This new test will become effective June 17, 2002. Among other things, the amended DOE test procedure will reduce the number of annual cycles manufacturers must use in calculating their dishwashers' energy consumption. This change uniformly will decrease the disclosed energy consumption for dishwashers.

Under EPCA, all energy use representations (including information on the EnergyGuide labels) must reflect the amended test procedure beginning 180 days after the change in the procedure is prescribed.<sup>2</sup> Consistent with this requirement, all energy use representations for dishwashers should reflect the amended test beginning on June 17, 2002. The timing of this restriction, however, creates several issues. First, the Commission's June 1 annual submission date for dishwashers required in the Rule predates the effective date of the new test procedure. If the June 1 submission date is followed, manufacturers would submit data based on the old version of the test

procedure because that version would continue to be applicable at that time. As a result, the staff would not have data to develop ranges based on the new test procedure.<sup>3</sup> Second, if the data submitted this year (whether it is based on the old or new test procedure) yields new ranges of comparability, manufacturers would be required to create new labels for all of their dishwasher products twice within a short period—once to meet the June 17 statutory deadline (section 6293(c)) for making representations based on the new test procedure and again shortly afterward to reflect new ranges of comparability published by the Commission (such ranges would not be effective until sometime after the June 17 deadline). Finally, new labels for units produced after June 17 (but before the new ranges are published) would have energy use disclosures based on the amended test procedure—to comply with section 6293(c)—but ranges of comparability based on the old test procedure.

To address these issues, the Commission is amending the Rule to require manufacturers to submit their annual dishwasher data for this year on June 17, 2002 instead of June 1, 2002 as currently required by the Rule. Because the amended DOE test procedure will not be effective until June 17, this change to the submission date will ensure that the new data reflects compliance with the amended DOE test procedure. In addition, the Commission is amending the Rule to set a 60-day effective date for any new standard size dishwasher ranges published this year.<sup>4</sup>

The Commission also is announcing that it does not expect manufacturers to change their labels this year to reflect the amended test procedure until after the Commission has published these new ranges (or published a statement that there will be no new ranges). In other words, the Commission intends to exercise discretion to not take law enforcement action pursuant to § 6293(c) against manufacturers that wait to account for the new test procedure on their labels until the Commission has provided notice about new ranges for dishwashers. The Commission plans to publish a notice announcing any changes to the ranges

<sup>3</sup> If the data submitted on June 1 does not yield new ranges, the current ranges which are based on the old test procedure would remain in effect until the next annual submission date (June 1, 2003).

<sup>4</sup> Because a new range for compact models became effective on March 22, 2002, any amendments published this year to the range for compact models cannot become effective until March 22, 2003. Compact models constitute only a small fraction of the basic dishwasher models on the market.

shortly after June 17. Assuming new ranges are published this year, the Commission expects that manufacturers would begin labeling their products with the results of the amended test procedure and the revised ranges on labels at that time. As indicated above, any new ranges for standard-size models would be effective 60 days after publication.<sup>5</sup>

Although the Commission's decision to allow an enforcement grace period for compliance with section 6293(c) here will cause a minor delay in the dissemination of labels reflecting the amended test procedure, it will ensure that both the energy use representations and ranges of comparability reflect data derived from the new test procedure. Thus, the approach discussed in this notice will avoid the problems and potential confusion for both consumers and manufacturers that could result from strict adherence to the current deadlines. For consumers, a blending of new test data with ranges based on prior data could affect their ability to make meaningful comparisons among competing models. For manufacturers, this approach allows them to change the labels on their dishwasher products only once instead of twice in a short period of time.

#### Administrative Procedure Act

The amendments published in this notice involve minor, procedural changes to the submission date for data already required by the Rule and to the effective date for new dishwasher ranges this year. These technical amendments merely alter the dates on which compliance is required and do not affect the requirements of the Rule nor do the amendments alter the frequency with which regulated entities must comply with these requirements. These changes will help to ensure that information on new EnergyGuide labels for dishwashers will reflect both energy use representations and any resulting new ranges of comparability based on the amended test. In addition, these minor amendments must take effect in a timely fashion to avoid the problems discussed in this notice. Accordingly, the Commission finds for good cause that public comment and a 30-day effective date for these technical, procedural amendments are impractical and

<sup>5</sup> The Commission notes that § 305.11(a)(5)(i)(H)(2) of the Rule currently requires manufacturers to print language near the bottom of their dishwasher labels indicating that the label information is based "on six washloads a week." As a result of the new test procedure, this will have to change to "five washloads a week." The Commission will formally publish this amendment in its notice regarding dishwasher ranges this summer.

<sup>2</sup> 42 U.S.C. 6293(c).

unnecessary (5 U.S.C. 553(b)(A)(B) and (d)).

**Regulatory Flexibility Act**

The provisions of the Regulatory Flexibility Act relating to a Regulatory Flexibility Act analysis (5 U.S.C. 603–604) are not applicable to this proceeding because the amendments do not impose any new obligations on entities regulated by the Appliance Labeling Rule. The amendments merely alter the dates on which compliance is required and do not affect the requirements of the rule nor do the amendments alter the frequency with which regulated entities must comply with these requirements. Thus, the amendments will not have a “significant economic impact on a substantial number of small entities.” 5 U.S.C. 605. The Commission has concluded, therefore, that a regulatory flexibility analysis is not necessary, and certifies, under Section 605 of the Regulatory

Flexibility Act (5 U.S.C. 605(b)), that the amendments announced today will not have a significant economic impact on a substantial number of small entities.

**Paperwork Reduction Act**

In the 1988 NPR, the Commission stated that the Rule contains disclosure and reporting requirements that constitute “information collection requirements” as defined by 5 CFR 1320.7(c), the regulation that implements the Paperwork Reduction Act (“PRA”).<sup>6</sup> The Commission noted that the Rule had been reviewed and approved in 1984 by the Office of Management and Budget (“OMB”) and assigned OMB Control No. 3084–0068. OMB has again reviewed the Rule and extended its approval for its recordkeeping and reporting requirements until September 30, 2004. The amendments now being adopted do not change the substance or frequency of the recordkeeping, disclosure, or

reporting requirements and, therefore, do not require further OMB clearance.

**List of Subjects in 16 CFR Part 305**

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

Accordingly, 16 CFR part 305 is amended as follows:

**PART 305—[AMENDED]**

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

**Authority:** 42 U.S.C. 6294.

2. Section 305.8(b) is revised to read as follows:

**§ 305.8 Submission of Data.**

\* \* \* \* \*

(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 submission
Refrigerators .....	August 1.
Refrigerator-freezers .....	August 1.
Freezers .....	August 1.
Central air conditioners .....	July 1.
Heat pumps .....	July 1.
Dishwashers .....	* June 1.
Water heaters .....	May 1.
Room air conditioners .....	May 1.
Furnaces .....	May 1.
Pool heaters .....	May 1.
Clothes washers .....	March 1.
Fluorescent lamp ballasts .....	March 1.
Showerheads .....	March 1.
Faucets .....	March 1.
Water closets .....	March 1.
Urinals .....	March 1.
Fluorescent lamps .....	March 1 [Stayed].
Medium Base Compact Fluorescent Lamps .....	March 1 [Stayed].
Incandescent Lamps, incl. Reflector Lamps .....	March 1 [Stayed].

\* Except the submission deadline for Year 2002 is June 17.

(2) All revisions to such data (both additions to and deletions from the preceding data) shall be submitted to the Commission as part of the next annual report period.

3. Section 305.10(a) is revised to read as follows:

**§ 305.10 Ranges of estimated annual energy consumption and energy efficiency ratings.**

(a) The range of estimated annual energy consumption or energy efficiency ratings for each covered product (except fluorescent lamp ballasts, showerheads, faucets, water closets or urinals) shall be taken from the appropriate appendix to this rule in

effect at the time the labels are affixed to the product. The Commission shall publish revised ranges annually in the **Federal Register**, if appropriate, or a statement that the specific prior ranges are still applicable for the new year.

Ranges will be changed if the estimated annual energy consumption or energy efficiency ratings of the products within the range change in a way that would alter the upper or lower estimated annual energy consumption or energy efficiency rating limits of the range by 15% or more from that previously published. When a range is revised, all information disseminated after 90 days following the publication of the revision shall conform to the

revised range subject to the following exception. For any standard size dishwasher range revised in 2002, all information disseminated after 60 days following the publication of the revision shall conform to the revised range. Products that have been labeled prior to the effective date of a modification under this section need not be relabeled.

\* \* \* \* \*

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

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<sup>6</sup> 44 U.S.C. 3501–3520.