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## **BILLING CODE 6750-01S**

### **FEDERAL TRADE COMMISSION**

### **Information Collection Activities; Proposed Collection; Comment Request**

**AGENCY:** Federal Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The Federal Trade Commission (“FTC” or “Commission”) is seeking public comment on its proposal to extend for an additional three years the current Paperwork Reduction Act (“PRA”) clearance for information collection requirements in its Energy Labeling Rule. That clearance expires on November 30, 2019.

**DATES:** Comments must be submitted on or before **[INSERT DATE 60 DAYS AFTER DATE OF 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 ‘Energy Labeling Rule PRA Comment, FTC File No. R611004’ on your comment, and file your comment online at <https://www.regulations.gov> by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

**FOR FURTHER INFORMATION CONTACT:** Hampton Newsome, (202) 326-2889, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission,

600 Pennsylvania Avenue NW, Washington, DC 20580.

**SUPPLEMENTARY INFORMATION:** Under the PRA, 44 U.S.C. 3501-3521, federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. “Collection of information” means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3); 5 CFR 1320.3(c). As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the existing paperwork clearance for the Energy Labeling Rule, 16 CFR Part 305 (OMB Control Number 3084-0069).

The Energy Labeling Rule implements the Energy Policy and Conservation Act of 1975 (“EPCA”).<sup>1</sup> The Rule establishes testing, reporting, recordkeeping, and labeling requirements for manufacturers of major household products (refrigerators, refrigerator-freezers, and freezers; dishwashers; clothes washers; water heaters; room air conditioners; furnaces; central air conditioners; heat pumps; pool heaters; fluorescent lamp ballasts; lamp products; plumbing fittings; plumbing fixtures; ceiling fans; consumer specialty lamps; and televisions). The requirements relate specifically to the disclosure of information relating to energy consumption and water usage. The Rule’s testing and disclosure requirements enable consumers purchasing products to compare the efficiency or energy use of competing models. In addition, EPCA and the Rule require manufacturers to submit relevant data to the Commission regarding energy or water usage in connection with the products they manufacture. The Commission uses this data to compile ranges of comparability for covered appliances for publication in the Federal

Register. These submissions, along with required records for testing data, may also be used in enforcement actions involving alleged misstatements on labels or in advertisements.

### **Burden Statement**

*Estimated annual hours burden:* 478,000

The estimated hours burden imposed by Section 324 of EPCA and the Commission's Rule include burdens for testing (354,802 hours); reporting (1,828 hours); recordkeeping (1,019 hours); labeling (108,864 hours); retail and online catalog disclosures (6,800 hours); and online label posting (4,533 hours). The total burden for these activities is 478,000 hours (rounded to the nearest thousand).

The following estimates of the time needed to comply with the requirements of the Rule are based on census data, Department of Energy figures and estimates, general knowledge of manufacturing practices, and industry input and figures. Because the compliance burden falls almost entirely on manufacturers and importers (with a *de minimis* burden for retailers), burden estimates are calculated on the basis of the number of domestic manufacturers and/or the number of units shipped domestically in the various product categories.

#### *A. Testing*

Under the Rule, manufacturers of covered products must test each basic model they produce to determine energy usage (or, in the case of plumbing fixtures, water consumption). The burden imposed by this requirement is determined by the number of basic models produced, the average number of units tested per model, and the time required to conduct the applicable test.

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<sup>1</sup> 42 U.S.C. 6294.

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. The staff estimates that the frequency with which models are tested every year ranges roughly between 10% and 50% and that the actual percentage of basic models tested varies by appliance category. In addition, the majority of tests conducted are required by Department of Energy requirements; therefore, it is likely that only a small portion of the tests conducted is attributable to the Rule's requirements. Accordingly, the burden estimates are based on the assumption that 25% of all basic models are tested annually due to the Rule's requirements. Thus, the estimated testing burden for the various categories of products covered by the Rule is as follows:<sup>2</sup>

Category of Manufacturer	Number of Basic Models	Percentage of Models Tested (FTC required)	Avg. Number of Units Tested Per Model	Labor Hours Per Unit Tested	Total Annual Testing Burden Hours
Refrigerators, Refrigerator-freezers, and Freezers	5,134	25%	4	4	20,536
Dishwashers	875	25%	4	1	875
Clothes washers	599	25%	4	2	1,198
Water heaters	3,112	25%	2	24	37,344
Room air conditioners	1,585	25%	4	8	12,680
Furnaces	1,900	25%	2	8	7,600
Central A/C	1,270	25%	2	24	15,240
Heat pumps	903	25%	2	72	32,508
Pool heaters	215	25%	2	12	1,290
Fluorescent lamp ballasts	454	25%	4	3	1,362

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<sup>2</sup> The following numbers reflect estimates of the basic models in the market. The actual numbers will vary from year to year.

Lamp products	5,100	25%	12	14	214,200
Plumbing fittings	1,700	25%	2	2	1,700
Plumbing fixtures	22,000	25%	1	.0833	458
Ceiling Fans	6,966	25%	3	1	5,225
Televisions	2,586	25%	2	2	2,586
					354,802

*B. Reporting*

The Rule requires that manufacturers of covered products “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. 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 CCMS at <https://regulations.doe.gov/ccms> as provided by 10 CFR 429.12.” 16 CFR 305.8(a)(1). The Rule also requires manufacturers to furnish links to images of their EnergyGuide labels as part of these required annual reports. 16 CFR 305.8(a)(5). Manufacturers must submit data to the FTC both when they begin manufacturing new models and annually. 16 CFR 305.8; 42 U.S.C. 6296(b).

Reporting burden estimates are based on information from industry representatives. Manufacturers of some products, such as appliances and HVAC equipment, indicate that, for them, the reporting burden is best measured by the estimated time required to report on each model manufactured, while others, such as makers of fluorescent lamp ballasts and lamp products, state that an estimated number of annual burden hours by manufacturer is a more meaningful way to measure. The figures below reflect these different methodologies as well as

the varied burden hour estimates provided by manufacturers of the different product categories that use the latter methodology.

#### Appliances, HVAC Equipment, Pool Heaters, and Televisions

Staff estimates that the average reporting burden for these manufacturers is approximately two minutes per basic model. Based on this estimate, multiplied by a total of 14,633 basic models of these products, the annual reporting burden for the appliance, HVAC equipment, and pool heater industry is an estimated 838 hours ( $2 \text{ minutes} \times 25,145 \text{ models} \div 60 \text{ minutes per hour}$ ).

#### Fluorescent Lamp Ballasts, Lamp Products, and Plumbing Products

The total annual reporting burden for manufacturers of fluorescent lamp ballasts, lamp products, and plumbing fixtures is based on the estimated average annual burden for each category of manufacturers, multiplied by the number of manufacturers in each respective category, as shown below:

Category of Manufacturer	Annual Burden Hours Per Manufacturer	Number of Manufacturers	Total Annual Reporting Burden Hours
Fluorescent lamp ballasts	6	20	120
Lamp products	15	50	750
Plumbing products	1	120	120

The total reporting burden for industries covered by the Rule is 1,828 hours annually ( $838 + 120 + 750 + 120$ ).

#### *C. Recordkeeping*

The Rule requires manufacturers to keep records of the test data generated in performing

the tests to derive information included on labels required by the Rule. EPCA and the Rule require manufacturers to keep records of the test data generated in performing the tests to derive information included on labels and required by the Rule. As with reporting, burden is calculated by number of models for appliances, HVAC equipment, pool heaters, and televisions, and by number of manufacturers for fluorescent lamp ballasts, lamp products, and plumbing products.

#### Appliances, HVAC Equipment, Pool Heaters, and Televisions

The recordkeeping burden for manufacturers of appliances, HVAC equipment, pool heaters, and televisions varies directly with the number of tests performed. Staff estimates total recordkeeping burden to be approximately 419 hours for these manufacturers, based on an estimated average of one minute per record stored (whether in electronic or paper format), multiplied by 25,145 tests performed annually ( $1 \times 25,145 \div 60$  minutes per hour).

#### Fluorescent Lamp Ballasts, Lamp Products, and Plumbing Products

The total annual recordkeeping burden for manufacturers of fluorescent lamp ballasts, lamp products, and plumbing fixtures is based on the estimated average annual burden for each category of manufacturers (derived from industry sources), multiplied by the number of manufacturers in each respective category, as shown below:

Category of Manufacturer	Annual Burden Hours Per Manufacturer	Number of Manufacturers	Total Annual Recordkeeping Burden Hours
Fluorescent lamp ballasts	2	20	40
Lamp products	10	50	500
Plumbing fixtures	0.5	120	60

The total recordkeeping burden for industries covered by the Rule is 1,019 hours annually ( $419+40+500+60$ ).

#### *D. Labeling*

EPCA and the Rule require that manufacturers of covered products provide certain information to consumers through labels on covered products. The burden imposed by this requirement consists of (1) the time needed to prepare labels, and (2) the time needed to affix required labels.

EPCA and the Rule specify the content, format, and specifications for the required labels, so manufacturers need only add the energy consumption figures derived from testing. In addition, most companies use automation to generate labels, and the labels do not change from year to year.

Given these considerations, staff estimates that the time to prepare labels for covered products is no more than four minutes per basic model. Based on Department of Energy data, staff has estimated that manufacturers offer approximately 54,399 basic models of covered products. Based on these estimates, staff estimates that the approximate annual drafting burden involved in labeling covered products is 3,627 hours per year [54,399 (all basic models) × four minutes (drafting time per basic model) ÷ 60 (minutes per hour)].

Based on input from industry representatives and trade associations, staff estimates that it takes approximately 4 second to affix labels to products for retail sales.<sup>3</sup> Based on an average of 4 seconds per unit, the annual burden for affixing labels to covered products is 105,237 hours [4 (seconds) × 94,713,098 (the estimated number of total products shipped for sale annually) divided by 3,600 (seconds per hour)].

The total labeling burden for all industries covered by the Rule is 108,864 (105,237 hours for preparation plus 3,627 hours for affixing) annually.

#### *E. Online and Retail Sales Catalog Disclosures*

The Rule requires that sellers offering covered products online or through retail sales catalogs (*i.e.*, those publications from which a consumer can order merchandise) disclose online or in the catalog energy or water consumption for each covered product. Because this information is supplied by the product manufacturers, the burden on the retailer consists of incorporating the information into the online or catalog presentation.

In the past, staff has estimated that there are 100 sellers who offer covered products through paper retail catalogs. While the Rule initially imposed a burden on catalog sellers by requiring that they draft disclosures and incorporate them into the layouts of their catalogs, paper catalog sellers now have substantial experience with the Rule and its requirements. Energy and water consumption information has obvious relevance to consumers, so sellers are likely to disclose much of the required information with or without the Rule. Accordingly, given the small number of catalog sellers, their experience with incorporating energy and water

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<sup>3</sup> Estimates from trade association members for labeling costs ranged from 1 second to 8 seconds. Staff has chosen a middle-ground estimate of 4 seconds, although due to improvements in automation, staff believes this estimate

consumption data into their catalogs, and the likelihood that many of the required disclosures would be made in the ordinary course of business, staff believes that any burden the Rule imposes on these paper catalog sellers would be minimal.

Staff estimates that there are approximately 400 online sellers of covered products who are subject to the Rule's catalog disclosure requirements. Staff estimates that these online sellers each require approximately 17 hours per year to incorporate the data into their online catalogs. This estimate is based on the assumption that entry of the required information takes 1 minute per covered product and an assumption that the average online catalog contains approximately 1,000 covered products (based on a sampling of websites of affected retailers). Given that there is a great variety among sellers in the volume of products they offer online, it is very difficult to estimate such volume with precision. In addition, this analysis assumes that information for all 1,000 products is entered into the catalog each year. This assumption likely overstates the associated burden because the number of incremental additions to the catalog from year to year is likely to be much lower after initial start-up efforts have been completed. The total catalog disclosure burden for all industries covered by the Rule is 6,800 hours (400 sellers  $\times$  17 hours annually).

#### *F. Online Label Posting*

The Rule require manufacturers to post images of their EnergyGuide and Lighting Facts labels online. Given approximately 54,399 total models at an estimated five minutes per model, this requirement entails a burden of 4,533 hours.

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likely overstates the time spent labeling most covered products.

*Estimated annual cost burden:* \$12,063,968 in labor cost and \$5,672,500 in other non-labor costs.

*Labor costs:* Staff derived labor costs by applying estimated hourly cost figures to the burden hours described above. In calculating the cost figures, staff assumes that test procedures are conducted by skilled technical personnel at an hourly rate of \$28.37, and that recordkeeping and reporting, and labeling and marking, generally are performed by clerical personnel at an hourly rate of \$16.24.

Based on the above estimates and assumptions, the total annual labor costs for the five different categories of burden under the Rule, applied to all the products covered by it, is \$12,064,000 (rounded to the nearest thousand).<sup>4</sup>

Activity	Burden Hours Per Year	Wage Category/ Hourly Rate	Total Annual Labor Cost
Testing	354,802	Engineering technicians (\$28.37)	\$10,065,733
Reporting	1,828	Data Entry/Information Processing (\$16.24)	\$29,687
Recordkeeping	1,019	Data Entry/Information Processing (\$16.24)	\$16,549
Labeling	108,864	Data Entry/Information Processing (\$16.24)	\$1,767,951
Online and Catalog disclosures	6,800	Data Entry/Information Processing (\$16.24)	\$110,432

<sup>4</sup> The labor cost estimates below are derived from the Bureau of Labor Statistics figures in “Table 1. National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2018,” available at: <https://www.bls.gov/news.release/ocwage.t01.htm>.

Online Label Posting	4,533	Data Entry/Information Processing (\$16.24)	\$73,616
			\$12,063,968

*Capital or Other Non-Estimated annual non-labor cost:* \$5,672,500.

Manufacturers must incur the cost of procuring labels used in compliance with the Rule.

Based on estimates of 189,000,000 units shipped annually, at an average cost of three cents for each label, the total (rounded) labeling cost is \$5,670,000.

The overwhelming majority of manufacturers submit required annual reports through the DOE online reporting system. However, a limited number of manufacturers submit required reports to the Commission directly (rather than through trade associations) and incur some nominal costs for paper and postage. Staff estimates that these costs do not exceed \$2,500.

**Request for Comment:** Pursuant to Section 3506(c)(2)(A) of the PRA, the FTC invites comments on: (1) whether the disclosure, recordkeeping, and reporting requirements are necessary, including whether the resulting information will be practically useful; (2) the accuracy of our burden estimates, including whether the methodology and assumptions used are valid; (3) how to improve the quality, utility, and clarity of the disclosure requirements; and (4) how to minimize the burden of providing the required information to consumers.

You can file a comment online or on paper. For the FTC to consider your comment, we must receive it on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Write ‘Energy Labeling Rule PRA Comment, FTC File No.

\_\_\_\_" on your comment. 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, or to send them to the Commission by courier or overnight service. To make sure that the Commission considers your online comment, you must file it through the <https://www.regulations.gov> website by following the instructions on the web-based form provided. Your comment – including your name and your state – will be placed on the public record of this proceeding, including the <https://www.regulations.gov> website. As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the regulations.gov site.

If you file your comment on paper, write "Energy Labeling Rule Comment, FTC File No. \_\_\_\_\_" on your comment and on the envelope, and mail it to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the publicly accessible website at [www.regulations.gov](http://www.regulations.gov), you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else'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, your comment should not include any “trade secret or any commercial or financial information which . . . is privileged or confidential” – as provided by Section 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) – including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled “Confidential,” and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted publicly at [www.regulations.gov](http://www.regulations.gov), we cannot redact or remove your comment unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

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 DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. For information on the Commission’s privacy policy, including routine uses permitted by the Privacy

Act, see <https://www.ftc.gov/site-information/privacy-policy>.

**Heather Hipsley,**

*Deputy General Counsel.*

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