



## FEDERAL TRADE COMMISSION

### Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

**AGENCY:** Federal Trade Commission.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (“PRA”), the Federal Trade Commission (“FTC” or “Commission”) is seeking public comment on its proposal to extend for an additional three years the clearance from the Office of Management and Budget (“OMB”) for information collection requirements in the Energy Labeling Rule (“Rule”). That clearance expires on February 29, 2024.

**DATES:** Comments must be filed by [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, P145403,” 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.

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

#### **SUPPLEMENTARY INFORMATION:**

*Title of Collection:* Energy Labeling Rule (Rule), 16 CFR Part 305.

*OMB Control Number:* 3084-0069.

*Type of Review:* Extension without change of currently approved collection.

*Affected Public:* Private Sector: Businesses and other for-profit entities.

*Estimated Annual Burden Hours:* 821,651.

*Estimated Annual Labor Costs:* 24,690,012.

*Estimated Annual Non-labor Costs:* \$3,000,000.

*Abstract:*

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.

As required by section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), the FTC is providing this opportunity for public comment before requesting that OMB extend the existing clearance for the information collection requirements contained in the Rule.

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

## **Burden Estimates:**

**Estimated annual hours burden:** 821,651.

The estimated hours burden imposed by Section 324 of EPCA and the Commission's Rule include burdens for testing (693,320 hours); reporting (2,646 hours); recordkeeping (807 hours); labeling (112,272 hours); retail and online catalog disclosures (6,800 hours); and online label posting (5,806 hours). The total burden for these activities is 821,651 hours (rounded to the nearest hour).

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.

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 proportion of models tested each 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	9,703	25%	4	4	38,812
Dishwashers	1,350	25%	4	1	1,350
Clothes washers	1,364	25%	4	2	2,728
Water heaters	3,936	25%	2	24	47,232
Room air conditioners	1,844	25%	4	8	14,752
Furnaces	5,894	25%	2	8	23,576
Central A/C and Heat pumps	11,911	25%	2	24	142,932
Pool heaters	280	25%	2	12	1,680
Fluorescent lamp ballasts	494	25%	4	3	1,482
Lamp products	20,000	25%	10	8	400,000
Plumbing fittings	3,000	25%	2	2	3,000
Plumbing fixtures	45,111	25%	1	.0833	939
Ceiling fans	9,572	25%	3	1	7,179
Televisions	3,274	25%	2	2	3,274
Portable air conditioners	548	25%	4	8	4,384
					693,320

### *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

<sup>2</sup> The following numbers reflect estimates of the basic models in the market and test burdens based on information collected by the Department of Energy or other sources. The actual basic model numbers will vary from year to year.

information to the Department of Energy via the CCMS at <https://regulations.doe.gov/ccms> as provided by 10 CFR 429.12.” 16 CFR 305.11. The Rule also requires manufacturers to furnish links to images of their EnergyGuide labels as part of these required annual reports. 16 CFR 305.11. Manufacturers must submit data to the FTC both when they begin manufacturing new models and annually. 16 CFR 305.11; 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 49,676 basic models of these products, the annual reporting burden for the appliance, HVAC equipment, and pool heater industry is an estimated 1,656 hours (2 minutes × 49,676 models ÷ 60 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 2,646 hours annually (1,656 + 120 + 750 + 120).

### *C. Recordkeeping*

EPCA and the Rule require manufacturers to keep the data generated from the tests 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 207 hours for these manufacturers, based on an estimated average of one minute per record stored (whether in electronic or paper format), multiplied by 12,419 tests<sup>3</sup> performed annually ( $1 \times 12,419 \div 60$  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

<sup>3</sup> This is derived from 25% of 49,676 estimated models that are tested.

The total recordkeeping burden for industries covered by the Rule is 807 hours annually (207 + 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 (all covered products except plumbing and fluorescent lamp products, which do not have separate labels) is no more than four minutes per basic model. In addition, staff estimates that, on average, manufacturers draft or revise labels for 25% of the total basic models each year. Based on Department of Energy data, staff has estimated that manufacturers offer approximately 69,676 basic models of covered products. Based on these estimates, staff estimates that the approximate annual drafting burden involved in labeling covered products is 1,161 hours per year  $[69,676 \text{ (all basic models)} \times 25\% \times \text{four minutes (drafting time per basic model)} \div 60 \text{ (minutes per hour)}]$ .

Based on input from industry representatives and trade associations, staff estimates that it takes approximately 4 seconds to affix labels to products for retail sales.<sup>4</sup> Based on an average of 4 seconds per unit, the annual burden for affixing labels to covered products is 111,111 hours

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<sup>4</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 likely overstates the time spent labeling most covered products.

[4 (seconds) × 100,000,000 (the estimated number of total products shipped for sale annually) divided by 3,600 (seconds per hour)].<sup>5</sup>

The total labeling burden for all industries covered by the Rule is 112,272 (1,161 + 111,111) 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 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

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<sup>5</sup> Includes only those product categories, such as showroom appliances and heating and cooling equipment, that must have separate labels affixed to them.

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 × 17 hours annually).

*F. Online Label Posting*

The Rule require manufacturers to post images of their EnergyGuide and Lighting Facts labels online. Given approximately 69,676 total models (excluding plumbing and fluorescent lamp products, which do not have these labels) at an estimated five minutes per model, this requirement entails a burden of 5,806 hours.

**Estimated annual cost burden:** \$24,690,012 in labor costs and \$3,000,000 in other non-labor costs.

**Labor costs:** Staff derived labor costs by applying estimated mean hourly cost figures to the burden hours described above. In calculating the cost figures, staff assumes that test procedures are conducted by engineering technicians at an hourly rate of \$32.10, and that recordkeeping and reporting, and labeling and marking, generally are performed by data entry personnel at an hourly rate of \$18.97.<sup>6</sup>

Activity	Burden Hours Per Year	Wage Category/ Mean Hourly Rate	Total Annual Labor Cost
Testing	693,320	Engineering technicians (\$32.10)	\$22,255,572

<sup>6</sup> 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>.

Reporting	2,646	Data Entry/Information Processing (\$18.97)	\$50,195
Recordkeeping	807	Data Entry/Information Processing (\$18.97)	\$15,309
Labeling	112,272	Data Entry/Information Processing (\$18.97)	\$2,129,800
Online and Catalog disclosures	6,800	Data Entry/Information Processing (\$18.97)	\$128,996
Online Label Posting	5,806	Data Entry/Information Processing (\$18.97)	\$110,140
			\$24,690,012

**Capital or Other Non-Estimated non-labor cost:** \$3,000,000.

Manufacturers must incur the cost of procuring labels used in compliance with the Rule. Based on estimates of 100,000,000 units shipped annually, at an average cost of three cents for each label, the total (rounded) labeling cost is \$3,000,000.

**Request for Comment:**

Pursuant to Section 3506(c)(2)(A) of the PRA, the FTC invites comments on: (1) whether the disclosure and recordkeeping requirements are necessary, including whether the information will be practically useful; (2) the accuracy of our burden estimates, including whether the methodology and assumptions used are valid; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information.

For the FTC to consider a comment, we must receive it on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. 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.

You can file a comment online or on paper. Due to heightened security screening, postal mail addressed to the Commission will be subject to delay. We encourage you to submit your comments online through the <https://www.regulations.gov> website.

If you file your comment on paper, write “Energy Labeling Rule, PRA Comment, P145403,” 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. If possible, submit your paper comment to the Commission by overnight service.

Because your comment will become publicly available at <https://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 (1) be filed in paper form, (2) be clearly labeled “Confidential,” and (3) 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*, 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>.

**Josephine Liu,**

*Assistant General Counsel for Legal Counsel.*

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