

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

The Federal Trade Commission (“FTC” or “Commission”) seeks comments on issues related to recent Department of Energy (“DOE”) regulatory actions or new issues raised by commenters in response to a November 2, 2015 Notice of Proposed Rulemaking (“2015 NPRM” or “NPRM”)<sup>1</sup>, including disclosure changes regarding portable air conditioner (“portable AC”) labeling, large-diameter and high-speed small-diameter ceiling fan labels, electric instantaneous water heater labeling.<sup>2</sup>

**(1) Necessity for Collecting the Information**

The FTC’s Energy Labeling Rule (“Rule”), issued pursuant to the Energy Policy and Conservation Act (EPCA),<sup>3</sup> 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.

For the instant rulemaking, the Commission proposes amendments to the Energy Labeling Rule to require labels for portable ACs, large-diameter and high-speed small diameter ceiling fans, and instantaneous electric water heaters. Additionally, it proposes eliminating certain marking requirements for plumbing products.

The proposed amendments are designed to: (1) ensure the Rule’s labeling requirements are consistent with EPCA, which mandates that FTC labels reflect applicable DOE test procedures when available; and/or (2) improve the Rule by providing consumers with energy information about additional products not covered previously.

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<sup>1</sup> 80 Fed. Reg. 67,351. The comments received in response to the 2015 NPRM are here: <https://www.ftc.gov/policy/public-comments/initiative-601>. The comments included: Association of Home Appliance Manufacturers (AHAM) (#00016); CSA Group (#00007); California Investor Owned Utilities (California IOUs) (#00019); Earthjustice (“Joint Commenters”) (#00018); NSF International (#00005); and Plumbing Manufacturers International (PMI) (#00006). Of these, only the AHAM comment addressed the FTC’s Paperwork Reduction Act (“PRA”) burden analysis in the NPRM. The AHAM comment is discussed further in response to items (8) and (12) of this Supporting Statement.

<sup>2</sup> On December 11, 2015, OMB filed comment on the associated submission (ICR Reference No: 201511-3084-001): “Terms of the previous clearance remain in effect. The FTC should consider comments received regarding the information collection instrument(s) and provide a response and any necessary adjustments in its next submission to OMB.” Ultimately, public comments on the November 2015 proposed amendments led to final amendments (81 Fed. Reg. 63,634, September 15, 2016) for some of the earlier proposals, and raised new issues that, paired with recent DOE regulatory actions, led to the Commission issuing new proposed amendments (81 Fed. Reg. 62,681, September 12, 2016) for comment.

<sup>3</sup> 42 USC 6291 et seq.

**(2) Use of the Information**

The primary purpose of the proposed information requirements is to encourage consumers to comparison shop for energy-efficient household products.

**(3) Consideration of Using Improved Technology to Reduce Burden**

The proposed amendments permit the use of any technologies that covered firms may wish to employ and that may reduce the burden of information collection. Disclosing energy usage information to consumers, however, entails labeling on products or their packaging; as such, electronic disclosure pursuant to the Government Paperwork Elimination Act, 44 U.S.C. § 3504 note, is impracticable.

**(4) Efforts to Identify Duplication**

Commission staff have not identified any other federal statutes, rules, or policies that would duplicate the proposed Rule.

**(5) Efforts to Minimize Burden on Small Organizations**

Although the EPCA requires the Rule to apply to all manufacturers of covered products, the Commission is seeking comment about minimizing impact on small businesses. While some manufacturers subject to the Rule's requirements may be small businesses, staff believes that everything consistent with EPCA's requirements has been done to minimize compliance burden.

**(6) Consequences of Conducting the Collection Less Frequently**

Not applicable; there is no flexibility within EPCA's framework to "collect" less frequently the information contained in the proposed new labeling requirements.

**(7) Circumstances Requiring Collection Inconsistent With Guidelines**

The proposed amendments' information collection requirements are consistent with all applicable guidelines contained in 5 C.F.R. § 1320.5(d)(2).

**(8) Consultation Outside the Agency**

Regarding the 2015 NPRM, AHAM commented that the testing and labeling proposed would be more burdensome than the estimates included in the FTC's PRA burden analysis. Specifically, AHAM estimated: 32 hours per model for testing (8 hours x 4 units, as well as up to 4 hours for preparing the data); 40 hours per model for reporting; and 40 hours per model for label preparation. It is unclear whether AHAM's reporting burden estimate refers to annual certification reports or to new model reports. Annual reports include all models under current production (including models previously reported to the database). It is also unclear whether an estimate of 40 hours for label drafting is per model rather than, perhaps more justifiably, per

product type or per manufacturer. As noted in the instant NPRM associated with this Supporting Statement, the Commission seeks clarification regarding AHAM's estimates.

Finally, in developing the instant proposed requirements, FTC staff have consulted with DOE staff and is seeking public comments on the proposed requirements and associated PRA burden analysis.

**(9) Payments and Gifts to Respondents**

Not applicable.

**(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.

**(12) Estimated Annual Hours Burden and Associated Labor Cost**

**Total Incremental Burden of the Proposed Rulemaking: 11,457 hours**

Burden estimates below are based on Census data, DOE figures and estimates, general knowledge of manufacturing practices, and trade association advice and figures. The FTC estimates that there are about 450 basic models (*i.e.*, units with essentially identical physical and electrical characteristics) affected by these amendments, including 100 electric instantaneous water heater models, 130 large-diameter and 70 high-speed small diameter fan models, and 150 portable AC models. In addition, the FTC estimates that there are approximately 2,700,000 ceiling fan units (of the type relevant here), 1,000,000 portable AC units, and 100,000 electric instantaneous water heaters shipped each year in the U.S.

*Reporting:* FTC staff estimates that the average reporting burden for manufacturers will be approximately two minutes to enter label data per basic model. Subject to further public comment, including AHAM clarification regarding its reporting burden estimate, the FTC estimates that annual reporting burden is approximately 15 hours [(2 minutes × 450 models)].

*Labeling:* The FTC additionally seeks further public comment on its burden estimate for labeling, including AHAM clarification of its proffered estimate for portable AC labeling. Provisionally, and tied to prior FTC burden estimates for labeling focused on the time to affix product labels, FTC staff estimates burden to be six seconds per unit; accordingly, 6,334 hours (six seconds x 3,800,000 total annual product shipments).

*Testing:* Manufacturers will require approximately 3 hours to test each new basic ceiling fan model, 24 hours for each water heater, and 36 hours for portable ACs.<sup>4</sup> The FTC estimates that, on average, 50% of the total basic models are tested each year. Accordingly, the estimated annual testing burden for the three affected products categories is 4,200 [ceiling fans – 300 (3 hours x 200 x .5); water heaters – 1,200 (24 hours x 100 x .5); and portable ACs – 2,700 (36 hours x 150 x .5)].

*Recordkeeping:* The Rule also requires ceiling fan manufacturers to keep records of test data generated in performing the tests to derive information included on labels. The FTC estimates that it will take manufacturers one minute per record (*i.e.*, per model) to store the data. Accordingly, the estimated annual recordkeeping burden would be approximately 8 hours, rounded up (1 minute x 450 basic models).

*Catalog Disclosures:* Based upon FTC staff research concerning the number of manufacturers and online retailers, staff estimates that there are an additional 300 catalog sellers who are subject to the Rule’s catalog disclosure requirements. Staff estimates further that these sellers each require approximately 3 hours per year to incorporate the data into their catalogs. This estimate is based on the assumptions that entry of the required information takes on average one minute per covered product and that the average online catalog contains approximately 200 covered products relevant here. Given that there is great variety among sellers in the volume of products that they offer online, it is very difficult to estimate such numbers with precision. In addition, this analysis assumes that information for all 200 covered products is entered into the catalog each year. This is a conservative assumption 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. Thus, the total annual disclosure burden for all catalog sellers of ceiling fans covered by the Rule is 900 hours (300 sellers × 3 hours).

Thus, estimated annual burden attributable to the proposed amendments is 11,457 hours (15 hours for reporting + 6,334 hours for affixing labels + 4,200 hours for testing + 8 hours for recordkeeping + 900 disclosure hours for catalog sellers).<sup>5</sup>

**Total Associated Labor Cost: \$369,280**

Staff derived labor costs by applying assumed hourly wages<sup>6</sup> to the burden hours described above. In calculating labor costs, the FTC assumes that electrical engineers perform test procedures, electronic equipment installers affix labels, and data entry workers enter label data, catalog disclosures, and perform recordkeeping. Average hourly wages for these labor

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<sup>4</sup> For portable ACs, the estimate assumes 3 units tested at 8 hours apiece consistent with DOE requirements, with an additional 4 hours for data analysis. See DOE’s Compliance Certification Management System at <https://www.regulations.doe.gov/ccms>.

<sup>5</sup> The minor difference here from the resulting incremental burden hours tallied in ROCIS (11,456) is due to rounding error.

<sup>6</sup> The mean hourly wages that follow are drawn from “Occupational Employment and Wages–May 2015,” Bureau of Labor Statistics (“BLS”), U.S. Department of Labor, Table 1, released March 30, 2016 (“National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2015”), available at <http://www.bls.gov/news.release/ocwage.t01.htm>.

categories, based on BLS data, are as follows: (1) electrical engineers (\$46.80); (2) electronic equipment installers (\$24.22); and (3) data entry workers (\$15.79).

Based on the above estimates and assumptions, the total annual labor cost for the five different categories of burden under the Rule, applied to the affected product categories, is derived as follows:

*Reporting (Data Entry):* 15 hours (450 basic models x 2 minutes) x \$15.79/hour (data entry workers) = \$237

*Labeling (Affixing Labels):* 6,334 hours x \$24.22 (electronic equipment installers) = \$153,409

*Testing:* 4,200 hours x \$46.80/hour (electrical engineers) = \$196,560

*Recordkeeping:* 8 hours x \$15.79/hour (data entry workers) = \$126

*Catalog Disclosures:* 1,200 hours x \$15.79/hour (data entry workers) = \$18,948

Thus, the total annual labor cost is approximately \$369,280.

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

Manufacturers are not likely to require any significant capital costs to comply with the proposed amendments. Industry members, however, will incur the cost of printing labels for each covered unit. The estimated label cost, based on \$.03 per label, is \$114,000 (3,800,000 x \$.03).

**(14) Estimated Cost to Federal Government**

Staff believes that the cost to the FTC for administering the proposed Rule changes will be *de minimis*. Accordingly, FTC staff retains the previous estimate of \$90,000 per year as the cost to the Government for implementing the Rule. This estimate is based on the assumption that one-half attorney work year and half of a legal technician work year will be expended.

**(15) Program Changes/Adjustments**

The proposed amendments will result in an estimated additional 11,457 burden hours, annualized, and cumulative of all affected manufacturers, \$369,280 in labor costs, and \$114,000 in capital/non-labor costs.

**(16) Plans for Tabulation and Publication**

Not applicable.

**(17) Failure to Display the OMB Expiration Date**

Not applicable.

**(18) Exceptions to Certification**

Not applicable.