

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

The Federal Trade Commission (“FTC” or “Commission”) issues amendments to the Energy Labeling Rule to eliminate certain marking requirements for plumbing products and to exempt certain ceiling fans from labeling requirements. Additionally, the amendments update the Rule to impose labeling requirements for electric instantaneous water heaters. The Commission also makes non-substantive, conforming changes to the testing provisions for LED covered lamps and minor corrections to other provisions. The Commission sought comments on these issues in a September 12, 2016 Notice of Proposed Rulemaking (81 Fed. Reg. 62,681).¹

(1) Necessity for Collecting the Information

The FTC’s Energy Labeling Rule (“Rule”), issued pursuant to the Energy Policy and Conservation Act (EPCA),² 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 issues amendments to the Energy Labeling Rule to require labels for instantaneous electric water heaters. Additionally, it eliminates certain marking requirements for plumbing products.

(2) Use of the Information

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

¹ On November 18, 2016, OMB filed comment on the FTC’s associated submission to it (ICR Reference Number 201611-3084-002) (“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.”).

The public comments received in response to the 2016 NPRM are here: <https://www.ftc.gov/policy/public-comments/initiative-681>. The comments included: Delta T Corporation dba Big Ass Solutions (Delta T) (#00009); De Longhi Appliances (#00010); A. O. Smith Corporation (#00011); Association of Home Appliance Manufacturers (AHAM) (#00012); Rheem Manufacturing Company (#00013); Appliance Standards Awareness Project (#00014); Air-Conditioning, Heating, and Refrigeration Institute (AHRI) #00015; Hunter Fan Company (#00008); Plumbing Manufacturers International (PMI) #00003; and the People’s Republic of China (#0016 and #0017).

² 42 USC 6291 et seq.

(3) Consideration of Using Improved Technology to Reduce Burden

The 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 final amendments.

(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 new labeling requirements.

(7) Circumstances Requiring Collection Inconsistent With Guidelines

The 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

In developing the instant requirements, FTC staff have consulted with Department of Energy (DOE) staff and have sought public comments on the requirements and associated burden analysis under the Paperwork Reduction Act, 44 U.S.C. § 3501 et seq. (PRA).

(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 Hours Burden of the Amendments: 1,672 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 100 basic models (*i.e.*, units with essentially identical physical and electrical characteristics) of instantaneous water heaters affected by these amendments. In addition, FTC staff estimates that there are 6 instantaneous water heater manufacturers. The FTC estimates that there are 100,000 electric instantaneous water heaters shipped each year in the U.S.

Reporting: FTC staff estimates that manufacturers will require approximately two minutes per model to enter label data per basic model. Accordingly, the FTC estimates that cumulative annual reporting burden will be 3 hours (2 minutes per model × 100 basic models).

Labeling: FTC staff estimates that manufacturers will require six seconds per unit to affix labels. Accordingly, the FTC estimates that cumulative annual disclosure (labeling) burden will be 167 hours to affix labels [(six seconds per unit x 100,000 total annual product shipments)].

Testing: For testing, manufacturers will require approximately 24 hours for each water heater. The FTC estimates that, on average, 50% of the total basic models are tested each year. Accordingly, the estimated annual testing burden for electric instantaneous water heaters is 1,200 hours (24 hours x 100 x 0.5).

Recordkeeping: The Rule also requires electric instantaneous water heater 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 2 hours (1 minute x 100 basic models).

Catalog Disclosures: Based upon FTC staff research concerning the number of manufacturers and online retailers, staff estimates that there are an additional 150 catalog sellers who are subject to the Rule's catalog disclosure requirements. Staff estimates further that these sellers each require approximately 2 hours per year to incorporate the data into their catalogs.³ 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 100 covered products relevant here. Given that there is great variety among sellers in how many products that they offer online, it is very difficult to estimate such numbers with precision. In

³ This is a reduction from the prior estimated 3 hours per year per seller appearing in the September 12, 2016 Notice of Proposed Rulemaking and the associated PRA Supporting Statement sent to OMB (ICR Reference Number 201611-3084-002). It reflects the reduced scope of covered products for catalog disclosure vis-à-vis these final amendments relative to the previously proposed amendments that included disclosures additionally for portable air conditioners (PACs) and large-diameter and high-speed small-diameter (HSSD) ceiling fans. In the final amendments underlying this Supplemental Supporting Statement, the Commission explains why it is not requiring labeling for HSSD ceiling fans nor, for now, labeling for PACs.

addition, this analysis assumes that information for all 100 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 electric instantaneous water heaters covered by the Rule is 300 hours (150 sellers × 2 hours).

Thus, estimated annual burden attributable to the amendments is 1,672 hours (3 hours for reporting + 167 for labeling + 1,200 for testing + 2 hours for recordkeeping + 300 disclosure hours for catalog sellers).

Total Associated Labor Cost: \$65,898

Staff derived labor costs by applying assumed hourly wages⁴ 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 categories, based on BLS data, are as follows: (1) electrical engineers (\$47.41); (2) electronic equipment installers (\$24.27); and (3) data entry workers (\$16.24).

Based on the above estimates and assumptions, the total annual labor cost for the various burden categories and sub-categories noted above is as follows:

Reporting: 3 hours x \$16.24/hour (data entry workers) = \$49
Labeling: 167 hours x \$24.27 (electronic equipment installers) = \$4,053
Testing: 1,200 hours x \$47.41/hour (electrical engineers) = \$56,892
Recordkeeping: 2 hours x \$16.24/hour (data entry workers) = \$32
Catalog Disclosures: 300 hours x \$16.24/hour (data entry workers) = \$4,872

Thus, the total annual labor cost is approximately \$65,898.

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

Manufacturers are not likely to require any significant capital costs to comply with the amendments. Industry members, however, will incur the cost of printing package labels for each covered unit. The estimated label cost, based on \$.03 per label, is \$3,000 (100,000 x \$.03).

(14) Estimated Cost to Federal Government

Staff believes that the cost to the FTC for administering the 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.

⁴ The mean hourly wages that follow are drawn from “Occupational Employment and Wages–May 2016,” Bureau of Labor Statistics (“BLS”), U.S. Department of Labor, Table 1, released March 31, 2017 (“National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2016”), available at <https://www.bls.gov/news.release/ocwage.t01.htm>.

(15) Program Changes/Adjustments

The amendments will result in an estimated additional 1,672 hours with associated annual labor and non-labor (labeling) costs of \$65,898 and \$3,000, respectively.

(16) Plans for Tabulation and Publication

Not applicable.

(17) Failure to Display the OMB Expiration Date

Not applicable.

(18) Exceptions to Certification

Not applicable.