



VIA FTC COMMENT WORKS

Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue, NW
Suite CC-5610 (Annex B)
Washington, D.C. 20580

Re: Energy Labeling Amendments (16 CFR Part 305) (Project No. R611004)

January 11, 2016

The Alliance to Save Energy, American Council for an Energy Efficient Economy, Appliance Standards Awareness Project, Consumer Federation of America, Consumers Union, Earthjustice, Natural Resources Defense Council, and Public Citizen (“Joint Commenters”) submit the following comments on the Federal Trade Commission’s (“FTC’s”) notice of proposed rulemaking concerning revisions to the Energy Labeling Rule.¹ In general, the Joint Commenters support many of the changes in the proposal, and we appreciate the Commission’s ongoing commitment to improve the Labeling Rule’s effectiveness. For example, the proposal to require the consolidation of range information on the labels for refrigerators and electric storage water heaters will have a positive impact on the public’s access to energy efficiency information. However, we offer specific comments below recommending additional revisions and responding to issues on which the proposal sought stakeholder input.

¹ See 80 Fed. Reg. 67,351 (Nov. 2, 2015) (to be codified at 16 C.F.R. Part 305).

I. Consolidating range information for refrigerator-freezers would be more helpful to consumers than including refrigerators with no freezer in the same range.

FTC's proposal to provide two range groups on the labels for refrigerator-freezers represents a reasonable compromise. First, as the proposal correctly notes, nothing in the Energy Policy and Conservation Act ("EPCA") requires the label ranges to match the product classes set by the Department of Energy ("DOE") in its standards regulations.² Furthermore, presenting comparative information for both similarly configured models and across different configurations will offer consumers important information, and reflects the reality that while some consumers may be committed to particular features, others are more flexible in their willingness to trade off those features for reduced utility bills.

Moreover, there is no reason to suspect that the inclusion of a second comparison range would confuse consumers. The EnergyGuide labels for heat pumps have featured two comparability ranges for nearly 30 years.³ And FTC's proposed example label for refrigerators clearly indicates what each range bar depicts.⁴

However, the "All Models" range bar would be more helpful to consumers if FTC returned in part to the approach it suggested in the 2014 proposal.⁵ There, FTC proposed to consolidate range information for refrigerators by grouping together the automatic defrost refrigerator-freezers that are purchased by the vast majority of residential consumers, while maintaining separate categories for less common models. Specifically, the Commission proposed to consolidate refrigerator ranges into three categories: automatic defrost refrigerator-freezers, manual or partial automatic defrost refrigerators and refrigerator-freezers, and refrigerators with automatic defrost but no freezer.⁶ This approach would result in only minimal range bar overlap between models with and without a freezer – only the range bar for the second category would group such products together.

In contrast, the new proposal would include refrigerators in the same comparison range with much more common automatic defrost refrigerator-freezers. That combination would be less helpful to consumers than a range bar specific to refrigerator-freezers. Consumers are unlikely to be willing to sacrifice having an integrated freezer compartment, especially the roughly seventy percent of households that do not currently have a separate freezer unit.⁷ For such households, buying a refrigerator with no freezer compartment would create the need to purchase a second major appliance at a potentially significant extra cost.⁸ Moreover, consumers who take the time to track

² *Id.* at 67,355.

³ *See* 52 Fed. Reg. 46,888, 46,900 (Dec. 10, 1987) (establishing dual ranges for heat pump labels).

⁴ *See* 80 Fed. Reg. at 67,375.

⁵ 79 Fed. Reg. 34,642 (June 18, 2014).

⁶ *Id.* at 34,651.

⁷ Residential Energy Consumption Survey (2009) at Table HC3.1: Appliances in U.S. Homes, by Housing Unit Type, available at <https://www.eia.gov/consumption/residential/data/2009/#appliances>.

⁸ In contrast, the presence or absence of the other attributes that would be grouped within the "All Models" range bar would be unlikely to induce a second purchase. For example, the absence of through-the-door ice service does not deprive consumers of the ability to make, store, and obtain ice for use in the home.

down a unit at the low end of the “All Models” comparison range would likely be disappointed to discover the absence of a freezer section. Such a result could undermine consumer trust in EnergyGuide’s comparison ranges for other products. Modifying the proposal by minimizing the overlap between refrigerators and refrigerator-freezers would improve the usefulness of the proposed “All Models” range bar.

II. Providing links to current labels for all products through DOE’s Compliance Certification Management System will ensure access to label information; any alleged enforcement implications are easily addressed.

For the reasons expressed in our prior comments on the issue, the Joint Commenters continue to support the use of the DOE’s Compliance Certification Management System (“CCMS”) as a clearinghouse of links to the current EnergyGuide and Lighting Facts labels for all certified products that are subject to labeling requirements.⁹ The benefits of providing a centralized location to access current labels greatly exceed the burden of providing the link to CCMS in the course of fulfilling a manufacturer’s existing certification obligation.

Moreover, extending the requirement to provide a label link via CCMS to products that are subject to labeling requirements, but which are not presently certified, would have additional benefits. For such products, like specialty consumer lamps and LED general service lamps, the inclusion of label links in CCMS will help consumers who turn to DOE’s certification database for information on available product offerings. The absence from the database of certain products – particularly highly efficient alternatives to covered products like many general service LEDs – undermines the usefulness of the database as a tool to assist consumers in finding efficient products that meet their needs. Therefore, even if FTC concludes that the burdens of requiring reporting for such additional products would outweigh the benefits, providing manufacturers the option to submit a label link via CCMS would help to improve the consumer utility of DOE’s database.

In the proposal, FTC notes that some stakeholders have raised the concern that posting EnergyGuide labels online prior to certifying the underlying performance ratings to DOE could “run afoul of DOE and [Environmental Protection Agency] restrictions on marketing prior to government certification.”¹⁰ To the extent these stakeholders raise a valid concern, the issue can be adequately addressed by informal DOE or Environmental Protection Agency (“EPA”) enforcement guidance. In the alternative, FTC could require that the website address submitted to CCMS must be made active within some period after submittal. The Joint Commenters suggest that seven days following the date of certification would be ample time to ensure that a link submitted via CCMS is active. An addition to the regulatory language proposed for 16 C.F.R. § 305.6(b) could implement this delay:

⁹ See Comments of Earthjustice, et al. (Aug. 18, 2014) at 17-18 (Project No. R611004 #00017); *available at* <https://www.ftc.gov/policy/public-comments/initiative-569>.

¹⁰ 80 Fed. Reg. at 67,352.

(b) Manufacturers must submit the Web site address for the online labels covered by paragraph (a). In lieu of submitting the required information to the Commission, 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. Any Web site address submitted via the CCMS must be active not less than 7 days after submittal.¹¹

III. Eliminating the separate classification for heat pump water heaters will help consumers making purchasing decisions.

FTC's proposal to integrate the labels for heat pump electric water heaters with other electric storage water heaters reflects the reality that these products compete with each other for the same applications. Manufacturers market heat pump water heaters as a direct replacement for traditional electric storage water heaters, as demonstrated in marketing materials discussing both the operating costs savings achievable by replacing a traditional unit with a heat pump model, and the ease of installation for such a swap.¹² Maintaining separate range bars for the two products could mislead consumers into thinking that a traditional electric storage water heater at the low end of the range is the most efficient alternative available for their application.

IV. Allowing five years to update ceiling fan labels would be unreasonably long.

As noted in previous comments, the Joint Commenters support the Commission's proposed changes to the labels for ceiling fans.¹³ These changes will increase the effectiveness of the label by more closely aligning its appearance with the EnergyGuide labels for other products with which consumers are familiar.

However, the five-year lead time recommended by certain industry stakeholders would be unreasonably long. Pursuant to the lead time specified in the EPCA, FTC allowed ceiling fan manufacturers only two years to begin labeling products when the Commission adopted the initial ceiling fan label rule at the end of 2006.¹⁴ Because ceiling fan packaging already allocates space to FTC labels, the task of revising the content of that information should not require a lead time longer than the Commission previously allowed. Moreover, because DOE will soon complete a

¹¹ As proposed, 16 C.F.R. § 305.6(b) appears to incorrectly reference paragraph (c) of that section, instead of paragraph (a). *Id.* at 67,365.

¹² GE, *GeoSpring™ Heat Pump Water Heater*, <http://www.geappliances.com/ge/heat-pump-hot-water-heater.htm> (last visited Jan. 11, 2016) (claiming that the manufacturer's heat pump model is "70% more efficient than a standard electric water heater" and that "because it uses the same water and electric connections" as a traditional electric storage water heater, "installation is fast and easy" (footnote omitted)); American Water Heaters, *American® Electric Heat Pump Water Heaters: The Answer to High Energy Bills*, <http://www.americanwaterheater.com/new/heat-pump-water-heaters/> (last visited Jan. 11, 2016) (claiming "[a]nnual operating cost as low as \$192, yielding up to \$419 annual saving cost compared to a conventional electric model"); Rheem, *Hybrid Learning Center: Features and Benefits, Easy Installation*, <http://hybrid.rheemecosense.com/features.html> (last visited Jan. 11, 2016) (claiming the manufacturer's heat pump models "can be installed just as easily as a standard electric water heater.").

¹³ See Comments of Earthjustice, et al., *supra* note 9, at 21.

¹⁴ See 42 U.S.C. § 6294(a)(2)(H); 71 Fed. Reg. 78,057, 78,058 (Dec. 28, 2006).

rulemaking to revise the test procedures applicable to ceiling fans, manufacturers will need to retest existing models according to the new test procedure.¹⁵ The lead time allowed for a label revision should reflect that manufacturers will need to update their representations concerning efficiency in any event once DOE finalizes test procedure revisions.

V. Labels for portable air conditioners should indicate the performance of comparable room air conditioners.

FTC has correctly determined that requiring EnergyGuide labels for portable air conditioners will likely assist consumers in making purchasing decisions and be economically and technologically feasible.¹⁶ Moreover, FTC's proposal to make the labels for these products the same or similar to the labels for room air conditioners accurately reflects the significant overlap in the market for these products. The proposed rule recognizes that "portable air conditioner models closely resemble room air conditioners."¹⁷ However, FTC has proposed not to combine the ranges for portable air conditioners with room air conditioners. The proposal suggests that "it is not clear whether consumers routinely compare portable air conditioners to room air conditioners when shopping."¹⁸

The Joint Commenters urge FTC to reconsider this issue, and to include a second range bar on portable air conditioner labels that compares performance to room air conditioners of similar capacity. First, as shown by the types of questions shoppers are asking online, many consumers intend to use portable air conditioners in stationary, continuous applications traditionally served by room air conditioners, or are directly comparing the two products when making a purchase.¹⁹ In addition, some retailers appear to be encouraging the perception that portable air conditioners are an energy-efficient alternative to room air conditioners.²⁰ These factors indicate that a second range bar

¹⁵ See 79 Fed. Reg. 62,522, 62,527 (Oct. 17, 2014) (proposing ceiling fan test procedures which manufacturers must use to make "representations of ceiling fan efficiency 180 days after the publication of any final amended test procedures in the Federal Register.").

¹⁶ 80 Fed. Reg. at 67,357.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ See, e.g., Amazon, Questions & Answers: Honeywell MN12CES 12,000 BTU Portable Air Conditioner with Remote Control - Black/Silver, http://www.amazon.com/forum/-/TxIANNFN2N4DM8/ref=ask_ql_ql_al_hza?asin=B008UHXLGA (last visited Jan. 11, 2016) (question dated Apr. 13, 2014) ("Can this unit be setup [sic] with a water drain hose for continuous operation rather than [a] manual drain pan?"); Amazon, Questions & Answers: Whynter 14,000 BTU Dual Hose Portable Air Conditioner (ARC-14S), http://www.amazon.com/forum/-/TxIOANSOPR6ZNW/ref=ask_ql_ql_al_hza?asin=B0028AYQDC (last visited Jan. 11, 2016) (question dated Apr. 26, 2014) ("I am looking to use this in a garage office, but need the temp/unit to stay on 24/7. during [sic] use 72, at night 78. Anyone using this in this way?"); Amazon, Questions & Answers: Frigidaire FRA053PU1 5,000 BTU Portable Air Conditioner, http://www.amazon.com/forum/-/TxC9VXSA6VE1GV/ref=ask_ql_ql_al_hza?asin=B004P8K39G (last visited Jan. 11, 2016) (question dated June 8, 2014) ("What is wattage of this air conditioner? Does it use more or less power than [an] in-window air conditioner?").

²⁰ See Kara Zorn, *6 Ways A Portable A/C Unit Will Lower Your Energy Bills*, Compact Appliance: Learning Center (Apr. 30, 2015), <http://learn.compactappliance.com/portable-air-conditioning-energy-savings/> (last visited Jan. 11, 2016) ("Contemporary portable units are made to be more energy efficient than wall units. Something you have to keep in mind is that window units roast in the sun all day, which can cause premature wear and tear and make them work harder than they have to, which may cause your energy bills to go up.").

on portable air conditioner labels, providing a comparison to room air conditioners, would assist consumers in making purchasing decisions. Finally, the proposed DOE test procedures for portable air conditioners are closely related to the existing test procedures for room air conditioners, so a direct comparison of the two products should be feasible.²¹

VI. Labels for central air conditioners are an important regional standards compliance tool.

The Joint Commenters support FTC's proposal to update the labels for central air conditioners and heat pumps to facilitate compliance with the regional standards that apply to these products. The proposed labels appear to accurately reflect the consensus recommendations of the working group convened by DOE to negotiate compliance and enforcement implementation for those standards. However, the Joint Commenters have three concerns regarding the content of FTC's proposal for these products.

First, the Joint Commenters urge FTC to consider adding a requirement that central air conditioner and heat pump outdoor units be marked with a ruggedized label that is near or a part of the unit's nameplate, indicating in what regions of the country, if any, installation of the unit is prohibited. This marking feature, which will ensure that non-compliant installations can be detected after the fact and remediated through installation of a compliant unit at no cost to the consumer, was agreed to by the working group as a requirement that all represented manufacturers would implement and that the Air-Conditioning, Heating and Refrigeration Institute ("AHRI") would enforce as part of its certification program.²² However, while AHRI-certified products account for the vast majority of the market, not all central air conditioner and heat pump manufacturers certify their products through AHRI. To ensure a level playing field with regard to the enforceability of the standards for these products, FTC should consider adopting the working group's consensus marking requirements into the Labeling Rule regulations.

Second, the Joint Commenters are concerned that FTC's proposal to eliminate the requirement that EnergyGuide labels for heating and cooling equipment identify the manufacturer or private labeler of the product will make it more difficult for consumers to access that information. Even if the brand identity is clearly indicated on the product itself, many consumers do not see the heating and cooling equipment they purchase until it is being installed in their home. To address this issue, FTC has required central air conditioner, heat pump, and furnace retailers, installers, and assemblers to provide EnergyGuide labels to consumers before a purchase decision is finalized.²³ Because the consumers buying heating and cooling equipment are likely to see the labels

²¹ See 80 Fed. Reg. 74,020, 74,024 (Nov. 27, 2015) (proposing to align portable air conditioner test conditions with the test conditions in the DOE test procedures for room air conditioners and other cooling products).

²² DOE Regional Standards Enforcement Working Group, *Presentation Handout: Enforcement Plan* (Oct. 24, 2014) at 31 (Document ID# EERE-2011-BT-CE-0077-0070); see, e.g., Example of Voluntary Marking on Manufacturer Label (Document ID# EERE-2011-BT-CE-0077-0091); Public Meeting Transcript: Central Air Conditioner Regional Standards Enforcement Working Group (Sept. 4, 2014) at 43-67 (Document ID# EERE-2011-BT-CE-0077-0075) (discussing proposal for ruggedized label); Public Meeting Transcript: Central Air Conditioner Regional Standards Enforcement Working Group (Sept. 24, 2014) at 4-16 (Document ID# EERE-2011-BT-CE-0077-0079) (same).

²³ See 16 C.F.R. § 305.14(b)(2)(ii) & (iii); see also 80 Fed. Reg. at 67,369 (proposed 16 C.F.R. § 305.14(a)(2)(ii) & (iii)).

without seeing the actual product, the manufacturer or private labeler's identity may not be readily apparent to the consumer. Moreover, though many retailers, installers, and assemblers deal more or less exclusively with a single manufacturer or private labeler, that is not universally the case. Therefore, having the manufacturer or private labeler's name on the EnergyGuide label would likely be helpful to a consumer shown multiple labels by a heating and cooling equipment retailer, installer, or assembler.

Third, while the Joint Commenters do not object to FTC's proposal to allow central air conditioner manufacturers to print multiple model numbers on a single label as long as the models share the same efficiency ratings and capacities, FTC should consider establishing a maximum limit, either on the number of different model numbers or the amount of space that can be devoted to listing such numbers. Including a long string of several model numbers on a single label could impact the legibility of the label and/or discourage consumers from reviewing it carefully.

Thank you for the opportunity to participate.


Kelly Speakes-Backman
Senior Vice President of Policy & Research
Alliance to Save Energy


Jennifer Thorne Amann
Buildings Program Director
American Council for an Energy-Efficient Economy

Marianne DiMascio
Outreach Director
Appliance Standards Awareness Project

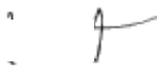

Mel Hall-Crawford
Special Projects Director
Consumer Federation of America



Shannon Baker-Branstetter
Policy Counsel, Energy and Environment
Consumers Union



Timothy Ballo
Staff Attorney
Earthjustice



Noah Horowitz
Director & Senior Scientist, Center for Energy Efficiency, Energy & Transportation
Program
Natural Resources Defense Council

/s/ Tyson Slocum (by permission)
Tyson Slocum
Director, Energy Program
Public Citizen