



1111 19th Street NW > Suite 402 > Washington, DC 20036  
t 202.872.5955 f 202.872.9354 www.aham.org

November 14, 2016

Via Online Comment Portal

Mr. Hampton Newsome  
Attorney  
Division of Enforcement, Bureau of Consumer Protection  
Federal Trade Commission  
600 Pennsylvania Ave., NW  
Washington, D.C. 20580

<https://ftcpublic.commentworks.com/ftc/plumbingnprm>

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

Dear Mr. Newsome:

The Association of Home Appliance Manufacturers (AHAM) respectfully submits the following comments to the Federal Trade Commission (FTC or Commission) on its proposed Energy Labeling Amendments, (16 CFR Part 305) (Project No. R611004), 81 Fed. Reg. 62681 (Sept. 12, 2016).

AHAM represents manufacturers of major, portable and floor care home appliances, and suppliers to the industry. AHAM's more than 150 members employ tens of thousands of people in the U.S. and produce more than 95% of the household appliances shipped for sale within the U.S. The factory shipment value of these products is more than \$30 billion annually. The home appliance industry, through its products and innovation, is essential to U.S. consumer lifestyle, health, safety and convenience. Through its technology, employees and productivity, the industry contributes significantly to U.S. jobs and economic security. Home appliances also are a success story in terms of energy efficiency and environmental protection. New appliances often represent the most effective choice a consumer can make to reduce home energy use and costs.

AHAM supports the FTC and Department of Energy (DOE) in efforts to save energy and help consumers make purchase decisions that are informed by energy use and efficiency. We recognize that an integral part of the appliance program is appliance labeling and do not oppose labeling for portable air conditioners. AHAM does, however, oppose combining range categories for portable air conditioners and room air conditioners as the consumers buying those products are not the same.

## **I. Portable Air Conditioner and Room Air Conditioner Consumers Differ**

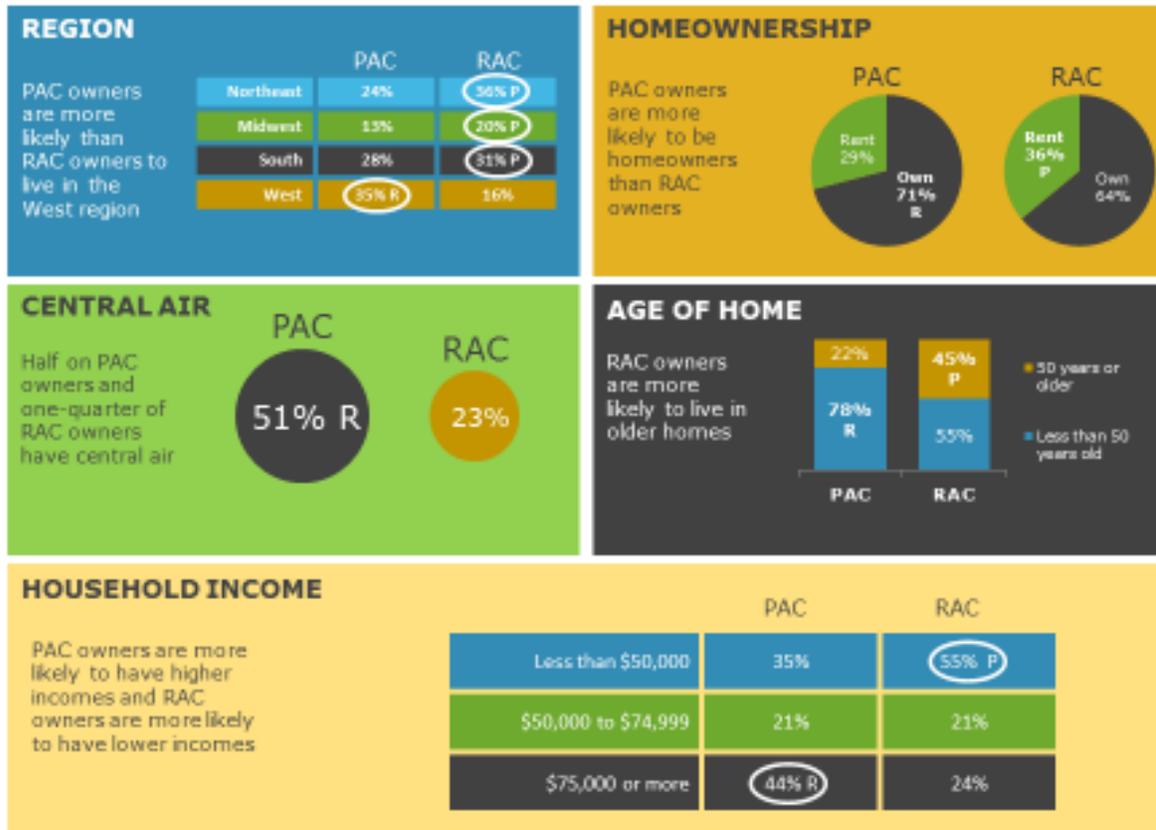
The Commission proposed to require EnergyGuide labels for portable air conditioners (PACs) and proposed combining range categories for PACs and room air conditioners (RACs). The Commission proposed to wait to issue a final rule on PAC labels until DOE harmonizes the test procedures for those products. The Commission cited as reasoning for this proposal comments it received citing examples that assert that consumers compare PACs and RACs and a DOE statement that “comparative ratings between room ACs and portable ACs [are] desirable.” FTC sought comment on its proposal.

AHAM does not oppose the Commission’s proposal to require EnergyGuide labels for PACs. But AHAM does oppose the Commission’s proposal to combine range categories for PACs and RACs. AHAM data, based on a survey of RAC and PAC owners conducted in 2016 by The Stevenson Company,<sup>1</sup> show that RAC and PAC consumers are different. PAC owners are more likely to have higher incomes, own their home, live in the West region, and have newer homes (less than 50 years old). RAC owners are more likely to have lower incomes; rent their home; live in the Northeast region, and have older homes (50 years or more). These data are presented in more detail below in Figure 1.

---

<sup>1</sup> The Stevenson Company, AHAM Home Comfort Report, Prepared for AHAM (Sept. 2016). An online survey was conducted among consumers nationwide who met the following criteria: nationally representative sample; own a portable air conditioner or room air conditioner; 18 years or older; not competitively employed; primarily or equally responsible for the purchase of portable/room air conditioner; primarily/equally uses the portable/room air conditioner; mix of genders, incomes, home ownership, census region. 2,000 interviews were completed (1,000 among PAC owners and 1,000 among RAC owners).

## Summary of Key Measures



**Figure 1: Key Differences Between PAC and RAC Owners**

Moreover, each product has unique key purchase drivers. PAC purchasing is most often related to portability and the inability of a RAC to fit in the consumers' window. In other words, PAC purchasers did not consider purchasing a RAC because they wanted the ability to move the product from room to room, they wanted the ability to store the unit elsewhere in cooler weather, or a RAC would not fit in their window. RAC purchasing is most often related to a consumer not needing portability, lower cost, and lack of awareness of PACs. In other words, RAC purchasers did not consider purchasing a PAC because they did not need the ability to move the unit from room to room, they thought PACs were too expensive, or they did not know about PACs. In addition, according to the AHAM Home Comfort Report, most consumers say that they are likely to repurchase the configuration (PAC or RAC) they currently own.

In addition, RACs and PACs do not have similar usage, meaning that the cost to operate the products, shown on the EnergyGuide label, will not be comparable over the course of a year. This is evident by comparing data DOE cited in its recent proposed rule on energy conservation standards for PACs. DOE cited the Residential Energy Consumption Survey 2009 to indicate RAC operating hours are 585 hours per year. DOE also cited to a field use study of PACs that

on average of 86 cooling mode operating hours for the 86 days measured in the study, or for the equivalent of 182 cooling mode operating hours for a six month cooling study.<sup>2</sup> RACs represent the principal source of cooling in many households—only six percent of households with RACs also have central air conditioning. Of respondents to the AHAM Home Comfort Report who had central air conditioning, 31 percent use RACs and 69 percent use PACs, a further indication that usage patterns significantly differ between products. Thus, there is a strong indication that, unlike RACs, PACs are used for supplemental cooling.

Because RACs and PACs are not the same product and, as demonstrated above, their consumers are different, combining the ranges of comparability for the two products could be confusing to consumers. Currently, there are different ranges of comparability for non-louvered and casement RACs. Those products have different functionality and installation and are appropriately separated so that a consumer can compare products within the class they are purchasing. This approach correctly recognizes that the products are not directly comparable and leads consumers to compare apples to apples. Mixing product different product types would contradict this approach and could confuse consumers who, as discussed above, are shopping with different focuses depending on whether they are looking for a RAC or a PAC. This will also dilute the meaning of the EnergyGuide label.

In reviewing features driving air conditioner unit purchases, according to the AHAM Home Comfort Report, the most important features for both PACs and RACs are cooling capacity (BTUs) and price. Energy Efficiency Ratio and cost to operate the unit do enter into the purchase decision, but come later in the list of priorities. Thus, even if consumers do compare RACs and PACs in making an air conditioner purchase, they may not be comparing energy efficiency and/or cost to operate in making a decision between the two products. Instead, they are likely focused on cooling capacity and price.

The Commission cited DOE's statement that it would be desirable to have comparable ratings between RACs and PACs and concluded that that implies that consumers compare these products. FTC should not rely on implications derived from DOE's desire to have comparable test procedures. FTC must rely on data demonstrating the two products are comparable in their use and that consumers compare the products. The DOE statement demonstrates neither. Moreover, though DOE has indicated it has plans to harmonize the PAC and RAC test procedures, DOE has yet to propose to do so and has not undergone notice and comment rulemaking. Thus, it is possible that DOE will not proceed with RAC test procedure changes that would harmonize the procedures. FTC should not finalize a labeling proposal based on a rule DOE has not proposed, vetted with stakeholders, or finalized.

---

<sup>2</sup> Burke, *et al.*, 2014. "Using Field-Metered Data to Quantify Annual Energy Use of Residential Portable Air Conditioners." Lawrence Berkeley National Laboratory Berkeley, CA. LBNL Report LBNL-6469E. September 2014. Note that DOE did not rely upon this data in its proposed rule and instead used RAC data as a proxy for PACs. AHAM commented that DOE should use the field metered data from this study. DOE relied on the field metered data from this study for other inputs in its analysis and AHAM commented that it should do so for usage as well. The usage from the Burke, *et al.* study is consistent with what AHAM would expect to see for PAC usage—we believe PAC usage is much less than RAC usage.

## II. Labeling and Energy Conservation Standards Compliance Should Be Aligned

The Commission also sought comment on the timing and content of the reporting requirements for PACs.

AHAM continues to urge the Commission to require reporting and EnergyGuide labeling only when compliance with Federal energy conservation standards is required. As we indicated in our previous comments dated January 2016, AHAM strongly opposes a requirement to label PACs prior to the compliance date of an energy conservation standard. Recognizing that it takes considerable effort to design products to meet an energy conservation standard, especially a new standard, EPCA provides manufacturers with a five year lead-in period to new energy conservation standards. *See* 42 U.S.C. 6295(I). The pre-development, development, and tooling phases of launching a new product take years to complete and require extensive company resources. And, as the Commission and DOE are well aware, bringing a product to market requires more than just development. Companies must also ensure that the products it will release meet the applicable standard and must certify compliance with DOE and, if applicable, include an EnergyGuide label. As described in our January 2016 comments, there are a multitude of company resources and a significant amount of time and coordination that go into these activities.

For the reasons we listed in our January 2016 comments and incorporate by reference here, requiring EnergyGuide labeling for PACs prior to the compliance date of a new energy conservation standard will require companies to divert resources from developing new, more efficient products to labeling. Aligning the compliances dates for energy conservation standards and EnergyGuide labeling, however, will allow manufacturers to engage in the extensive development and testing activities required to innovate and bring more efficient products to market and to comply with regulatory requirements.

AHAM also would request that, before finalizing labeling requirements for PACs, the Commission issue a more specific proposal that would include specifically proposed label content, compliance dates, and reporting requirements. Those requirements should all be consistent with DOE's reporting requirements and the DOE test procedure.

In addition, we would request that, should FTC decide to move forward with labeling/reporting requirements prior to the compliance date of PAC energy conservation standards, no requirements go into effect prior to October 1, 2017. Products for the upcoming cooling season have already been designed and are in production as these comments are being written. Commission staff has already acknowledged the burden and disruption associated with labeling per the DOE test procedure prior to that date in a Staff Opinion Letter.<sup>3</sup>

---

<sup>3</sup> Letter from Hampton Newsome, Attorney, Federal Trade Commission, to Jennifer Cleary, Director, Regulatory Affairs, AHAM (Oct. 13, 2016) (on file with FTC).

### III. Burden Estimates

The Commission sought clarification on AHAM's comments regarding the burden associated with reporting and labeling. FTC indicated it was unclear whether AHAM's reporting burden estimate of 40 hours refers to annual certification reports or to new model reports and sought clarification.

- AHAM estimated 32 hours per model for testing and up to 4 hours for preparing the data. Thus, AHAM agrees with FTC's proposal to assume, for PACs, that testing will take 32 hours per model—eight hours for each unit consistent with general industry practice to test four units in order to demonstrate compliance.
- AHAM estimated a minimum of 40 hours for reporting. (FTC had estimated two minutes per basic model). The 40 hours AHAM estimated are per report for the PAC product category (the number of hours per report varies by product type) and would vary depending on the number of PAC models a company reports. This is based on experience with reporting for other similar product categories. Although it may take only a few minutes to physically enter the data for a model, each model must be researched before it is ready to be entered into the report. This includes data gathering, often from multiple teams and locations, and quality checking.
- AHAM estimated a minimum of 40 hours for label preparation in addition to the six seconds FTC estimated to affix the label to the product. Label design is done on a per model basis because the energy cost information and other model details included on the label can be different for each basic model. Other elements related to labeling are not done on a per model basis, but rather apply across the full product category: label template design; coordinating label printing internally or through a third party vendor; and ensuring the proper parts are on the line in order to affix the label.

AHAM appreciates the opportunity to submit these comments on the Commission's proposed Energy Labeling Amendments and would be glad to discuss these matters in more detail should you so request.

Respectfully Submitted,

Jennifer Cleary  
Senior Director, Regulatory Affairs