



## FEDERAL TRADE COMMISSION

### 16 CFR Part 305

**RIN: 3084-AB15**

### Energy Labeling Rule

**AGENCY:** Federal Trade Commission.

**ACTION:** Final rule.

**SUMMARY:** The Federal Trade Commission (“FTC” or “Commission”) amends the Energy Labeling Rule (“Rule”) to require EnergyGuide labels for portable air conditioners and issue amendments to central air conditioner labels to conform with Department of Energy (“DOE”) changes to efficiency descriptors.

**DATES:** Amending instructions 1 (authority), 3 (for § 305.2), 5 (for § 305.3), 6 (for § 305.7), 7 (for § 305.10), 8 (for § 305.11), 9 (for § 305.13), 10 (for § 305.18), 12 (for § 305.27), 13 (for appendix E), and 14 (for appendix K2) are effective on October 1, 2022, and amending instructions 2 (for part 305), 4 (for § 305.2), and 11 (for § 305.20) are effective on January 1, 2023.

**ADDRESSES:** Copies of this document are available on the Commission’s website, [www.ftc.gov](http://www.ftc.gov).

**FOR FURTHER INFORMATION CONTACT:** Hampton Newsome (202-326-2889), Attorney, Bureau of Consumer Protection, Federal Trade Commission, Room CC-9528, 600 Pennsylvania Avenue NW, Washington, DC 20580.

### SUPPLEMENTARY INFORMATION:

#### I. Background on the Energy Labeling Rule

The Commission issued the Energy Labeling Rule (“Rule”) in 1979,<sup>1</sup> pursuant to the Energy Policy and Conservation Act of 1975 (“EPCA”).<sup>2</sup> The Rule requires

<sup>1</sup> 44 FR 66466 (Nov. 19, 1979).

<sup>2</sup> 42 U.S.C. 6294. EPCA also requires the Department of Energy (“DOE”) to develop test procedures that measure how much energy appliances use, and to

energy labeling for major home appliances and other consumer products to help consumers compare the energy usage and costs of competing models. It also contains labeling requirements for refrigerators, refrigerator-freezers, freezers, dishwashers, water heaters, clothes washers, room air conditioners, furnaces, central air conditioners, heat pumps, plumbing products, lighting products, ceiling fans, and televisions.

The Rule requires manufacturers to attach yellow EnergyGuide labels to many of the covered products and prohibits retailers from removing these labels or rendering them illegible. In addition, it directs sellers, including retailers, to post label information on websites and in paper catalogs from which consumers can order products. EnergyGuide labels for most covered products contain three key disclosures: estimated annual energy cost, a product's energy consumption or energy efficiency rating as determined by DOE test procedures, and a comparability range displaying the highest and lowest energy costs or efficiency ratings for all similar models. The Rule requires marketers to use national average costs for applicable energy sources (*e.g.*, electricity, natural gas, oil) as calculated by DOE in all cost calculations. Under the Rule, the Commission periodically updates comparability range and annual energy cost information based on manufacturer data submitted pursuant to the Rule's reporting requirements.<sup>3</sup>

## **II. Notice of Proposed Rulemaking**

In an April 10, 2020 Notice of Proposed Rulemaking (NPRM) (85 FR 20218), the Commission sought comments on EnergyGuide labels for portable air conditioners, updates to efficiency descriptors for central air conditioner labels, and

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determine the representative average cost a consumer pays for different types of energy.

<sup>3</sup> 16 CFR 305.10.

the need for changes to the current label layout and format requirements.

**A. Proposed EnergyGuide Labels for Portable Air Conditioners**

The NPRM proposed establishing EnergyGuide labeling for portable air conditioners. Under EPCA, the Commission may require labeling for DOE-designated covered products if it determines labeling will “assist purchasers in making purchasing decisions” and will be “economically and technologically feasible.” 42 U.S.C. 6294(a)(3). Prior to the NPRM, the Commission sought comment on labeling requirements for portable air conditioners in several previous *Federal Register* notices. In those publications, the Commission discussed the benefits and burdens of such labels, as well as their format and content, which would largely match the labels already required for room air conditioners.<sup>4</sup> Over the course of this proceeding, the Commission found, in accordance with its EPCA authority, labeling for this product category is likely to be economically and technologically feasible and assist consumers in their purchasing decisions.<sup>5</sup> Over several rounds of comments, a wide array of stakeholders, including industry members, utilities, and consumer groups supported (or did not oppose) the proposal.

In 2017, the Commission delayed final label requirements due to uncertainty about when DOE would promulgate efficiency standards for these products.<sup>6</sup> Specifically, in January of that year, DOE withdrew its final efficiency standards from *Federal Register* publication pursuant to the Presidential Memorandum on Implementation of Regulatory Freeze, leaving the final standards compliance date

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<sup>4</sup> 79 FR 34642 (June 18, 2014); 80 FR 67351 (Nov. 2, 2015); 81 FR 62681 (Sept. 12, 2016); and 82 FR 29230 (June 28, 2017). Earlier in this proceeding, the Commission waited on label requirements pending a final DOE-issued test procedure for these products. DOE published that test procedure on June 1, 2016 (81 FR 35242), and it became mandatory for energy use representations on November 28, 2016.

<sup>5</sup> 80 FR at 67357; and 81 FR at 62683. In discussing similar economic and technological feasibility determinations for labels in 1979, the Commission concluded “that Congress[’s] intent was to permit the exclusion of any product category, if the Commission found that the costs of the labeling program would substantially outweigh any potential benefits to consumers.” 44 FR at 66467-68 (discussing determinations under 42 U.S.C. 6294(a)(1)).

<sup>6</sup> 82 FR at 29232.

unclear. In early 2020, DOE announced a compliance date for the standards resolving any uncertainty.<sup>7</sup> Accordingly, the Commission then released an NPRM proposing EnergyGuide labels for portable air conditioners and a January 10, 2025 compliance date to coincide with the effective date of the DOE standards.

In previous notices on these issues, the Commission addressed the benefits as well as the economic and technological feasibility of portable air conditioner labels. In a 2015 notice, for example, it found portable air conditioners are common in the marketplace, vary in energy efficiency, and use energy similar to or greater than, currently labeled room air conditioners.<sup>8</sup> In addition, DOE reported the aggregate energy use of portable air conditioners has increased.<sup>9</sup> According to DOE estimates, sellers shipped 1.32 million units in the United States in 2014, with future growth projected.<sup>10</sup>

DOE also found these products exhibit a wide range of efficiency ratings and energy costs for similarly sized units (a difference of about \$100 per year between the most and least efficient models). After the 2025 implementation of DOE standards, that range is likely to be smaller, but remain significant (a difference of about \$30-\$50 depending on the size category as indicated in Appendix E2). DOE estimated average per-household annual electricity consumption for these products at 804 kWh/yr, generating \$105 in annual energy costs (at \$0.13 per kWh/hr).<sup>11</sup> Given this information, the Commission concluded energy labels are likely to assist consumers with their purchasing decisions by allowing them to compare the energy costs of competing models and, consequently, save significant money on their electric bills.

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<sup>7</sup> 85 FR 1378 (Jan. 10, 2020).

<sup>8</sup> 80 FR at 67357-58.

<sup>9</sup> See 78 FR 40403, 40404-05 (July 5, 2013).

<sup>10</sup> The most recent DOE shipment statistics are from 2014. 85 FR 1378; and “2016-12 Final Rule Technical Support Document: Energy Efficiency Program for Consumer Products and Commercial and Industrial Equipment: Portable Air Conditioners” (“DOE TSD”) December 2016 at <https://www.regulations.gov/document?D=EERE-2013-BT-STD-0033-0047>.

<sup>11</sup> DOE TSD at Table 7.3.2.

Further, in the NPRM, the Commission stated there is no evidence labeling is economically or technologically infeasible (*i.e.*, the costs of labeling substantially outweigh consumer benefits). Indeed, the burdens (discussed *infra* in the Paperwork Reduction Act section) of labeling are not likely to differ significantly from those for room air conditioners, which already have EnergyGuide labels.<sup>12</sup>

As discussed in the NPRM, the proposed portable air conditioner label would be mostly identical to the current room air conditioner label in content, format, and placement (*i.e.*, on packaging, not the product itself). The proposed amendments incorporated DOE's definition of "portable air conditioner" at § 305.3.<sup>13</sup> Applying the same electricity cost rate (\$0.13 kWh/hr) currently used for room air conditioners, the NPRM also contained cost ranges specifically for portable air conditioners in three size categories and derived from DOE energy use data.<sup>14</sup> Consistent with findings made in the 2016 and 2017 notices, the NPRM did not propose combining the ranges for portable and room air conditioners because it is not clear whether consumers routinely compare the two product categories when shopping.<sup>15</sup> However, consumers who want to compare them would be able to do so easily using the label's energy cost disclosure. In addition, consistent with provisions applicable to room air conditioners, the proposed amendments contained reporting requirements identical to those created by DOE for these products.

Finally, in the NPRM, the Commission proposed establishing an effective date for the label coinciding with the compliance date for DOE standards. Citing burdens associated with testing and labeling, industry comments earlier in this proceeding

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<sup>12</sup> See 80 FR at 67357 and 81 FR at 62683.

<sup>13</sup> To effect new labeling requirements, the proposed amendments inserted the term "portable air conditioner" next to "room air conditioner" into appropriate paragraphs of the Rule as detailed in the amendatory language included in this Notice.

<sup>14</sup> See DOE TSD, Chapter 3 at 24-25 and Ch. 5 at 5-20. Using estimates for the most energy consumptive models based on the DOE standards, the ranges by size category expressed in yearly energy consumption are: 1) less than 6,000 Btu/hr: (375-753 kWh/yr), 2) 6,000 to 7,999 Btu/hr: (663-916 kWh/yr), and 3) 8,000 Btu/yr or greater: (807-1034 kWh-yr).

<sup>15</sup> 81 FR at 62682; and 82 FR at 29231-29232.

urged the Commission to synchronize any new labeling requirements with the DOE standards compliance date.<sup>16</sup>

### **B. Efficiency Descriptors for Central Air Conditioners**

In the NPRM, the Commission also sought comments on updates to the efficiency descriptors on central air conditioner labels. In 2017, as part of an efficiency standards proceeding, DOE announced changes to the rating methods and associated efficiency descriptors for central air conditioners (*e.g.*, from “Seasonal Energy Efficiency Ratio (SEER)” to “Seasonal Energy Efficiency Ratio 2 (SEER2)”).<sup>17</sup> The DOE changes become effective on January 1, 2023. To ensure consistency with the DOE standards, the NPRM proposed changing all applicable references in Part 305, effective on January 1, 2023. Given the relatively small differences in the ratings produced by the old and the new rating methods, the Commission did not propose any additional label changes. The Commission noted plans to update ranges in Appendix H and I, as well as applicable numbers on the sample labels in Appendix L, when new data becomes available.

### **C. Questions on Label Layout and Format Requirements**

The Commission also requested comment on whether it should revise requirements in the Rule related to layout, format, and placement of EnergyGuide labels. Specifically, the NPRM asked whether some of these requirements (*e.g.*, § 305.13(b)) are too prescriptive. In addition, the NPRM asked whether the Rule should contain a general label durability and disclosure format requirement in lieu of the existing, specific provisions for layout, type style, setting, and label attachment. The NPRM also asked whether industry members interpret existing guidance in the Rule related to adhesive labels as a “required standard.” Finally, the NPRM contained several questions about the Rule’s cost and benefits and the potential

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<sup>16</sup> 82 FR 29231.

<sup>17</sup> 82 FR 1786 (Jan. 6, 2017); and 82 FR 24211 (May 26, 2017).

impact of more flexible requirements.

## **V. Comments on the NPRM**

The Commission received seven comments in response to the NPRM.<sup>18</sup> As detailed below, the commenters generally supported (or did not oppose) labels for portable air conditioners and the transition to the new DOE efficiency descriptors. However, they provided differing views on the need to revise existing label requirements. Finally, some commenters offered broad suggestions for replacing physical labels with electronic labels.

### **A. Portable Air Conditioner Labels**

All the commenters supported (or did not oppose) adding portable air conditioner labels to the Rule.<sup>19</sup> As discussed below, they asserted the labels' energy cost information would help consumers choose among portable air conditioners and alert them to the relative cost of portable and room models. The commenters also supported providing comparability ranges separate from room air conditioners.

The comments emphasized the label's consumer benefits. For example, CFA explained the labels "will provide significant value to consumers making purchasing decisions." The Joint Commenters noted the energy costs disclosures "will correctly indicate to consumers that portable units are typically less efficient than room air conditioners." AHAM, which represents portable air conditioner manufacturers, did not oppose the label but, as discussed further below, urged the Commission to

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<sup>18</sup> The comments are available at [www.regulations.gov](http://www.regulations.gov). The comments consist of Air-Conditioning, Heating, and Refrigeration Institute (AHRI) (#33-09); Association of Home Appliance Manufacturers (AHAM) (#33-04); Appliance Standards Awareness Project (ASAP) (including American Council for an Energy-Efficient Economy (ACEEE), National Consumer Law Center, on behalf of its low-income clients (NCLC), Natural Resources Defense Council (NRDC), & Northwest Energy Efficiency Alliance (NEEA)) (ASAP *et al.*) (#33-06); Goodman Manufacturing (#33-08); Jieun Rim (#33-02); Consumer Federation of America, National Consumer Law Center, Sierra Club, Earthjustice ("Joint Commenters") (#33-05); and the California Investor-Owned Utilities (Pacific Gas and Electric Company, San Diego Gas and Electric, and Southern California Edison) (CA IOUs) (#33-07).

<sup>19</sup> Joint Commenters, Jieun Rim, and ASAP *et al.* supported the proposal. AHAM stated that it did not oppose the labeling.

eliminate physical labels for all products and transition to an electronic label structure.

The commenters supported (or did not oppose) separate comparability ranges for portable and room air conditioners. AHAM, which “fully agreed” with the proposed approach on ranges, explained “consumers can adequately compare the two products, to the extent they even wish to do so for these two different products, easily using the label’s energy cost disclosure.” Referencing earlier comments, it argued combining the ranges would cause confusion because consumers of these products are different, and the two air conditioner categories do not have similar usage. AHAM also argued consumers focus mostly on capacity and purchase price when buying air conditioner units and thus may not use comparative energy costs information between the two categories.

Commenters further recommended two additional items. First, two commenters noted the regulatory text in § 305.10 should include a reference for DOE capacity and rounding determinations for portable air conditioners (Appendix CC to 10 CFR part 430, subpart B).<sup>20</sup> Second, the CA IOUs recommended statements on product packaging and literature about proper portable air conditioner operation, explaining the need for ducting to vent the heat produced by a unit to the outside.

Commenters, however, offered differing views on the timing for the new labels. AHAM strongly supported a compliance date coinciding with the DOE standards. It asserted that designing products to meet the new standards requires “considerable effort,” a fact reflected in EPCA’s five-year lead-in period for DOE standards. According to AHAM, the pre-development, development, and tooling phases of launching a new product take years to complete and require extensive company resources. In its view, instituting a label mandate prior to the DOE compliance date would require companies to divert resources from developing new, more efficient products to labeling. AHAM also explained that aligning the

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<sup>20</sup> See ASAP *et al.* and AHAM.



compliance dates with the DOE standards and EnergyGuide labels would allow manufacturers to engage in the extensive development and testing activities required to innovate and bring more efficient products to market, as well as to comply with regulatory requirements.

In contrast, the Joint Commenters, *ASAP et al.*, and the California Investor-Owned Utilities (CA IOUs) disagreed. The Joint Commenters argued consumers who currently lack the protection of a DOE minimum efficiency standard should have access to labels sooner to help identify and avoid inefficient models. Given the delays in the proceeding caused by the DOE litigation, these commenters argued manufacturers have had “ample time to make the investments they have claimed are necessary to deploy the labels.” In addition, with the issuance of DOE’s test procedure in 2016, manufacturers must, pursuant to EPCA (42 U.S.C. 6293(c)), disclose the DOE results in any energy representations they make. Thus, according to the Joint Commenters, manufacturers “have had more than three years to gain familiarity with the test procedures and to understand how different basic models perform under test.” The CA IOUs also noted manufacturers are currently reporting their models’ efficiency ratings to the California state database. *ASAP et al.* agreed FTC should require labeling sooner, stating: “[l]abeling in advance of the compliance date of the DOE standards will provide consumers with information to compare portable AC units as well as an indication that portable ACs are less efficient than room ACs.”

## **B. Energy Efficiency Descriptor Transition**

AHRI, Goodman, and the CA-IOUs generally supported the proposal to update the efficiency descriptors on the label. No commenter opposed the proposal. However, AHRI and Goodman urged the Commission to issue these updates as part of a broader overhaul to the Rule, which, as discussed in section V.C., would involve a transition from physical labels on individual units to online labels accessed through websites or QR codes.

These commenters also discussed the importance of updating the efficiency descriptors. In preparation for the DOE change, AHRI's members are designing, testing, certifying, and introducing new equipment. They are also educating industry members and consumers by modifying AHRI's product directory and certification program. AHRI expects manufacturers to release products with updated efficiency descriptors prior to the 2023 compliance deadline. DOE has issued guidance allowing early compliance with the test procedures, as long as the represented efficiencies comply with the 2023 minimum requirements. Given this timing, AHRI urged the Commission to complete label updates by summer 2021, so manufacturers may release compliant products as early as January 2022. In contrast, Goodman urged the Commission to issue the updates earlier, by December 2020, to give manufacturers even more time.

To minimize market confusion from such early compliance, AHRI is developing a communications campaign "to inform distributors, contractors, regulators, and building inspectors about the transition." AHRI did not offer any specific proposals for addressing the transition on the physical label itself. It also opposed any FTC mandate for two separate labels requiring disclosures of the old and new metrics. Instead, it recommended a transition to an "electronic label" beginning in 2023 as discussed further below. Prior to that date, under AHRI's proposal, manufacturers choosing to display the new efficiency descriptor earlier would use the physical EnergyGuide label along with a smaller label containing regional installation information, as well as a QR (or equivalent) link to an updated FTC electronic label.

Finally, on a separate issue involving central air conditioners, Goodman suggested the Commission modify range information for split-systems to revert to a format that appeared on labels prior to 2016. In its view, the current label, which limits the efficiency ratings to a single value, leads to consumer confusion because the actual efficiency rating for a system depends on the combination of the outdoor condenser and indoor unit.

### C. Label Burdens

Commenters offered a variety of views regarding the Rule's approach to labeling. First, the Joint Commenters, the CA IOUs, and Goodman offered differing views on whether the Rule's labeling requirements are "unnecessarily prescriptive." Second, as discussed in section D, both AHAM and AHRI recommended the Commission completely revise the Rule to transition to online or virtual energy labels.

The Joint Commenters and the CA IOUs rejected the notion that the Rule's requirements for label layout, type style and setting, and label adhesion are too prescriptive. In the CA IOUs' view, increased flexibility in the labeling requirements "could result in poor or inconsistent label quality that could inhibit consumers from making informed decisions regarding product performance." Further, they asserted that uniform presentation facilitates effective "information delivery" and avoids "unnecessary confusion." The CA IOUs further suggested the labels would better serve consumers if they appeared on both packages and the products themselves. Similarly, the Joint Commenters described the label specifications as "vital to the success of this program" and contended the questions in the NPRM ignore the "unique context and history of the EnergyGuide label program." In their view, because the EnergyGuide label has more information (*e.g.*, operating costs, efficiency ratings, comparative range bars, key product features, and explanatory statements) than many other required disclosures in other programs (*e.g.*, labels for textiles and leather goods), the energy labels require a format "highly standardized to ease comparisons." In addition, they argued allowing variability in layout and type style would hinder the label's effectiveness in assisting consumers with their purchasing decisions.

Finally, the Joint Commenters asserted the NPRM's questions regarding label flexibility "exhibits amnesia as to the widespread noncompliance that the inadequate specificity in [the FTC's] prior regulations had fostered." The commenters cited past store visits demonstrating "the use of adhesives varied widely and that certain

approaches were associated with higher rates of missing or detached labels.” The Joint Commenters noted that, in response to these findings, FTC added “specificity to its regulations governing adhesives.” In their view, reducing this specificity would “only encourage a return to labelling practices that deprive consumers of access to the important information that EnergyGuide labels provide.”

In contrast, Goodman, a heating and cooling equipment manufacturer, offered several detailed suggestions to eliminate specific labeling requirements in § 305.20. It argued that these changes would simplify the Rule and free “businesses from unnecessarily prescriptive requirements.” Specifically, Goodman recommended the Rule specify only minimum dimensions instead of the current range of widths and lengths and include only whole number minimums (*e.g.*, 7 inches for the length as opposed to 7 3/8 inches). It also suggested removal of requirements related to picas for copy set, the centering of text, and type style and setting, which includes requirements for a uniform font type. Goodman also recommended elimination of the existing paper stock requirement (“58 pounds per 500 sheets or equivalent”) and minimum peel adhesion capacity (“12 ounces per square inch”). Finally, it claimed the suggested minimum peel adhesion capacity in § 305.20(d) “is typically taken to be” a requirement despite the Rule’s language to the contrary.

#### **D. Transition to Electronic Labeling**

Three commenters discussed issues beyond whether the Rule’s specific label requirements should be less prescriptive. Specifically, AHAM, AHRI, and Goodman urged the Commission to consider “whether physical labels continue to provide value to consumers.” AHAM, whose members manufacture large household appliances, such as refrigerators and dishwashers, argued the “showroom focus” of the label is outdated and recommended a “transition away from physical labels” and a shift to a program providing label content solely online. In addition to helping manufacturers by significantly reducing compliance costs, AHAM argued such an approach would help consumers by reflecting evolving shopping patterns. According to AHAM, the

majority of consumers research appliances online before entering a store or purchasing from a website. Moreover, energy efficiency is not a primary factor in consumers' appliance purchases. Instead, according to AHAM, consumers focus on other factors, primarily purchase "cost." Should the FTC retain requirements for a physical label, AHAM recommended more flexible requirements, but also urged the Commission to retain the existing label specifications as a safe harbor. According to AHAM, companies have invested time and resources in developing labels compliant with the existing requirements. A safe harbor would allow them to benefit from these investments and provide more certainty even if the Commission shifts to less detailed regulations.

In AHAM's view, conditions have changed even in the last decade, and significant opportunities exist to permit "the electronic delivery of label information." It noted the Commission has already laid the groundwork for such a shift by requiring manufacturers to provide electronic access to label content (*e.g.*, § 305.9 (online availability of labels) and § 305.11 (submission of website address for online labels)). With these regulatory requirements in place, AHAM predicted a transition to electronic labels would involve a "small step" that would "dramatically reduce regulatory burden and cost" and eliminate the redundancy of requiring labels in both digital and paper format. AHAM asserted such a change would allow consumers "to access the content in the form and manner that best suits them" and allow them to "readily access the content wherever they may be researching their purchase." It also suggested such a shift would allow retailers to access labels from the DOE Compliance Certification Management System (CCMS) and provide flexibility to "present the label content through printouts, electronic displays, or other means" suitable to consumer needs. In addition, an online format would allow manufacturers to more easily update labels and make corrections to online content. Finally, AHAM urged the Commission to coordinate such efforts with Canada to "align data elements, reporting and content."

AHRI and Goodman offered similar suggestions but focused their comments on specific aspects of heating and cooling equipment. AHRI noted the FTC has the discretion under EPCA (42 U.S.C. 6294(a)) to discontinue the use of EnergyGuide labels for central air conditioners and heat pumps if it determines the label does not assist consumers in making purchasing decisions. It agreed with AHAM that the FTC has “already taken the most dramatic step forward in the virtual revolution by requiring all manufacturers to have a pdf or link version of its FTC label available online.” Nevertheless, according to AHRI, the label’s small value for heating and cooling equipment renders its administrative burden “outsized.” However, as discussed below, AHRI did not recommend the “wholesale retirement of EnergyGuide labels,” but rather a “modernization” using QR codes and electronic labels to inform consumers without requiring “anachronistic prescriptive stickers.”

In discussing the Rule’s current approach, AHRI argued the label on central air conditioners does not help consumers with their purchasing decisions because consumers generally do not buy these products “off-the-shelf” in retail stores and, for new home purchases, a builder (not the consumer) typically chooses equipment. In addition, contractors usually sell replacement products in the consumer’s home, often in urgent situations. In such transactions, contractors usually provide homeowners with information about their products using the “manufacturer’s literature, the AHRI Directory of Certified Product Performance, energy code requirements, incentive programs, and specific design features.” AHRI also argued, given the many different efficiency ratings of various outdoor-indoor unit combinations, “the actual value of the physical label is questionable at best.” Accordingly, not only are consumers unlikely to view the label prior to purchase, information provided directly by the contractor, including efficiency ratings for various unit combinations, is “significantly more accurate.”

In lieu of the current labeling approach, AHRI recommended a modified, smaller label giving both electronic access to consumer information online (*e.g.*,

through a QR code), as well as regional standards compliance statements in “clear text.” In AHRI’s view, this approach would bring “the cost-benefit equation” of the labeling program “into balance.” It would also allow consumers to learn about the product’s efficiency, while dramatically reducing the burden associated with affixing labels to the equipment.

## **V. Final Amendments**

The Commission issues the final amendments as proposed, with modifications discussed below. The amendments finalize the labeling requirements for portable air conditioners with a compliance date coinciding with the DOE standards.

Additionally, the amendments contain the proposed changes to the efficiency descriptors on central air conditioner labels. The Commission, however, declines to propose additional wide-ranging changes (*e.g.*, a transition to electronic labeling) to the EnergyGuide program at this time. Instead, the Commission may seek further comment on these issues, including the elimination of physical labels, in a future proceeding, where the Commission could gather the evidence necessary to fully consider significant amendments to the entire Rule.

### **A. Portable Air Conditioner Labels**

As proposed in the NPRM and supported by commenters, the Commission adopts the proposed amendments containing new labeling rules for portable air conditioners. As detailed in this and previous notices, these products are common in the marketplace, vary in energy efficiency, and use energy similar to, or greater than, currently labeled room air conditioners.<sup>21</sup> Further, energy labels for these products are likely to assist consumers with purchasing decisions by allowing them to compare the energy costs of competing models and, consequently, save significantly on their electric bills. In addition, there is no evidence labeling is economically or technologically infeasible (*i.e.*, that the costs of labeling substantially outweigh

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<sup>21</sup> 80 FR at 67357-58.

consumer benefits).<sup>22</sup>

After considering the comments, the Commission adjusts the compliance date to October 1, 2022.<sup>23</sup> As some commenters noted, manufacturers have sufficient information to create labels because, pursuant to 42 U.S.C. 6293(c), they have been testing their products since 2016 using the DOE procedure to substantiate any energy-related claims (including unit capacity) for all their models. Therefore, the proposed 2025 compliance date appears to be overly long, particularly given the expected consumer benefits from labeling very low efficiency units prior to the DOE standards. The Commission, however, understands such packaging changes can take time, particularly where manufacturers must redesign their box labels to accommodate the EnergyGuide. Accordingly, the final amendments establish an October 2022 compliance date to provide companies ample time to incorporate the label into packaging while getting these labels into the market sooner than originally proposed. As the Commission has noted in the past, manufacturers generally deploy their lines for these types of products on an annual basis beginning in October of each year.<sup>24</sup> The final compliance date, which coincides with the beginning of the model year, will allow manufacturers to incorporate the changes into their normal production schedules with minimal disruption. In addition, the Rule allows manufacturers to incorporate the label into the primary packaging display or affix them to label packaging (relieving them from redesigning boxes for models scheduled to be phased out before the 2025 standards).<sup>25</sup>

The final amendments also contain several other minor changes for the portable air conditioner labels in response to comments.<sup>26</sup> First, the final Rule

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<sup>22</sup> See 80 FR at 67357 and 81 FR at 62683.

<sup>23</sup> Specifically, manufacturers must include the new label on all units produced on or after that date.

<sup>24</sup> 83 FR 7593, 7594 (Feb. 22, 2018).

<sup>25</sup> 80 FR 67285, 67293 (Nov. 2, 2015).

<sup>26</sup> The final amendments also contain minor changes in section 305.27 (Paper Catalogs and Websites) to include references to portable air conditioners.



requires manufacturers to determine model capacity using the DOE testing requirements specifically applicable to portable air conditioners. Second, the final amendments contain a small change to the language in § 305.18(a)(9) to clarify that the comparative information on the portable air conditioners applies to models of similar capacity only (without the various configurations applicable to room air conditioners).<sup>27</sup>

### **B. Energy Efficiency Descriptor Transition**

The final Rule adopts the proposed amendments to require manufacturers to update the efficiency descriptors for central air conditioners to conform to pending DOE changes. The change for all applicable references in Part 305 will become effective on January 1, 2023 to ensure consistency with the new DOE requirements. To aid the transition, manufacturers may begin using the new information prior to January 1, 2023 in a manner consistent with DOE guidance. Given the relatively small differences produced by the old and the new rating methods, the amendments do not require dual labels or any additional explanatory information. As indicated in its comments, AHRI is developing a communications campaign to help various entities with the transition to the new descriptors. In addition, as part of the scheduled 2022 update to comparability ranges for all product classes (§ 305.12), the Commission will update ranges in Appendix H and I, as well as applicable numbers and terms on the sample labels in Appendix L.

### **C. Label Burdens and Electronic Labeling**

The final amendments do not make any broad changes to the Rule, although commenters recommended a wide array of potential changes. For instance, both

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<sup>27</sup> As with the room air conditioner labels, the portable air conditioner labels include the operating assumptions behind the energy cost estimates. In addition, the amendments do not contain requirements related to the need for ducting. Manufacturers have an incentive to ensure consumers understand how to operate their products properly and should not need a mandate from the FTC to do so. However, should problems arise in the marketplace, the Commission may reconsider such requirements in the future.

AHRI and AHAM recommended a transition away from the current physical label to a system that relies on electronic web-based labels or energy data to aid consumer purchasing decisions. Although these proposals warrant further exploration, such broad issues would require additional rounds of notice and comment to consider and develop. Accordingly, the Commission may consider those proposals during a future proceeding to avoid delay in promulgating the present amendments for portable air conditioner labels and update to efficiency descriptors for central air conditioners.

These broad industry suggestions are part of a larger inquiry about the Rule's future, particularly as online information continues to become more prevalent and consumer shopping habits change. EPCA's basic labeling provisions, developed in the 1970's, are predicated upon an understanding that consumers routinely examine and purchase products in retail showrooms with little prior information. Further, to ensure any covered product displayed in a showroom bears a label, the Rule requires manufacturers to affix the label on every unit it produces, apparently based on the expectation that any unit may be displayed in a store.

Over the years, however, buying patterns have changed. Consumers now frequently compare and purchase products without ever visiting a store. To help consumers in this evolving marketplace, the Commission's revisions in the last several years reflect these new buying patterns. Specifically, the FTC previously updated the Rule with clear requirements that retailers display labels on websites (§ 305.27), for manufacturers to make their labels accessible online (§ 305.9), and for manufacturers to submit links to those labels as part of their routine data reports filed through DOE's CCMS (§ 305.11).

Further amendments may reduce burdens while ensuring energy information is available to consumers. For instance, the Commission could examine whether the Rule should continue to require manufacturers to affix a display-ready EnergyGuide label on every appliance typically displayed in showrooms. Indeed, only a tiny fraction of units shipped actually appear in retail store displays, while the costs of

affixing display-ready labels to all units can impose significant burden. On the other hand, past commenters have noted that consumers use the label affixed to their old product in choosing a new one.

In addition, the Commission could consider changes to the label content to help consumers better compare products and understand issues not currently communicated by the label, such as climate change impacts, Smart Grid technologies, and better ways to display comparative energy cost information. However, without further commenter input, we do not know how valuable this information would be for consumers, and how easy it would be to convey such information with existing DOE-generated data.

These issues represent a few of many possible issues the Commission could consider in a future proceeding. In weighing any alternatives to the Rule, the Commission would need to ensure any new approach is consistent with its existing authority under EPCA. The Commission must also ensure consumers have access to clear, truthful energy information to assist them in their purchasing decisions while minimizing burdens placed on industry members. Fully evaluating these issues requires a more extensive proceeding focused from the outset at broad issues affecting the Rule in the 21st century.

The Commission also declines to propose amendments to eliminate the current physical labels for central air conditioners and replace them with a smaller label with a QR code (or its equivalent) linking consumers to online content as AHRI and Goodman recommended. Such substantial changes to the labeling program would require further study and consideration in a future rulemaking proceeding. In the meantime, the updated EnergyGuide label for central air conditioners, which contains both EPCA-mandated energy efficiency ratings and regional standards information for installers, will continue to aid both consumers and industry members.

Finally, the Commission may consider changes to the detailed label requirements (*e.g.*, the changes to current label layout and content advocated by

Goodman) in a future proceeding. Some of the Rule's detailed requirements mentioned in the NPRM may have indeed become obsolete. At the same time, detailed, uniform requirements for consumer labels like the EnergyGuide provide benefits to consumers by presenting information in a format that allows consumers to easily compare products across multiple categories. Moreover, the FTC's online, editable EnergyGuide templates already include all the label's general information in the size, font, and location required by the Rule and thus largely free manufacturers from having to navigate the detailed format requirements.

## **VI. Paperwork Reduction Act**

The current Rule contains recordkeeping, disclosure, testing, and reporting requirements that constitute information collection requirements as defined by the Paperwork Reduction Act ("PRA").<sup>28</sup> Under the PRA, an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement, unless it displays a currently valid Office of Management and Budget ("OMB") control number. OMB has approved the Rule's existing information collection requirements through December 31, 2022 (OMB Control No. 3084-0069).

The amendments include new labeling requirements for portable air conditioners that constitute information collections under the PRA. The Commission submitted these proposed information collections for review by OMB in conjunction with its publication of the NPRM. The Commission received no comments pertaining to its PRA estimates. OMB has approved these amended information collection requirements under the existing control number for the Rule (3084-0069).

Burden estimates below are based on Census data, DOE figures and estimates, public comments, general knowledge of manufacturing practices, and trade association advice and figures. The FTC estimates there are about 150 basic models of portable air conditioners (*i.e.*, units with essentially identical physical and electrical

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<sup>28</sup> 44 U.S.C. 3501 *et seq.*; *see also* 5 CFR 1320.3(c).

characteristics). In addition, FTC staff estimates there are 45 portable air conditioner manufacturers and 1,500,000 portable air conditioner units shipped each year in the U.S.

*Reporting:* The Rule requires manufacturers of covered products to annually submit 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, manufacturers may submit such information to DOE directly via the agency's Compliance Certification Management System, available at <https://regulations.doe.gov/ccms>, as provided by 10 CFR 429.12. Because manufacturers are already required to submit these reports to DOE, FTC staff estimates any additional burden associated with providing the information to the FTC is minimal. FTC staff estimates the average reporting burden for manufacturers of portable air conditioners will be approximately 15 hours per manufacturer. Based on this estimate, the annual reporting burden for manufacturers of portable air conditioners is 675 hours (15 hours × 45 manufacturers).<sup>29</sup> Staff estimates that information processing staff, at an hourly rate of \$16.24,<sup>30</sup> will typically perform the required tasks, for an estimated annual labor cost of \$10,962.

*Labeling:* The amendments require that manufacturers label portable air conditioners. The burden imposed by this requirement consists of the time needed to draft labels and incorporate them onto package designs. Since EPCA and the Rule specify the content and format for the required labels and FTC staff provide online

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<sup>29</sup> In earlier comments, AHAM (#681-00012) estimated the data entry involved in filing reports with the FTC is not particularly burdensome, but estimated that other tasks involved in reporting (such as performing the required testing and gathering information) could take as long as 40 hours per manufacturer. As noted above, however, testing and reporting are required and accounted for in DOE regulations. As a result, staff estimates that the primary burdens associated with reporting are due to DOE requirements.

<sup>30</sup> These labor cost estimates are derived from the Bureau of Labor Statistics figures in "Table 1." National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2018," available at: <https://www.bls.gov/news.release/ocwage.t01.htm>.

label templates, manufacturers need only input the energy consumption figures and other product-specific information derived from testing. FTC staff estimates the time to incorporate the required information into labels and label covered products is five hours per basic model. Accordingly, staff estimates that the approximate annual burden involved in labeling covered products is 750 hours [150 basic models  $\times$  5 hours]. Staff estimates that information processing staff, at an hourly rate of \$16.24,<sup>31</sup> will typically perform the required tasks, for an estimated annual labor cost of \$12,180.

*Testing:* Manufacturers of portable air conditioners must test each basic model they produce to determine energy usage, but the majority of tests conducted are required by DOE rules. As a result, it is likely only a small portion of the tests conducted are attributable to the Rule's requirements. In addition, 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. FTC staff estimates manufacturers will require approximately 36 hours for testing of portable air conditioners,<sup>32</sup> and that 25% of all basic models are tested annually due to the Rule's requirements. Accordingly, the estimated annual testing burden for portable air conditioners is 1,368 hours ((150 basic models  $\times$  25%)  $\times$  36 hours). Staff estimates that engineering technicians, at an hourly rate of \$28.37,<sup>33</sup> will typically perform the required tasks, for an estimated annual labor cost of \$38,300.

*Recordkeeping:* The Rule also requires manufacturers of covered products to retain records of test data generated in performing the tests to derive information included on labels. *See* 16 CFR 305.21. The FTC estimates the annual recordkeeping burden for manufacturers of portable air conditioners will be approximately one minute per basic model to store relevant data. Accordingly, the estimated annual

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<sup>31</sup> *Id.*

<sup>32</sup> AHAM estimated manufacturers would require 32 hours per model for testing and up to 4 hours for preparing the test data. AHAM Comment, #681-0016.

<sup>33</sup> *See supra* note 20.

recordkeeping burden would be approximately 3 hours (150 basic models × one minute). Staff estimates that information processing staff, at an hourly rate of \$16.24,<sup>34</sup> will typically perform the required tasks, for an estimated annual labor cost of \$50.

*Online and Retail Catalog Disclosures:* Staff estimates there are approximately 400 sellers of products covered under the Rule who are subject to the Rule's catalog disclosure requirements. Staff has previously estimated covered online and catalog sellers spend approximately 17 hours per year to incorporate relevant product data for products that are currently covered by the Rule. Staff estimates the portable air conditioner requirements will add one additional hour per year in incremental burden per seller. Staff estimates these additions will result in an incremental burden of 400 hours (400 sellers × one hour annually). Staff estimates that information processing staff, at an hourly rate of \$16.24,<sup>35</sup> will typically perform the required tasks, for an estimated incremental annual labor cost of \$6,496.

*Estimated annual non-labor cost burden:* Staff anticipates that manufacturers are not likely to require any significant capital costs to comply with the amendments.

## **VII. Regulatory Flexibility Act**

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 through 612, requires the Commission provide an Initial Regulatory Flexibility Analysis (IRFA) with a proposed rule and a Final Regulatory Flexibility Analysis (FRFA), with the final rule, if any, unless the Commission certifies that the rule will not have a significant economic impact on a substantial number of small entities. See 5 U.S.C. 603 through 605. The Commission does not anticipate that the amendments will have a significant economic impact on a substantial number of small entities. The Commission recognizes that some of the affected manufacturers may qualify as small businesses under the relevant thresholds. The Commission estimates that the amendments will

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<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

apply to 300 online and paper catalog sellers of covered products and about 45 portable air conditioner manufacturers. The Commission expects that approximately 150 of these various entities qualify as small businesses.

Although the Commission has certified under the RFA that the amendments would not have a significant impact on a substantial number of small entities, the Commission has determined, nonetheless, that it is appropriate to publish an FRFA in order to explain the impact of the amendments on small entities as follows:

*A. Description of the Reasons That Action by the Agency Is Being Taken*

Based upon the record, including public comments, the Commission is amending the Rule to expand product coverage and make additional improvements to the Rule to help consumers in their purchasing decisions for portable air conditioners.

*B. Issues Raised by Comments in Response to the IRFA*

The Commission did not receive any comments specifically related to the impact of the final amendments on small businesses. In addition, the Chief Counsel for Advocacy of the Small Business Administration did not submit comments.

*C. Estimate of Number of Small Entities to Which the Amendments Will Apply*

Under the Small Business Size Standards issued by the Small Business Administration, appliance manufacturers qualify as small businesses if they have fewer than 500 employees. Catalog sellers qualify as small businesses if their sales are less than \$8.0 million annually. The Commission estimates that there are approximately 150 entities subject to the final amendments that qualify as small businesses. The Commission estimates that the amendments will not have a significant impact on small businesses.

*D. Projected Reporting, Recordkeeping, and Other Compliance Requirements*

The amendments will slightly increase reporting, recordkeeping, and disclosure requirements associated with the Commission's labeling rules as discussed



above. The amendments likely will increase compliance burdens by extending the labeling requirements to portable air conditioners. The Commission anticipates that the label design change will be implemented by graphic designers.

*E. Description of Steps Taken To Minimize Significant Economic Impact, if any, on Small Entities, Including Alternatives*

The Commission sought comment and information on the need, if any, for alternative compliance methods that would reduce the economic impact of the Rule on such small entities. To allow time for industry to come into compliance with the revised Rule and minimize the impact of the amendments on covered entities, the Commission has given manufacturers until October 1, 2022 to implement portable air conditioner labels. The Commission may consider other proposals related to electronic labeling and additional issues in a future proceeding.

### **VIII. Other Matters**

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a “major rule,” as defined by 5 U.S.C. 804(2).

#### **Final Rule Language**

#### **List of Subjects in 16 CFR Part 305**

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

For the reasons stated above, the Commission amends part 305 of title 16 of the Code of Federal Regulations as follows:

**PART 305--ENERGY AND WATER USE LABELING FOR CONSUMER PRODUCTS UNDER THE ENERGY POLICY AND CONSERVATION ACT (“ENERGY LABELING RULE”)**

1. The authority citation for part 305 continues to read as follows:

**Authority:** 42 U.S.C. 6294.

2. In part 305, effective January 1, 2023:

- a. Revise all references to “seasonal energy efficiency ratio (SEER)” to read “seasonal energy efficiency ratio 2 (SEER2)”;
- b. Revise all references to “SEER” to read “SEER2”;
- c. Revise all references to “heating seasonal performance factor” to read “heating seasonal performance factor 2”;
- d. Revise all references to “HSPF” to read “HSPF2”;
- e. Revise all references to “Energy Efficiency Ratio” to read “Energy Efficiency Ratio 2”; and
- f. Revise all references to “EER” to read “EER2.”

3. In § 305.2, effective October 1, 2022, redesignate paragraph (l)(23) as (l)(24) and add new paragraph (l)(23) to read as follows:

**§ 305.2 Definitions.**

\* \* \* \* \*

(l) \* \* \*

(23) Portable air conditioners.

\* \* \* \* \*

4. In § 305.2, effective January 1, 2023, revise paragraph (p) to read as follows:

**§ 305.2 Definitions.**

\* \* \* \* \*

(p) *Energy efficiency rating* means the following product-specific energy usage descriptors: annual fuel utilization efficiency (AFUE) for furnaces; combined energy efficiency ratio (CEER) for room and portable air conditioners; seasonal energy efficiency ratio 2 (SEER2) for the cooling function of central air conditioners and heat pumps; heating seasonal performance factor 2 (HSPF2) for the heating function of heat pumps; airflow efficiency for ceiling fans; and, thermal efficiency (TE) for pool heaters, as these descriptors are determined in accordance with tests prescribed under section 323 of the Act (42 U.S.C. 6293). These product-specific energy usage descriptors shall be used in satisfying all the requirements of this part.

\* \* \* \* \*

5. In § 305.3, effective October 1, 2022, add paragraph (j) to read as follows:

**§ 305.3 Description of appliances and consumer electronics.**

\* \* \* \* \*

(j) *Portable air conditioner* means a portable encased assembly, other than a packaged terminal air conditioner, room air conditioner, or dehumidifier, that delivers cooled, conditioned air to an enclosed space, and is powered by single-phase electric current. It includes a source of refrigeration and may include additional means for air circulation and heating.

6. In § 305.7, effective October 1, 2022, add paragraph (e)(3) to read as follows:

**§ 305.7 Prohibited acts.**

\* \* \* \* \*

(e) \* \* \*

(3) The requirements of this part shall not apply to any portable air conditioner produced before October 1, 2022.

\* \* \* \* \*

7. In § 305.10, effective October 1, 2022, revise paragraph (f) to read as follows:

**§ 305.10 Determinations of capacity.**

\* \* \* \* \*

(f) *Room air conditioners and portable air conditioners.* The capacity for room air conditioners shall be the cooling capacity in Btu per hour, as determined according to appendix F to 10 CFR part 430, subpart B, but rounded to the nearest value ending in hundreds that will satisfy the relationship that the energy efficiency value used in representations equals the rounded value of capacity divided by the value of input power in watts. If a value ending in hundreds will not satisfy this relationship, the capacity may be rounded to the nearest value ending in 50 that will. The capacity for

portable air conditioners shall be determined according to appendix CC to 10 CFR part 430, subpart B, with rounding determined in accordance with 10 CFR part 430.

\* \* \* \* \*

8. In § 305.11, effective October 1, 2022, revise paragraph (b)(1) to read as follows:

**§ 305.11 Submission of data.**

\* \* \* \* \*

(b)(1) All data required by paragraph (a) of this section except serial numbers shall be submitted to the Commission annually, on or before the following dates:

**Table 1 to § 305.11(b)(1)**

<b>Product category</b>	<b>Deadline for data submission</b>
Refrigerators	Aug. 1
Refrigerators-freezers	Aug. 1
Freezers	Aug. 1
Central air conditioners	July 1
Heat pumps	July 1
Dishwashers	June 1
Water heaters	May 1
Room air conditioners	July 1
Portable air conditioners	Feb. 1
Furnaces	May 1
Pool heaters	May 1
Clothes washers	Oct. 1
Fluorescent lamp ballasts	Mar. 1
Showerheads	Mar. 1
Faucets	Mar. 1
Water closets	Mar. 1
Ceiling fans	Mar. 1
Urinals	Mar. 1
Metal halide lamp fixtures	Sept. 1
General service fluorescent lamps	Mar. 1
Medium base compact fluorescent lamps	Mar. 1
General service incandescent lamps	Mar. 1
Televisions	June 1

\* \* \* \* \*

9. In § 305.13, effective October 1, 2022, revise the section heading and paragraph (e)(3) to read as follows:

**§ 305.13 Layout, format, and placement of labels for refrigerators, refrigerator-freezers, freezers, dishwashers, clothes washers, water heaters, room air conditioners, portable air conditioners, and pool heaters.**

\* \* \* \* \*

(e) \* \* \*

(3) *Package labels for certain products.* Labels for electric instantaneous water heaters shall be printed on or affixed to the product's packaging in a conspicuous location. Labels for room air conditioners produced on or after October 1, 2019 and portable air conditioners, shall be printed on or affixed to the principal display panel of the product's packaging. The labels for electric instantaneous water heaters, room air conditioners, and portable air conditioners shall be black type and graphics on a process yellow or other neutral contrasting background.

\* \* \* \* \*

10. In § 305.18, effective October 1, 2022, revise the section heading and paragraph (a)(9) to read as follows:

**§ 305.18 Label content for room air conditioners and portable air conditioners.**

(a) \* \* \*

(9) Labels must contain a statement as illustrated in the prototype labels in appendix L of this part and specified as follows (fill in the blanks with the appropriate model type, year, energy type, and energy cost figure):

Your costs will depend on your utility rates and use.

Cost range based only on models [of similar capacity; of similar capacity without reverse cycle and with louvered sides; of similar capacity without reverse cycle and without louvered sides; with reverse cycle and with louvered sides; or with reverse cycle and without louvered sides].

Estimated annual energy cost is based on a national average electricity cost of \_\_\_\_ cents per kWh and a seasonal use of 8 hours use per day over a 3-month period.

For more information, visit [www.ftc.gov/energy](http://www.ftc.gov/energy).

\* \* \* \* \*

11. In § 305.20, effective January 1, 2023, revise paragraphs (g)(11) through (14) to read as follows:

**§ 305.20 Labeling for central air conditioners, heat pumps, and furnaces.**

\* \* \* \* \*

(g) \* \* \*

(11) For any single-package air conditioner with a minimum Energy Efficiency Ratio 2 (EER2) of at least 10.6, any split system central air conditioner with a rated cooling capacity of at least 45,000 Btu/h and minimum efficiency ratings of at least 13.8 SEER2 and 11.2 EER2 or at least 15.2 SEER2 and 9.8 EER2, and any split-system central air conditioners with a rated cooling capacity less than 45,000 Btu/h and minimum efficiency ratings of at least 14.3 SEER2 and 11.7 EER2 or at least 15.2 SEER2 and 9.8 EER2, the label must contain the following regional standards information:

(i) A statement that reads:

Notice

Federal law allows this unit to be installed in all U.S. states and territories.

(ii) For split systems, a statement that reads:

Energy Efficiency Ratio 2 (EER2): The installed system's minimum EER2 is \_\_\_\_.

(iii) For single-package air conditioners, a statement that reads:

Energy Efficiency Ratio 2 (EER2): This model's EER2 is [\_\_\_\_].

(12) For any split system central air conditioner with a rated cooling capacity of at least 45,000 Btu/h and minimum efficiency ratings of at least 13.8 SEER2 but lower than 11.2 EER2 or at least 15.2 SEER2 but lower than 9.8 EER2, and any split-system central air conditioners with a rated cooling capacity less than 45,000 Btu/h and

minimum efficiency ratings of at least 14.3 SEER2 but lower than 11.7 EER2 or at least 15.2 SEER2 but lower than 9.8 EER2, the label must contain the following regional standards information:

(i) A statement that reads:

Notice

Federal law allows this unit to be installed only in: AK, AL, AR, CO, CT, DC, DE, FL, GA, HI, ID, IL, IA, IN, KS, KY, LA, MA, ME, MD, MI, MN, MO, MS, MT, NC, ND, NE, NH, NJ, NY, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, VT, WA, WV, WI, WY and U.S. territories. Federal law prohibits installation of this unit in other states.

(ii) A map appropriate for the model and accompanying text as illustrated in the sample label 7 in appendix L of this part.

(iii) A statement that reads:

Energy Efficiency Ratio 2 (EER2): The installed system's minimum EER2 is \_\_\_.

(13) For any split system central air conditioner with a rated cooling capacity of at least 45,000 Btu/h and a minimum rated efficiency rating less than 13.8 SEER2, and any split-system central air conditioners with a rated cooling capacity less than 45,000 Btu/h and minimum efficiency ratings of less than 14.3 SEER2, the label must contain the following regional standards information:

(i) A statement that reads:

Notice

Federal law allows this unit to be installed only in: AK, CO, CT, ID, IL, IA, IN, KS, MA, ME, MI, MN, MO, MT, ND, NE., NH, NJ, NY, OH, OR, PA, RI, SD, UT, VT, WA, WV, WI, and WY. Federal law prohibits installation of this unit in other states.

(ii) A map appropriate for the model and accompanying text as illustrated in the sample label 7 in appendix L of this part.

(iii) A statement that reads:

Energy Efficiency Ratio 2 (EER2): The installed system's minimum EER2 is \_\_\_.

(14) For any single-package air conditioner with a minimum EER2 below 10.6, the label must contain the following regional standards information:

(i) A statement that reads:

Notice

Federal law allows this unit to be installed only in: AK, AL, AR, CO, CT, DC, DE, FL, GA, HI, ID, IL, IA, IN, KS, KY, LA, MA, ME, MD, MI, MN, MO, MS, MT, NC, ND, NE, NH, NJ, NY, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, VT, WA, WV, WI, WY and U.S. territories. Federal law prohibits installation of this unit in other states.

(ii) A map appropriate for the model and accompanying text as illustrated in the sample label 7 in appendix L of this part.

\* \* \* \* \*

12. In § 305.27, , effective October 1, 2022, revise the section heading and paragraphs (a)(1)(i), (b)(1)(i) introductory text, and (b)(1)(i)(B) to read as follows:

**§ 305.27 Paper catalogs and websites.**

(a) \* \* \*

(1) \* \* \*

(i) *Products required to bear EnergyGuide or Lighting Facts labels.* All websites advertising covered refrigerators, refrigerator-freezers, freezers, room air conditioners, portable air conditioners, clothes washers, dishwashers, ceiling fans, pool heaters, central air conditioners, heat pumps, furnaces, general service lamps, specialty consumer lamps (for products offered for sale after May 2, 2018), and televisions must display, for each model, a recognizable and legible image of the label required for that product by this part. The website may hyperlink to the image of the label using the sample EnergyGuide and Lighting Facts icons depicted in appendix L of this part. The website must hyperlink the image in a way that does not require consumers to save the hyperlinked image in order to view it.

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \* (i) *Products required to bear EnergyGuide or Lighting Facts labels.* All paper catalogs advertising covered products required by this part to bear EnergyGuide



or Lighting Facts labels illustrated in appendix L of this part (refrigerators, refrigerator-freezers, freezers, room air conditioners, portable air conditioners, clothes washers, dishwashers, ceiling fans, pool heaters, central air conditioners, heat pumps, furnaces, general service fluorescent lamps, general service lamps, and televisions) must either display an image of the full label prepared in accordance with this part, or make a text disclosure as follows:

\* \* \* \* \*

(B) *Room air conditioners, portable air conditioners, and water heaters.* The capacity of the model determined in accordance with this part, the estimated annual operating cost determined in accordance with this part, and a disclosure stating “Your operating costs will depend on your utility rates and use. The estimated operating cost is based on a [electricity, natural gas, propane, or oil] cost of [\$ \_\_ per kWh, therm, or gallon]. For more information, visit [www.ftc.gov/energy](http://www.ftc.gov/energy).”

\* \* \* \* \*

13. Effective October 1, 2022, redesignate appendix E to part 305 as appendix E1 and add appendix E2 to part 305.

The addition reads as follows:

**Appendix E2 to Part 305—Portable Air Conditioners**

**Range Information**

Seasonally Adjusted Cooling Capacity Range (Btu/h)	Range of estimated annual energy costs (dollars/year)	
	Low	High
Less than 6,000 Btu	\$48	\$98
6,000 to 7,999 Btu	87	120
8,000 or greater Btu	104	135

14. Effective October 1, 2022, revise appendix K2 to part 305 to read as follows:

**Appendix K2 to Part 305—Representative Average Unit Energy Costs for Dishwasher, Room Air Conditioner, Portable Air Conditioner Labels**

This Table contains the representative unit energy costs that must be utilized to calculate estimated annual energy cost disclosures required under §§305.16, 305.18

and 305.27 for dishwashers, room air conditioners, and portable air conditioners. This Table is based on information published by the U.S. Department of Energy in 2017.

Type of energy	In commonly used terms	As required by DOE test procedure
Electricity	¢13.00/kWh <sup>1</sup>	\$.1300/kWh.
Natural Gas	\$1.05/therm <sup>2</sup> or \$10.86/MCF <sup>3</sup>	\$0.00001052/Btu.
No. 2 Heating Oil	\$2.59/gallon <sup>4</sup>	\$0.00001883/Btu.
Propane	\$1.53/gallon <sup>5</sup>	\$0.00001672/Btu.
Kerosene	\$3.01/gallon <sup>6</sup>	\$0.00002232/Btu.

<sup>1</sup>kWh stands for kilowatt hour. kWh = 3,412 Btu (British thermal units).

<sup>2</sup>therm = 100,000 Btu.

<sup>3</sup>MCF stands for 1,000 cubic feet. For the purposes of this table, one cubic foot of natural gas has an energy equivalence of 1,032 Btu.

<sup>4</sup>For the purposes of this table, one gallon of No. 2 heating oil has an energy equivalence of 137,561 Btu.

<sup>5</sup>For the purposes of this table, one gallon of liquid propane has an energy equivalence of 91,333 Btu.

<sup>6</sup>For the purposes of this table, one gallon of kerosene has an energy equivalence of 135,000 Btu.

By direction of the Commission, Commissioner Wilson dissenting.

**April J. Tabor,**  
*Acting Secretary.*

Editorial Note: The Office of the Federal Register received this document on December 23, 2020.

Note: The following will not appear in the Code of Federal Regulations.

#### **Dissenting Statement of Commissioner Christine S. Wilson**

Today's Commission action finalizes required changes to the Energy Labeling Rule, but fails to remove prescriptive aspects of the Rule that I believe are unnecessary and that could hinder important aspects of competition. For the reasons described below, I dissent.

The current amendments were proposed in March 2020. At that time, and at my urging,<sup>1</sup> the Commission also sought comment on the more prescriptive aspects of

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<sup>1</sup> See Dissenting Statement of Commissioner Christine S. Wilson on the Notice of Proposed Rulemaking: Energy Labeling Rule (Dec. 10, 2018) (expressing my view that the Commission should seek comment on the prescriptive labeling requirements), <https://www.ftc.gov/public-statements/2018/12/dissenting-statement-commissioner-christine-s-wilson-notice-proposed>; See

the Rule.<sup>2</sup> I was pleased to receive many interesting and thoughtful comments submitted by stakeholders. For example, industry members explained that changes in the market and consumer behavior indicate that affixed labels with detailed information may have ceased to provide benefits to consumers.<sup>3</sup> Industry members also proposed providing the labeling information online or through QR codes at brick-and-mortar locations.<sup>4</sup> Making this information easier to access in the digital era could foster greater competition among appliance manufacturers and more informed purchasing decisions by consumers.

Rather than act on these comments or proposals, though, the Commission has chosen to finalize only the air conditioning proposals necessary to conform to Department of Energy changes. The Federal Register Notice approved by a majority of the Commission explains that revising other aspects of the labeling obligations imposed by the Rule will require further exploration. I see no reason for the Commission to forego that exploration now. We can both finalize these changes *and* ask stakeholders for additional input on how to improve the rest of the Rule.

The FTC promulgated the Energy Labeling Rule in the 1970s, an era when the

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Dissenting Statement of Commissioner Christine S. Wilson on the Notice of Proposed Rulemaking: Energy Labeling Rule (Oct. 22, 2019) (urging the Commission to seek comment on the labeling requirements), [https://www.ftc.gov/system/files/documents/public\\_statements/1551786/r611004\\_wilson\\_dissent\\_energy\\_labeling\\_rule.pdf](https://www.ftc.gov/system/files/documents/public_statements/1551786/r611004_wilson_dissent_energy_labeling_rule.pdf).

<sup>2</sup> See Concurring Statement of Commissioner Christine S. Wilson on the Notice of Proposed Rulemaking: Energy Labeling Rule (Mar. 20, 2020), [https://www.ftc.gov/system/files/documents/public\\_statements/1569815/r611004\\_wilson\\_statement\\_energy\\_labeling.pdf](https://www.ftc.gov/system/files/documents/public_statements/1569815/r611004_wilson_statement_energy_labeling.pdf).

<sup>3</sup> See, e.g., Air-Conditioning, Heating and Refrigeration Institute (AHRI) Comment (#33-09), available at: <https://www.regulations.gov/document?D=FTC-2020-0033-0009>; Association of Home Appliance Manufacturers (AHAM) Comment (#33-04), available at: <https://www.regulations.gov/document?D=FTC-2020-0033-0004>; Goodman Manufacturing Comment (#33-08), available at: <https://www.regulations.gov/document?D=FTC-2020-0033-0008>.

<sup>4</sup> *Id.*

agency was engaged in prolific rulemaking.<sup>5</sup> As I have noted previously,<sup>6</sup> no area of commerce was too straightforward or mundane to escape the Commission's notice:

- The Rule on Misbranding and Deception as to Leather Content of Waist Belts prescribed unlawful practices in connection with the sale of belts when not offered for sale as part of a garment. Among other things, the Rule prohibited the sale of belts that looked like leather, but that were made of split, ground, pulverized, or shredded leather or non-leather material, absent disclosures.<sup>7</sup>
- The Guides for Shoe Content Labeling and Advertising required leather, split leather, and concealed insoles “containing . . . non-leather material which are concealed from view, but which also contain other visible parts of leather,” to bear a label clearly disclosing the presence of the non-leather innersole.<sup>8</sup>
- The Hosiery Guides established that the term “long staple cotton” used to describe hosiery “is understood to mean cotton fiber which is not less than 1 1/8” in length of staple” and that the term “lisle” represents hosiery “made of yarn composed of two or more ply of combed long staple cotton fiber.”<sup>9</sup>

A federal statute mandated that the FTC promulgate the Energy Labeling Rule.<sup>10</sup> The FTC must implement the will of Congress, but it need not adopt a prescriptive approach while doing so. Here, the FTC itself has chosen to specify the

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<sup>5</sup> See, e.g., Timothy J. Muris, Paper: Will the FTC's Success Continue?, George Mason Law & Economics No. 18 (Sept. 24, 2018) (discussing the successes and failures of the FTC's enforcement efforts including the aggressive rulemaking activities in the 1970s), available at: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3254294](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3254294); Timothy J. Muris, Rules Without Reason, AEI J. on Gov't and Society (Sept/Oct. 1982) (describing failed FTC rulemaking proceedings), available at: <https://www.cato.org/sites/cato.org/files/serials/files/regulation/1982/9/v6n5-4.pdf>; Teresa Schwartz, Regulating Unfair Practices Under The FTC Act: The Need For a Legal Standard of Unfairness, 11 Akron Law Rev. 1 (1978) (explaining that the judicial reversals of FTC regulations resulted from a failure to establish an adequate legal basis for the regulations), available at: <https://ideaexchange.uakron.edu/akronlawreview/vol11/iss1/1/>.

<sup>6</sup> See Concurring Statement of Commissioner Christine S. Wilson, Amplifier Rule (Dec. 17, 2020), [https://www.ftc.gov/system/files/documents/public\\_statements/1585038/csw\\_amplifier\\_rule\\_stmt\\_11192020.pdf](https://www.ftc.gov/system/files/documents/public_statements/1585038/csw_amplifier_rule_stmt_11192020.pdf).

<sup>7</sup> 16 C.F.R. § 405.4, [https://www.ftc.gov/sites/default/files/documents/federal\\_register\\_notices/trade-regulation-rule-misbranding-and-deception-leather-content-waist-belts-16-cfr-part-405/960522traderegulationruleonmisbranding.pdf](https://www.ftc.gov/sites/default/files/documents/federal_register_notices/trade-regulation-rule-misbranding-and-deception-leather-content-waist-belts-16-cfr-part-405/960522traderegulationruleonmisbranding.pdf).

<sup>8</sup> 16 C.F.R. § 231.3, [https://www.ftc.gov/sites/default/files/documents/federal\\_register\\_notices/guides-luggage-and-related-products-industry-guides-shoe-content-labeling-and-advertising-and-guides/950918luggageandrelatedproducts.pdf](https://www.ftc.gov/sites/default/files/documents/federal_register_notices/guides-luggage-and-related-products-industry-guides-shoe-content-labeling-and-advertising-and-guides/950918luggageandrelatedproducts.pdf).

<sup>9</sup> 16 C.F.R. § 22.3, [https://www.ftc.gov/sites/default/files/documents/federal\\_register\\_notices/guides-hosiery-industry-16-cfr-part-22/960202hosieryindustry.pdf](https://www.ftc.gov/sites/default/files/documents/federal_register_notices/guides-hosiery-industry-16-cfr-part-22/960202hosieryindustry.pdf).

<sup>10</sup> Energy Policy and Conservation Act, 42 U.S.C. 6295.

trim size dimensions for labels, including the precise width (between 5 1/4” to 5 1/2”) and length (between 7 3/8” and 7 5/8”); the number of picas for the copy set (between 27 and 29); the type style (Arial) and setting; the weight of the paper stock on which the labels are printed (not less than 58 pounds per 500 sheets or equivalent); and a suggested minimum peel adhesive capacity of 12 ounces per square inch.<sup>11</sup> I urged the Commission take the opportunity to review these detailed labeling requirements in 2018, and again in 2019, when the Commission sought comment and revised other sections of this Rule.<sup>12</sup>

The Commission last conducted a full review of the Energy Labeling Rule in 2015; under our 10-year regulatory schedule, the next review is scheduled for 2025. However, since 2015, the Commission has sought comment on provisions of this Rule at least three times, including the current proceeding, and has made numerous amendments.<sup>13</sup> This piecemeal approach has clarified the Rule’s requirements – and I appreciate FTC staff’s efforts to keep this Rule clear and current – but the Commission can and should do more.

Specifically, the Commission should conduct a full review of the Rule to consider removing all dated and prescriptive provisions, and to consider the recent comments suggesting changes. Nothing prevents the Commission from conducting this review now – we do not have to wait until the 10-year anniversary. I urge the Commission to act on these comments, eliminate the more prescriptive aspects of the Rule, and maximize the positive impact of this Rule for consumers. If we are statutorily mandated to maintain this Rule, we should endeavor to make it beneficial

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<sup>11</sup> See 16 C.F.R §§ 305.13 and 305.20

<sup>12</sup> Dissenting Statement of Commissioner Christine S. Wilson on the Notice of Proposed Rulemaking: Energy Labeling Rule (Dec. 10, 2018), <https://www.ftc.gov/public-statements/2018/12/dissenting-statement-commissioner-christine-s-wilson-notice-proposed>; Dissenting Statement of Commissioner Christine S. Wilson on the Notice of Proposed Rulemaking: Energy Labeling Rule (Oct. 22, 2019), [https://www.ftc.gov/system/files/documents/public\\_statements/1551786/r611004\\_wilson\\_dissent\\_energy\\_labeling\\_rule.pdf](https://www.ftc.gov/system/files/documents/public_statements/1551786/r611004_wilson_dissent_energy_labeling_rule.pdf).

<sup>13</sup> See 81 Fed. Reg. 62861 (Sept. 12, 2016) (seeking comment on proposed amendments regarding portable air conditioners, ceiling fans, and electric water heaters); 84 Fed. Reg. 9261 (Mar. 14, 2019) (proposing amendments to organize the Rule’s product descriptions); 85 Fed. Reg. 20218 (Apr. 10, 2020) (seeking comment on proposed amendments regarding central and portable air conditioners).

for consumers and competition.

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