



UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

Bureau of Consumer Protection  
Division of Enforcement

October 13, 2016

Jennifer Cleary  
Director, Regulatory Affairs  
Association of Home Appliance Manufacturers (AHAM)  
111 19<sup>th</sup> Street, NW, Suite 402  
Washington, DC 20036

Dear Ms. Cleary:

This letter responds to the Association of Home Appliance Manufacturers' (AHAM's) request for guidance about the timing of energy-related representations generated by a new Department of Energy (DOE) test procedure for portable air conditioners (PACs). As discussed below, given the burdens and complications associated with testing and labeling PACs in the middle of the current "cooling season" (*i.e.*, the annual marketing cycle for these products), we would not recommend enforcement action if manufacturers begin using the new test for energy representations in the next season (*i.e.*, October 1, 2017).

On June 1, 2016, DOE published a final PAC test procedure in the Federal Register (81 Fed. Reg. 35242). In its Notice, DOE indicated that the "final rule changes will be mandatory for representations of energy use or efficiency on or after November 28, 2016." This requirement stems from a statutory provision requiring that all energy representations made 180 days after a new DOE test fairly disclose the new test results (42 U.S.C. 6293(c)(2)). Under the statute, FTC has authority to enforce this provision (42 U.S.C. 6303(c)). In a letter to DOE staff, AHAM asked that manufacturers be allowed to begin using the new DOE test results on October 1, 2017, given the burdens associated with earlier compliance. AHAM has forwarded its request to FTC given this agency's authority over claims made pursuant to the test procedure.

Currently, FTC has no labeling requirements nor does DOE have energy efficiency standards for PACs.<sup>1</sup> Accordingly, any energy representations for such products are voluntary. Nevertheless, cooling capacity (in BTUs), an energy-related descriptor derived from the DOE test, routinely appears on packages and other marketing material to communicate the appropriately-sized product to meet consumers' needs. According to AHAM's letter to DOE staff, the new DOE test procedure yields significantly lower cooling capacity ratings compared to those appearing in the market today. Thus, the new DOE test procedure has an immediate

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<sup>1</sup> FTC is currently considering energy labeling for PACs. 81 Fed. Reg. 62681 (Sept. 12, 2016). In addition, DOE has sought comments on proposed conservation standards. 81 Fed. Reg. 53961 (Aug. 15, 2016).

impact on capacity disclosures, even though there are no mandatory energy-efficiency disclosures for PACs.

AHAM further explains that the testing compliance date is difficult, burdensome, and disruptive to manufacturers because it falls in the middle of the 2017 cooling season. According to AHAM, companies are currently producing models for the 2017 cooling season. Manufacturers have nearly (or already) completed product artwork, including the box, in-box materials, and user guides for such models. In addition, they have already designed and completed product testing using the current test for models slated to be sold in the 2017 season. Retailers have chosen the products they plan to sell based on cooling capacities generated under those tests. AHAM explains that re-testing now will result in stranded investments and additional costs for manufacturers. In addition, conducting timely new tests for all of these models will be nearly impossible, especially given difficulties in finding third-party labs equipped to do the test and limited in-house lab resources. To ensure accurate claims, AHAM argues that manufacturers need additional time to more fully understand the test procedure and to test multiple units.

AHAM believes the burden of this testing deadline is not balanced by any benefit to consumers or the environment. Testing and re-labeling in this production cycle will not lead to any new energy-saving product designs because manufacturers have not had time to redesign products. AHAM also argues a transition to the new cooling capacities in the middle of the cooling season will lead to consumer confusion. In light of these concerns, AHAM has requested that FTC exercise enforcement discretion to ensure a uniform development and production timeline for PACs in response to the new test. Specifically, it recommends allowing manufacturers to begin using the new test procedure with the next cooling season on October 1, 2017.

The FTC staff finds these arguments compelling. Therefore, given the burden and disruption associated with implementing the new test in the middle of the 2017 cooling season, staff would not recommend enforcement action related to energy representations under the new DOE test procedure before the next cooling season (*i.e.*, October 1, 2017).<sup>2</sup> To encourage uniformity in representations for consumers, our guidance here applies to all affected industry members, not just AHAM members. Cooling capacity is a principal metric used by consumers in shopping for these products. Accordingly, uniformity in these disclosures is particularly important in this context to minimize any confusion resulting from these regulatory changes.

The views expressed in this letter are those of FTC staff assigned to enforce the Commission's Energy Labeling Rule (16 C.F.R. Part 305). In accordance with Section 1.3(c) of the Commission's Rules of Practice and Procedure, 16 C.F.R. § 1.3(c), this is a staff opinion only and has not been approved by the Commission or by any individual Commissioner. The advice provided in this letter is not binding upon the Commission and is given without prejudice to the right of the Commission later to rescind the advice and, when appropriate, to commence an enforcement proceeding. In conformance with Section 1.4 of the Commission's Rules of

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<sup>2</sup> The Commission has considered similar issues in the past. For example, the Commission weighed the impact of labeling changes on products involving annual production cycles in extending the effective date for light bulb labels. *See, e.g.*, 76 Fed. Reg. 20233 (April 12, 2011) (extension of effective date for light bulb package labels).

Practice, 16 C.F.R. § 1.4, this letter is being placed on the public record. If you have any further questions, please contact me at (202) 326-2889.

Sincerely,

A handwritten signature in blue ink, appearing to read "Hampton Newsome", written in a cursive style.

Hampton Newsome  
Attorney