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

**Re: Portable Air Conditioners, Matter No. R611004**

June 9, 2020

Consumer Federation of America, National Consumer Law Center (on behalf of its low-income clients), Sierra Club, and Earthjustice (“Joint Commenters”) submit the following comments on the Federal Trade Commission’s (“FTC’s”) notice of proposed rulemaking concerning revisions to the Energy Labeling Rule (“Rule”) to require EnergyGuide labels for portable air conditioners, update the efficiency descriptor used on central air conditioner labels, and seek comment on various requirements of the Rule.<sup>1</sup>

In general, the Joint Commenters support FTC’s proposal to require EnergyGuide labels for portable air conditioners that mirror the labels used on room air conditioners and to update the central air conditioner labels to the current metric. In particular, the proposed EnergyGuide labels for portable air conditioners will provide significant value to consumers making purchasing decisions. Among other things, by emphasizing annual energy costs, the proposed labels will correctly indicate to consumers that portable units are typically less efficient than room air conditioners.<sup>2</sup>

However, in light of the crucial assistance labels will provide to consumers making purchasing decisions, FTC’s proposal to delay mandatory labeling for portable air conditioners until the 2025 compliance date of the Department of Energy’s (“DOE’s”) standards for these products is unwarranted. As prior comments on this subject have explained, there is significant variation in the efficiency of currently available portable air conditioner models. For example, DOE found that the most efficient unit in the Department’s test sample had an efficiency rating “80% higher than that of the least efficient unit.”<sup>3</sup> That remarkable disparity in performance underscores consumers’ need for access to labels as soon as possible, as DOE’s standards have not yet narrowed the gap by driving the least efficient models from the market. It is vital that consumers who currently lack the

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<sup>1</sup> See 85 Fed. Reg. 20,218 (Apr. 10, 2020) (to be codified at 16 C.F.R. Part 305).

<sup>2</sup> See Comments of Appliance Standards Awareness Project, et al. at 2 (Nov. 14, 2016) (discussing relative efficiency of portable and room air conditioners), *at* [https://www.ftc.gov/system/files/documents/public\\_comments/2016/11/00014-129456.pdf](https://www.ftc.gov/system/files/documents/public_comments/2016/11/00014-129456.pdf).

<sup>3</sup> *Id.* at 3 (citing 81 Fed. Reg. 38,398, 38,418 (June 13, 2016)).

protection of a DOE minimum efficiency standard at least have access to labels that enable them to identify and avoid the models that are most costly to operate.

Nor are there persuasive reasons for delaying compliance. In support of its proposed delay, FTC cites industry comments submitted in 2016.<sup>4</sup> Those comments urged synchronization of the DOE and FTC compliance dates to facilitate manufacturers' investments in bringing new models to the market, but also acknowledged that the industry could accommodate a compliance date for labeling of October 1, 2017.<sup>5</sup> Manufacturers have now had ample time to make the investments they claimed were necessary in 2016. Moreover, manufacturers have been required to use DOE's test procedure to make any representations about the energy use or efficiency of portable air conditioners since November 2016.<sup>6</sup> Thus, manufacturers have had more than three years to gain familiarity with the test procedures and to understand how different basic models perform under test. Withholding the requirement to label products for the full five years of lead time provided for compliance with DOE's standards would ignore that, thanks to DOE's unlawful refusal to publish standards, manufacturers are not starting at square one.<sup>7</sup>

While we strongly urge FTC to implement the proposed portable air conditioner labels on an expedited basis, other changes discussed in the proposal should not be pursued. In particular, the proposed rule's suggestion that certain labeling requirements may be "unnecessarily prescriptive," including requirements relating to attributes such as label layout, type style and setting, and label adhesion fails to withstand scrutiny. The proposed rule attempts to contrast the Energy Labeling Rule with the less detailed requirements applicable to other labeling programs, but ignores the unique context and history of the EnergyGuide label program that shows why the additional detail is vital to the success of this program.<sup>8</sup>

First, the textiles and leather goods that FTC presents as a model of regulatory flexibility often have only a single label with little other information beyond what FTC requires, as one would typically find inside the back of a shirt. In contrast, EnergyGuide labels may be located on product packaging, where they need to be readily distinguishable from a variety of other text and images.<sup>9</sup> But even when the label is on the product, the greater volume of valuable information presented on EnergyGuide labels, which may include, among other things, estimated operating costs, efficiency ratings, comparative range bars, key product features, and explanatory statements, calls for a format that is highly standardized to ease comparisons. Because the information presented on many EnergyGuide labels is complex and dense, allowing greater room for variability in layout and type

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<sup>4</sup> 85 Fed. Reg. at 20,220 n.16.

<sup>5</sup> See 82 Fed. Reg. 29,230, 29,231 (June 28, 2017) (discussing comments of the Association of Home Appliance Manufacturers).

<sup>6</sup> See 85 Fed. Reg. at 20,219 n.4.

<sup>7</sup> See *NRDC v. Perry*, 940 F.3d 1072 (9th Cir. 2019) (affirming order to publish delayed standards).

<sup>8</sup> See 85 Fed. Reg. at 20,220 (discussing regulations governing textiles and leather products).

<sup>9</sup> See, e.g., 16 C.F.R. § 305.13(e)(3) (requiring labels on product packaging).

style and setting would hinder the label's effectiveness in assisting consumers to make purchasing decisions.

Finally, FTC's hostility to the detailed regulations governing label adhesion and paper quality exhibits amnesia as to the widespread noncompliance that the inadequate specificity in its prior regulations had fostered. In detailing visits to 48 appliance showrooms across the country where more than 3,000 appliances were checked for compliance with the Energy Labeling Rule's requirements, commenters explained that practices in the use of adhesives varied widely and that certain approaches were associated with higher rates of missing or detached labels.<sup>10</sup> In response, FTC added specificity to its regulations governing adhesives.<sup>11</sup> Reducing the specificity of FTC's regulations would encourage a return to labelling practices that deprive consumers of access to the important information that EnergyGuide labels provide.

In sum, we urge FTC to require labeling for portable air conditioners during the period before the compliance date of the DOE standards and to leave in place regulations governing the appearance and attachment of EnergyGuide labels.

Thank you for considering these comments.

/s/ Timothy Ballo

Timothy Ballo  
Earthjustice  
[tballo@earthjustice.org](mailto:tballo@earthjustice.org)

/s/ Charles Harak (by permission)

Charles Harak  
National Consumer Law Center, on behalf of  
its low-income clients  
[charak@nclc.org](mailto:charak@nclc.org)

/s/ Mel Hall-Crawford (by permission)

Mel Hall-Crawford  
Consumer Federation of America  
[melhc@consumerfed.org](mailto:melhc@consumerfed.org)

/s/ Rose K. Monahan (by permission)

Rose K. Monahan  
Sierra Club  
[rose.monahan@sierraclub.org](mailto:rose.monahan@sierraclub.org)

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<sup>10</sup> Comments of Earthjustice, et al. at 1-2 (Dec. 3, 2012), *at* [https://www.ftc.gov/sites/default/files/documents/public\\_comments/rule-concerning-disclosures-regarding-energy-consumption-and-water-use-certain-home-appliances-and/560957-00028-85299.pdf](https://www.ftc.gov/sites/default/files/documents/public_comments/rule-concerning-disclosures-regarding-energy-consumption-and-water-use-certain-home-appliances-and/560957-00028-85299.pdf).

<sup>11</sup> *See* 80 Fed. Reg. 67,285, 67,291 (Nov. 2, 2015). FTC's analysis of hang tagging practices also led the Commission to adopt additional specificity governing their use to reduce the incidence of hang tags becoming detached. *Id.*