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FEDERAL TRADE COMMISSION

16 CFR Part 432

RIN 3084-AB62

## SUPPLEMENTARY INFORMATION:

### Statement of Basis and Purpose<sup>4</sup>

#### I. Background

The Commission promulgated the Amplifier Rule in 1974 to address sellers' failure to provide essential purchase information regarding the performance of home entertainment amplifiers<sup>2</sup> Specifically, manufacturers described the products' performance through power output claims (e.g., "25Watts"), but tested the amplifiers under a variety of conditions and procedures that rendered different results for the same product. Thus, a 25w (10m) 3J0

under specified test conditions For example, amplifiers must be tested at an ambient air temperature of at least 77°(25°

Rule improvements, the continuing need for the Rule's costs and benefits, as well as

manufacturers' websites, FTC staff confirmed these widely divergent claims from different testing parameters

Based on the comments and FTC staff's review, the Commission found requiring disclosure of test conditions is unlikely to prevent deceptive power output claims. Test conditions are highly technical and require complex calculations to convert claims into apples-to-apples power output comparisons. Thus, the average consumer is unlikely to understand or use the disclosed test conditions to avoid deception.<sup>16</sup> This problem is exacerbated by the fact that consumers now shop online more frequently, providing fewer opportunities to listen to equipment before purchasing.

To address widespread misleading power output claims, the Commission published a Notice of Proposed Rulemaking ("NPRM"), proposing an amendment to the Amplifier Rule to standardize the three test conditions.<sup>17</sup> Specifically, the Commission proposed the following standard values: (1) a load impedance of 8 ohms, (2) a power band of 20 Hz to 20 kHz (except for self-powered subwoofer systems) and (3) a THD limit of less than 0.1%. FTC staff's review found amplifiers are generally designed to drive a nominal load impedance of 8 ohms; 20 Hz to 20 kHz covers the normal range of human hearing<sup>18</sup> and 0.1% THD does not audibly distort a

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<sup>16</sup> FTC staff has surveyed numerous academic articles finding that consumers are not able to effectively comprehend highly technical disclosures; no surveyed research found to the contrary. See, e.g., Omri Ben-Shahar & Carl E. Schneider, *The Failure of Mandated Disclosure*, 45 *U. PA. L. REV.* 647 (2011), available at <http://www.jstor.org/stable/41149884>. The Commission promulgated the Rule so consumers would not need to perform complex calculations to derive useful power ratings. It found, prior to the Rule, consumers had to "deduct 10 to 25 percent [from the "music power" ratings previously claimed] and divide by 2" to derive power ratings that reflected normal usage. 39 *FR* 5388. Additionally, the Commission has previously concluded that "an insufficient number of consumers understand the meaning and significance of disclosures concerning power bandwidth and impedance." 63 *FR* 37238-37239 (July 9, 1998).

<sup>17</sup> 87 *FR* 45047 (July 27, 2022).

<sup>18</sup> The Commission's NPRM proposal excluded amplifiers in self-powered subwoofers used in systems that employ two or more amplifiers dedicated to different portions of the audio frequency spectrum from being tested over a

signal. Several commenters suggested test conditions, and many manufacturers' specification sheets already disclose power outputs tested at 8 ohms, 20 Hz to 20 kHz, and at THD limits of, or slightly below 0.1%.

The Commission received nine unique comments in response to the NPRM.<sup>19</sup> While most of the commenters either broadly supported the regulation of power output claims or the standardization of test conditions,<sup>20</sup> two expressed concern about the THD limit. They explained many vacuum tube and solid state amplifiers would not be able to qualify for a power output claim under the proposed 0.1% limit.<sup>21</sup> Accordingly, they recommended the Commission allow manufacturers to disclose their chosen THD level rather than set a fixed limit. Additionally, one

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power band of 20 Hz to 20 kHz. The Commission has previously recognized that "standalone . . . amplifiers . . . must reproduce signals covering the full musical frequency bandwidth; powered subwoofer systems . . . incorporate crossover circuitry that filters out frequencies above the bass range," and the amplifiers in self-powered subwoofer systems only amplify bass frequencies. 64 FR 38610, 38613 (July 19, 1999). Consequently, the Commission proposed to limit the power band for testing self-powered subwoofer amplifiers to the frequency within those amplifiers' intended operating bandwidth. The NPRM proposal requires testing amplifiers in self-powered full-range loudspeakers, such as full-range Bluetooth speakers that output more than two watts, over a power band of 20 Hz to 20 kHz.

<sup>19</sup>t

commenter recommended replacing the term “total harmonic distortion” with “THD with noise” or “THD+N,” to align the Rule with the Commission’s original intent.<sup>22</sup>

In response to these comments, the Commission issued a Supplemental Notice of Proposed Rulemaking (“SNPR”) that modified its NPRM proposal standardizing test conditions in three ways<sup>23</sup>. First, it proposed updating the Rule’s reference to “total harmonic distortion” with “total harmonic distortion plus noise” (“THD+N”).<sup>24</sup> Second, the Commission proposed raising the THD+N limit to 1.0% to address commenters’ concern that a significant number of amplifiers on the market cannot qualify for any power output claim under the NPRM proposal’s 0.1% limit.<sup>25</sup> Third, the Commission proposed requiring sellers to designate power output disclosures under § 432.2 with the text “FTC Power Output Rating.” Further, if sellers make Optional Disclosures under § 432.4, they would have to state “This rating does not meet the FTC standard,” to help consumers distinguish between the two.<sup>26</sup>

Additionally, the Commission proposed making four non-substantive changes to update and clarify the language of the Rule: (1) eliminating unnecessary language in § 432.4 that currently incorporates § 432.2’s requirement to disclose the test conditions; (2) consolidating all standardized test conditions into a single section, § 432.3, to make the Rule easy to use; (3) modifying § 432.3(e) to clarify amplifiers must meet the standard for impedance, power band, and THD+N at all levels from 250mW to the disclosed level; and (4) updating § 432.4’s prohibition against using an “asterisk” to make required disclosures reflect modern usage.<sup>27</sup>

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<sup>22</sup> E.W. Blackwood (NPRM 7).

<sup>23</sup> 88 FR 5670, 56786 (Aug. 21, 2023).

<sup>24</sup> Id. at 56783 (discussing proposed CFR 432.3(e)).

<sup>25</sup> Id.

<sup>26</sup> Id. at 56784 (discussing proposed CFR 432.2 and 432.4).

<sup>27</sup> Id. (discussing proposed CFR 432.2 to 432.4).

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recommended against using the disclosure “This rating does not meet the FTC standard,” distinguish Optional Disclosures under § 432.4 from FTC power output disclosures under § 432.2. CTA noted this phrase could have the unintended consequence of denigrating acceptable international standards used by manufacturers making power output claims in their Optional Disclosures.

### III. Analysis of SNPRM Comments and Rule Amendment

Based on the record, the Commission amends the Rule to standardize the test conditions as proposed in its SNPRM, with one small exception. Specifically, the Rule as amended requires power output ratings under § 432.2 to use 8 ohms load impedance, 20 Hz to 20 kHz power band, and THD+N of 1.0%. Two of the four SNPRM comments wholly supported the Commission’s proposal and the remaining comments did not raise any issues that warrant modifying or supplementing these standard parameters. Specifically, the Commission will not require disclosure of supplemental information regarding the bandwidth used for testing the harmonics. As the commenter proposing the recommendation acknowledged, “since most people can’t even hear the fundamental at 20kHz, let alone the second harmonic, there is no need to measure anything beyond 20kHz.”<sup>32</sup> The Commission agrees and declines to adopt this recommendation.

The Commission also declines to adopt the recommendation to allow manufacturers to set the power band and impedance parameters. While CTA stated in general terms that certain manufacturers produce amplifier devices not designed to generate power output in accordance with the FTC standard test conditions, it neither identified any affected manufacturers nor

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<sup>32</sup> E.W. Blackwood (SNPRM 4).

included data indicating the proportion of affected models.<sup>38</sup> In addition, the amended Rule does not increase costs for affected manufacturers by requiring them to modify their products to meet the FTC standard, as suggested by CTA.<sup>39</sup> The amended Rule only requires compliance with the FTC standard when sellers make power related claims. If a manufacturer does not want to comply with the FTC standard, it need not make a claim. Moreover, to the extent the manufacturer wants to rate power output using “in device” parameters different from the FTC standard, it may do so using Optional Disclosures under § 432.4.

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ensure the advertised power claim does not mask lower power levels at which the amplifier would not meet the FTC's standard.

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NPRM provided evidence regarding ~~the~~ use of multichannel systems. Likewise, ~~the~~  
SNPRM solicited comment ~~on~~ formalizing the Commission's 2010 guidance, ~~but~~ the  
Commission received none

## V. Regulatory Analysis

Under Section 22 of the FTC Act, 15 U.S.C. 57, the Commission must issue a preliminary regulatory analysis for a proceeding and recommend a rule if the Commission: (1) estimates that the amendment will have an annual effect on the national economy of \$100 million or more; (2) estimates that the amendment will cause a substantial change in the cost or price of certain categories of goods or services; or (3) otherwise determines that the amendment will have a significant effect upon covered entities or upon consumers. In the NPRM and SNPRM, the Commission preliminarily determined that the proposed amendments to the Rule will not have such effects on the national economy, on the cost of sound amplification equipment, or on covered businesses or consumers. In developing these proposals, the Commission has sought to minimize prescriptive requirements and provide flexibility to sellers in meeting the Rule's objectives. The Commission received no comments.

regulatory purpose while minimizing burdens on small entities. The RFA requires that the Commission provide an Initial Regulatory Flexibility Analysis (“IRFA”) with a proposed rule and a Final Regulatory Flexibility Analysis (“FRFA”) with a 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.

The Commission believes that the amendments would not have a significant economic impact upon small entities, although they may affect a substantial number of small businesses. Specifically, the change in the disclosure requirements should not significantly increase the costs of small entities that manufacture or import power amplification equipment for use in the home. In the SNPRM, the Commission certified that the proposed amendments would not, if promulgated, have a significant impact on a substantial number of small entities. The Commission noted that, while a substantial number of the entities covered by the Rule likely qualify as small businesses, the Commission did not anticipate that the amendments would result in higher costs for covered entities because manufacturers already test power output for their amplifiers. The Commission nonetheless determined that it was appropriate to publish an IRFA to inquire into the impact of the proposed amendments on small entities. The Commission received no comments regarding the SNPRM’s certification or IRFA. Therefore, based on available information, the Commission certifies that amending the Rule will not have a significant economic impact on a substantial number of small businesses.

Management and Budget (“OMB”) regulations implementing the Paperwork Reduction Act (“PRA”). OMB has approved the Rule’s existing information collection requirements through April 30, 2024 (OMB Control No. 3080-0105). As described above, the Commission is proposing amendments to simplify power output measurements by standardizing test parameters. The amendments do not change the frequency of the testing or disclosure requirements specified under the Rule. Accordingly, FTC staff do not anticipate that this change will result in additional burden hours or higher costs for manufacturers who already provide output for their amplifiers, in many cases testing amplifiers under the conditions specified by the proposed amendments. Therefore, the amendments do not require further OMB clearance.

#### VIII. Congressional Review Act

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

#### List of Subjects in 16 CFR Part 432

Amplifiers, Home entertainment products, Trade practices.

For the reasons stated above, the Commission amends part 432 of title 16 of the Code of Federal Regulations as follows:

#### PART 432—POWER OUTPUT CLAIMS FOR AMPLIFIERS UTILIZED IN HOME ENTERTAINMENT PRODUCTS

1. The authority citation for part 432 continues to read:

Authority : 38 Stat. 717, as amended; (15 U.S.C. 581)-

2. Revise § 432.2 to read as follows:

§ 432.2 Required disclosures.

satellite speaker system that employs two or more amplifiers dedicated to different portions of the audio frequency spectrum, any power level from 250 mW to the rated power shall be

Other operating characteristics and technical specifications not required in § 432.2 may be disclosed. Provided that:

(a) Any other power output is rated by the manufacturer, expressed in minimum watts per channel, and clearly and conspicuously labeled. This rating was not tested under the FTC standard without the use of a footnote, asterisk, or similar notation to make the representation;

(b) All disclosures or representations made under this section are less conspicuously and prominently made than any rated power output disclosure required in § 432.2. Any disclosure or representation bold faced or more than twice the height of any rated power output disclosure required in § 432.2 is not less prominent; and

(c) The rating and testing methods standards used in determining such representations are well known and generally recognized by the industry at the time the representations or disclosures are made, are neither intended nor likely to deceive or confuse consumers, and are not otherwise likely to frustrate the purpose of this part.

By direction of the Commission.

April J. Tabor,

Secretary