



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

Bureau of Consumer Protection
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April 15, 2013

Via Email

David Calabrese
General Counsel
Air-Conditioning, Heating, and Refrigeration Institute
2111 Wilson Boulevard, Suite 500
Arlington, VA 22201-3001

Dear Mr. Calabrese:

On April 5, 2013, the Department of Energy (DOE) announced that it will not enforce new regional efficiency standards for furnaces pending the resolution of ongoing litigation. Consistent with this development, the FTC staff will not recommend enforcement action against manufacturers that do not use the new label pending resolution of the ongoing litigation.

On June 27, 2011 (76 Fed. Reg. 37408), DOE published new energy conservation standards for residential furnaces, central air conditioners, and heat pumps, including regional standards for different product types. The American Public Gas Association (APGA) challenged these standards for furnaces, and other entities intervened to challenge the standards for air conditioners and heat pumps. On January 11, 2013, the Department of Justice and APGA filed a joint motion asking the court to enter an agreement to settle APGA's challenge that would, among other things, vacate the DOE standards for non-weatherized gas furnaces. To date, the court has not approved the settlement agreement. Currently, the DOE regulations require compliance with the new furnace standards beginning May 1, 2013. Given the uncertainty raised by the proposed settlement, DOE announced on April 5, 2013 that, during the pendency of the litigation, it will "act in a manner consistent with the terms of the settlement agreement with regard to the enforcement of the standards."

Earlier this year, as directed by the Energy Policy and Conservation Act (EPCA),¹ the Commission issued new disclosures, including new EnergyGuide labels, to help industry members comply with the new DOE regional efficiency standards (78 Fed. Reg. 8362 (Feb. 6,

¹ 42 U.S.C. §§ 6291-6309.

2013)). Aware of the pending settlement in the DOE litigation, the Commission tied implementation of the new disclosures to DOE's compliance date, currently scheduled for May 1, 2013 for certain furnaces. The FTC disclosure rules will not go into effect if the DOE standards are vacated by the settlement. However, if the settlement is not approved by May 1, 2013, the DOE standards and associated FTC labeling requirements become effective. The dissemination of the new labels at that time could cause significant confusion for consumers and industry members as well as wasted resources should a final settlement eventually vacate the DOE standards.

Therefore, consistent with DOE's April 5, 2013 enforcement statement, the FTC staff will not recommend enforcement action against industry members that do not implement the new FTC disclosure requirements contained in the February 6, 2013 final rule notice pending resolution of the DOE litigation.² This approach will help coordinate implementation of the DOE standards with the FTC disclosures, which are designed to help consumers and industry members understand those standards.

The views expressed in this letter are those of the staff assigned to enforce the Commission's Energy Labeling Rule. 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 reviewed or approved by the Commission or by an individual Commissioner. It 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 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 black ink, appearing to read "Hampton Newsome", written over a horizontal line.

Hampton Newsome
Attorney

² The February 6, 2013 notice contained new EnergyGuide label design and content requirements for all heating and cooling equipment, including a few product types not subject to the DOE regional standards (*e.g.*, boilers and oil furnaces). To promote consistency in the timing of these broad label changes and to minimize confusion from inconsistent label designs, this FTC staff enforcement position applies to all the new requirements in February 6, 2013 notice, whether they apply to products subject to regional standards or not. Once the DOE litigation is resolved, the staff will provide guidance on updating labels for the various heating and cooling products covered by the Rule.