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Air-Conditioning, Heating, and Refrigeration Institute

August 6, 2012

Federal Trade Commission (FTC)
Office of the Secretary
Room H-113 (Annex C)
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: AHRI Comments – Appliance Labeling Rule (16 CFR Part 305) (Project No. P114202)

Dear FTC Staff:

These comments are submitted by the Air-Conditioning, Heating, and Refrigeration Institute (AHRI) in response to the FTC's proposed Appliance Labeling Rule appearing in the Federal Register on June 6 2012.

AHRI is the trade association representing manufacturers of heating, cooling, water heating, and commercial refrigeration equipment. More than 300 members strong, AHRI is an internationally recognized advocate for the industry, and develops standards for and certifies the performance of many of the products manufactured by our members. In North America, the annual output of the HVACR industry is worth more than $20 billion. In the United States alone, our members employ approximately 130,000 people, and support some 800,000 dealers, contractors and technicians.

As previously stated in our comments to FTC on May 16, 2012, we applaud FTC's recent efforts to eliminate duplicative requirements by harmonizing the FTC and the U.S. Department of Energy (DOE) reporting and testing rules. Several manufacturers currently submit certification reports to DOE and FTC through voluntary industry certification programs (VICPs), such as AHRI. We recommend that FTC continue to recognize the reporting mechanism through VICPs, so that manufacturers who are part of such programs can avoid the burden of duplicative reporting. Duplicative reporting requirements would not provide any benefit to consumers while considerably increasing the regulatory burden on manufacturers.

FTC proposes to add a reference to the DOE website on the EnergyGuide label for residential split central air conditioners. We support the idea. However, we urge FTC to allow manufacturers that participate in AHRI's certification programs the option of adding a reference in the EnergyGuide label to the AHRI directory of certified product performance, www.ahridirectory.org. The AHRI directory is more user friendly than the DOE website and help consumers select the correct equipment in their region. Since the AHRI directory of certified equipment has been used for many years both as a valuable tool for contractors and specifiers, and to help consumers in making informed decisions when purchasing products that are covered under the Energy Policy and Conservation

Act, it has recognition in the marketplace that should be used to its fullest advantage. Furthermore, references to databases of certified equipment should be included in all EnergyGuide labels and not be limited to split system central air conditioners only. Lastly, we would like to point out that the following link shown on Sample Label 7A (page 33353) is not currently working: https://www.regulations.doe.gov/certification.

The current Appliance Labeling Rule requires that retailers post label information on websites and in paper catalogs from which consumers can order products. Manufacturers must provide distributors and installers with energy information about their furnaces, central air conditioners, and heat pumps in paper or electronic form (including internet-based access). In turn, retailers, including installers, must show this information to their customers and let them read the information before purchase. We believe that the fulfillment of these requirements and the release of regional standards information by manufacturers will provide consumers with the necessary disclosures. However, we have concerns with the following additional requirements in the proposed rule:

- Printing QR ("Quick Response") codes on EnergyGuide labels should be optional for manufacturers and FTC should not make this a mandatory requirement. FTC must consider the size of QR codes in relation to the overall size of the EnergyGuide label. Depending on the particular product and corresponding information required on the label, there may not be enough space to add the QR codes. There is already a considerable amount of information that manufacturers are required to include on the EnergyGuide labels. Adding QR codes may confuse consumers and may or may not be helpful to them, particularly when recognizing that not all consumers will have the capability to access the code. The efficiency metrics that are currently required on EnergyGuide labels and are in the current federal energy conservation standards provide adequate information to consumers. If a manufacturer chooses to include QR codes on the EnergyGuide labels, the manufacturer should be allowed to determine or create the website that best provides detailed product information and not be restricted to linking the QR codes to DOE's website.

- FTC's proposal to expand the label's availability by requiring it on manufacturer websites, on product packaging, and at the point of sale is unduly burdensome for several manufacturers. We believe that FTC should not require a manufacturer to make the EnergyGuide label available on a publicly accessible website, but the act of making the label available on such a website should be permissible if a manufacturer chooses to do so. Manufacturers are currently responsible for applying the EnergyGuide label on their products, and they should not be required to meet any mandatory disclosure requirements other than the ones specified in the current rule. The process would get more complicated for those manufacturers who procure products from other manufacturers and private label them since it would entail an additional logistical and cost burden to the private labeler to ensure that the EnergyGuide label is available on websites and product packaging. We feel that through the current practice of applying the EnergyGuide labels on products, manufacturers adequately communicate product information to catalog sellers, thereby fulfilling their duties. Some manufacturers use transparent shrink wrap as packaging material, thereby making the EnergyGuide label on the product clearly visible. Other manufacturers create open pockets on

their product packaging to ensure that the EnergyGuide label on the product can be viewed through those pockets without damaging the product packaging. In such examples, requiring the label on the product packaging is unnecessarily redundant and increases channel costs without adding any value to the disclosure process. Rather than overly prescribing additional disclosure requirements on manufacturers, FTC should allow manufacturers to continue using innovative mechanisms that meet the current disclosure requirements. Finally, the requirement for a label to remain on a manufacturer's website for two years after the cease of production adds an unnecessary burden on the manufacturer and should not be implemented. The requirement would force the manufacturer to allocate additional resources to maintain the website without adding any value to the product or providing any additional benefit to the consumer. This is also in conflict with the current DOE guidance on discontinued models, which requires that basic models be removed from public websites once DOE is notified. Ultimately, what matters is that the consumer receives the appropriate unit at the point of sale, and this can be verified through a simple inspection of the EnergyGuide label on the unit.

With regards to oil-fired furnaces, we recommend that FTC change the reference to input rate on Sample Label 9B in the proposed rule to input capacity, so that the terminology is consistent with the language in DOE's regulations. We thank FTC for adopting our recommended changes to the EnergyGuide label. However, we feel that FTC may have misconstrued our comments because the proposed rule makes it mandatory to specify four input capacities of 84,000, 105,000, 119,000 and 140,000 Btu/h. Although we are in favor of the label displaying up to four efficiency ratings associated with the four input capacities, there are other input capacities available in the marketplace besides the ones specified in the proposed rule. The label should show the input capacities for the nozzles that the manufacturer makes available for that model but the number and size of those nozzles is the manufacturer's choice. Accordingly, the FTC labeling rules should not specify what input rates must be shown on the label. FTC should also determine a mechanism through which an efficiency rating at a particular input capacity is associated with the ENERGY STAR logo. For example, Sample Label 9B on page 33359 of the Federal Register notice includes the 85.5% AFUE rating at an input capacity of 84,000 Btu/h. This particular efficiency rating meets the ENERGY STAR AFUE criteria and the manufacturer should have an option to designate the ENERGY STAR logo next to the rating.

In the case of oil-fired boilers, the multiple input capacity and efficiency label format should be specified as an option for manufacturers. Boiler manufacturers have been providing EnergyGuide labels per the current FTC rules. Although there may be advantages to this alternative label format, the cost and disruption associated with FTC labeling changes should not be imposed on the manufacturers of residential oil-fired boilers. Those manufacturers should be provided the option of continuing to use the oil-fired boiler EnergyGuide label in the existing rule or incur the expense of employing the format proposed in Sample Label 9B. This will ensure that no undue burden is placed on boiler manufacturers.

Section D on page 33342 of the Federal Register notice states that "Until January 1, 2015, manufacturers must continue to use the current label, including the current ranges, for those products." We recommend that such a restrictive sentence be

removed altogether from the final rule. The statement effectively disallows any kind of transition time that is needed to meet the effective date with respect to the regional standards. Furthermore, we do not think that FTC should mandate manufacturers to begin using the new labels earlier than the dates on which the regional standards take effect as such a requirement is overly prescriptive. Instead, FTC should simply allow manufacturers to apply the new EnergyGuide labels whenever the final appliance labeling rule takes effect. The following two phases specified in the proposed rule provide sufficient flexibility to manufacturers to determine an appropriate lead-time prior to the dates on which the regional standards take effect: (1) Under the first phase, manufacturers must begin using the new label no later than May 1, 2013 for equipment subject to new standards effective on that date or not subject to any change in the standards, and (2) Under the second phase, manufacturers must begin placing the new labels no later than January 1, 2015 for any heating and cooling equipment subject to new standards effective on that date. Lastly, there is a possibility that products eligible to be installed anywhere in the United States from May 1, 2013 and January 1, 2015 onwards and manufactured prior to those dates may be stranded in distribution chains. Such products could potentially include the current EnergyGuide labels rather than the ones in this proposed rule. FTC must account for the fact that some products could get stranded in distribution chains, and as long as those products meet the efficiency criteria of the regional standards and are eligible to be installed anywhere within the United States, FTC should not disallow the sale of such products after the regional standards take effect on the basis that the previous EnergyGuide labels were applied on those products.

Our initial comments to FTC on February 6, 2012 recommended sample labels with colored maps symbolizing the various regions within the United States. Our subsequent investigation of this issue has led us to conclude that the costs associated with generating colored maps are burdensome for our industry. Hence, we request that FTC maintain the basic colors in the current rule: process yellow color for the label and the process black color for the type and graphics. In the case of the U.S. maps on the non-weatherized gas furnace and the single package central air conditioner labels, FTC's sample labels can indicate the U.S. South states by solid filling them with process black color. For split system central air conditioners, the FTC sample label can distinguish the three regions through various patterns in process black color.

The current labeling rules state that the manufacturer may add the ENERGY STAR logo to labels on qualifying products. Since this is an optional marking, we recommend that any sample label provided in the rule with the ENERGY STAR logo also include "(optional)" under the logo. This change would better reflect the labeling rule provision regarding the ENERGY STAR logo.

In the case of small-duct, high velocity systems, some manufacturers have been granted a waiver by DOE to sell equipment that have efficiency ratings below 13 SEER/7.7 HSPF. FTC should develop an EnergyGuide label for products that have efficiencies outside the ranges in the proposed EnergyGuide labels and are sold based on waivers granted by DOE.

The proposed rule has the following typographical errors:

- Section 305.12(g)(12)(ii) on page 33348 of the Federal Register notice, the reference to the Sample Label should be 7A and not 9A.
- Although the state of Kentucky is part of the U.S. South and is mentioned in the Sample Label 9A's ENERGY STAR logo on page 33358 of the Federal Register notice, the map within the logo does not indicate Kentucky as being part of the U.S. South.

Lastly, we would like to inform you that in a letter to the DOE's Energy Secretary Steven Chu, we requested an 18-month extension of the May 1, 2013, effective date of amended federal minimum efficiency standards for residential non-weatherized gas furnaces. The proposed extension -- to November 1, 2014 -- would give manufacturers adequate time to prepare for compliance with regional furnace standards and related standards enforcement and product labeling requirements. The letter is attached and could have potential implications on FTC's proposed appliance labeling rule.

AHRI appreciates the opportunity to provide these comments. If you have any questions regarding this submission, please do not hesitate to contact me.

Sincerely,

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Attachment:

1. AHRI Letter to DOE on July 30, 2012

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Air-Conditioning, Heating, and Refrigeration Institute

July 30, 2012

The Honorable Steven Chu
Secretary of Energy
U.S. Department of Energy
1000 Independence Avenue SW
Washington, DC 20560

Re: AHRI Petition for an 18-Month Extension
of the May 1, 2013, Effective Date of Amended
Federal Minimum Efficiency Standards for
Residential Non-Weatherized Gas Furnaces

Dear Mr. Secretary:

The amended federal minimum efficiency standards for residential non-weatherized gas furnaces contained in the direct final rule published in the June 27, 2011, Federal Register and later confirmed in the October 31, 2011, Federal Register has an effective date of May 1, 2013. The Air-Conditioning, Heating, and Refrigeration Institute (AHRI) respectfully petitions the U.S. Department of Energy (DOE) for an 18-month extension of this effective date. This extension of the standards' effective date is needed in order for manufacturers to have adequate time to prepare for compliance with regional furnace standards and related standards enforcement and product labeling requirements, and to ensure that any changes in furnace minimum standards are timed to coincide with the start of the 2014-2015 heating season. We request that DOE grant this petition as soon as possible, but by no later than September 15, 2012; otherwise, manufacturers and distribution channels will begin to incur significant market disruptions and economic losses as they will have to re-position product offerings and distribution for the upcoming heating season. The 18-month delay would make the effective date to November 1, 2014. This is still two years before what would have been the normal effective date for these standards and less than two years from DOE publication of its enforcement rule, assuming that DOE publishes this rule near the end of this year.

In its direct final rule, DOE adopted the AHRI-supported consensus amended furnace standards applicable to products manufactured on or after May 1, 2013, wherever installed. Using the date of manufacture as the standards' effective date is the traditional approach that avoids market disruptions and economic losses caused by potential stranded inventory. DOE has since taken the position that the agency is bound by statute to apply the 90% AFUE furnace standard for the northern region of the country to furnaces installed in that region on or after May 1, 2013, (ref. June 16, 2012, letter from Deputy Assistant Secretary Kathleen B. Hogan to me). Making the effective date of the regional standard for furnaces the date of installation instead of the date of manufacture is not what the parties that signed the consensus agreement contemplated, and it effectively advances the implementation of the standard by a minimum of eight months. That is the amount of time it would take distribution

channels from manufacturers to distributors to installers to do what is necessary to avoid having stranded inventory as of May 1, 2013. Economic losses throughout the distribution channel in the rapidly approaching 2012-2013 heating season can be avoided by delaying the effective date of the amended furnace standards, as requested. The requested 18-month extension will likewise avoid market disruptions caused by a standards change in the middle of the 2013-2014 heating season.

AHRI is requesting an 18-month extension of the effective date of the furnace standards for the further reason that DOE has not yet prescribed what manufacturers, not to mention distributors and installers, must do to establish compliance with regional standards. Inasmuch as DOE has not even published a proposed rule on regional standards enforcement and recognizing that under the Energy Policy and Conservation Act (EPCA) DOE has 15 months from the date it prescribes regional standards to prescribe regional standards enforcement rules, AHRI assumes that it will be the end of the year before a final rule is published. We do not know what the final rule will require of manufacturers, but if it imposes obligations to track products or to submit additional information, manufacturers should be allowed a minimum of 12 months to begin compliance. Distributors and contractors will, of course, have their own compliance lead time needs depending on what they are required to do by the final rule.

Product labeling for regional standards enforcement is an additional concern requiring several months of lead time for compliance. In the June 16, 2012, letter from Deputy Assistant Secretary Kathleen Hogan, AHRI was advised to contact the Federal Trade Commission (FTC) about any such concerns "as this matter is outside the scope of DOE's authority." AHRI will certainly do so. However, since product labeling will be an integral part of any regional standards enforcement scheme, we strongly urge DOE and the FTC to coordinate their activities in this area, including scheduling of proposed and final rules. Of course, only DOE, and not the FTC, has the legal authority to coordinate standards effective dates with rules related to enforcement of those standards.

AHRI presumes that DOE supports Congress's objective to expedite standards' rulemaking through adoption of consensus standards via direct final rules. That was certainly AHRI's intent in negotiating consensus amended furnace and central air conditioner standards -- and the effective dates of those standards -- with other stakeholders and presenting them to DOE for adoption in January 2010. We gave up the statutory 5-year lead time for standards compliance and compromised on a May 1, 2013, effective date for the amended furnace standards based on date of manufacture, thinking that DOE would publish a direct final rule adopting the consensus standards within 6 months, i.e., June of 2010. We knew that DOE would then have 15 months to prescribe rules for enforcement of the standards, taking us to October 2011. The May 1, 2013, date would then have provided at least 18 months for industry to prepare for compliance with the standards and related certification and enforcement requirements. We did not anticipate that it would take DOE nearly two years to publish a direct final rule adopting the consensus agreement, thereby greatly compressing the lead time for compliance. As previously mentioned, the signatories to the consensus standards agreement also proposed regional standards effective dates based on date of manufacture and not on date of installation so that stranded inventory would not be a complicating factor.

If this had been a traditional contested rulemaking and DOE had published a final rule prescribing regional furnace standards on October 31, 2011, DOE and the FTC would have had to publish their respective final rules on regional standards enforcement and product labeling by January 31, 2013. The effective date of the new furnace standards would have been October 31, 2016, 5 years after

publication of the standards' final rule and 3 years and 9 months after publication of the final rules on standards enforcement and labeling.

Regional standards and direct final rules are new both to DOE and to industry and other stakeholders, and all of us are learning from experience. AHRI has readily engaged in negotiating consensus standards in order to expedite the rulemaking process, and does not want this to be a disappointing endeavor, discouraging us from ever doing it again. We ask that DOE recognize and appreciate where we started from and how much we compromised and adjust the furnace standards' effective date to allow manufacturers, as well as distribution channels, adequate time to prepare for compliance.

Respectfully submitted,

Stephen R. Yurek
President & CEO

Cc: FTC
ACEEE
NRDC
ASE
CEC
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HARDI
ACCA