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**Re: Regional Labeling for Heating and Cooling Equipment— Proposed Rule
(16 CFR Part 305) (Project No. P114202)**

Earthjustice respectfully submits the following comments on FTC's Proposed Rule on Regional Labeling for Heating and Cooling Equipment. 77 Fed. Reg. 33337 (June 6, 2012).

Timing

Earthjustice supports FTC's proposal to require the use of the label in advance of the effective dates of the regional standards themselves, and strongly objects to the American Public Gas Association's comments suggesting that FTC delay this rulemaking.

The Energy Independence and Security Act requires FTC to finish the current rulemaking "not later 15 months after the date of the publication of a final rule that establishes a regional standard for a product." Pub. L. 110-140; 42 USC § 6295(o)(6)(H)(iii). FTC cannot ignore this duty merely because a trade association has petitioned for review of DOE's rules, or because DOE might incorporate a waiver provision into its enforcement plan. Congress easily could have provided for either such eventuality when it set the deadline for FTC to issue this rule, yet it did not. The deadline is triggered by "the date of the publication of the final rule," not by the resolution of any challenges to the already-published final rule. This trigger date has already been reached, DOE's rules remain law, and APGA has never filed a motion to stay them. Moreover, APGA failed to raise its objection (or comment at all) when FTC published an advance noticed of proposed rulemaking and request for public comment in accordance with a deadline also triggered by DOE's publication of the final rule. *See* 76 Fed. Reg. 72872 (Nov. 28, 2011); 42 USC § 6295(o)(6)(H)(i) (requiring FTC to begin this rulemaking "not later than 90 days after the date of the publication of" final regional standards).

Label location

Earthjustice supports the proposed rule's requirements that labels be available both online and on product packaging. Earthjustice also supports the proposed requirement that contractors, assemblers, installers, and other retail sellers provide consumers with a copy of the label or directions for viewing the label online prior to the sale of the product. This requirement is necessary to help ensure that all consumers receive this information.

Earthjustice believes this provision needs improvement. Among other things, it should require that disclosures be made far enough in advance for consumers to have a meaningful opportunity to use the label information. Merely requiring retailers to "let [consumers] read the labels" or "provide customers the opportunity to read such information," 77 Fed. Reg. at 33349; to be codified at 16 C.F.R. § 305.14(b)(3), is unlikely to ensure customers have a realistic opportunity to view the label, understand it, and have a chance to actually consider it in their purchasing decision. To rectify this, FTC should require that such disclosures take place whenever a retail seller discusses a specific model with a customer, such as during an initial consultation or telephone call. FTC should additionally require retail sellers to confirm in writing before sale

that customers they have read and understood the label and, where applicable, are aware of the states in which product may be legally installed.

In addition, FTC should extend this affirmative disclosure requirement to all retail sellers. It makes little sense to require only a subset of retail sellers—made up mainly of smaller companies—to take affirmative steps prior to each sale to ensure consumers have label information while allowing other retail sellers—including large companies with big box stores—to merely leave the labels in a display, a binder, or (in the event the products are properly labeled¹) on the products themselves. In order to ensure that the label information is likely to make it easy for consumers to determine whether a product complies with the regional standards, and to aid consumers in understanding the relative efficiencies and operating costs of the products they purchase, FTC should require that all retailer sellers—including those who operate big box stores—affirmatively provide consumers with a copy of the label or directions for viewing the label online prior to the sale of the product. This should be additional to, not instead of, the proposed requirement that big box stores display labels where consumers will be likely to find them.

At the very least, FTC should clarify—preferably by amending the proposed regulatory text—that this requirement applies to retail sellers who negotiate or make sales over the telephone or online (e.g. via e-mail or web forms) in addition to those who do so at the consumer’s home or other installation site.

Finally, for the reasons articulated by NRDC et al., Earthjustice believes FTC should ensure that labels are affixed such that they remain attached for the lifetime of a product. FTC’s proposal to rely on the presence of the unit’s model number to provide consumers with information, *see* 77 Fed. Reg. 33342 n.38, adds an unnecessary step to the process and assumes consumers will have internet access and be familiar with the available online databases.

Thank you for the opportunity to comment.

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¹ *Cf.* Comments of Earthjustice et al. Re: Appliance Labeling Amendments, Matter No. R611004 (May 16, 2012), p. 18-19 (summarizing finding that fewer than half of all covered products observed in appliance stores displayed compliant labels and comparing to similar results of GAO and FTC inspections).