

**Alliance to Save Energy * American Council for an Energy-Efficient Economy
Appliance Standards Awareness Project * Consumer Federation of America
Earthjustice * National Consumer Law Center
Natural Resources Defense Council * Northeast Energy Efficiency Partnerships
Northwest Energy Efficiency Alliance * Northwest Power and Conservation Council**

February 6, 2012

Mr. Hampton Newsome, Attorney
Division of Enforcement
Federal Trade Commission
600 Pennsylvania Avenue NW
Washington, DC 20580

Re: Advance Notice of Proposed Rulemaking on Regional Labeling for Heating and Cooling Equipment (16 CFR Part 305) (Project No. P114202)

I. Introduction

On behalf of the Alliance to Save Energy, American Council for an Energy-Efficient Economy, Appliance Standards Awareness Project, Consumer Federation of America, Earthjustice, National Consumer Law Center, Natural Resources Defense Council, Northeast Energy Efficiency Partnerships, Northwest Energy Efficiency Alliance and Northwest Power and Conservation Council, we respectfully submit these comments on the Federal Trade Commission's Advance Notice of Proposed Rulemaking on Regional Labeling for Heating and Cooling Equipment. 76 Fed. Reg. 72872 (November 28, 2011). In June 2011, the Department of Energy ("DOE") issued a direct final rule promulgating the first ever regional efficiency standards for residential furnaces, central air conditioners, and heat pumps. These standards were set at levels recommended in a joint agreement by manufacturers, consumer groups, efficiency advocates, states, and environmental groups and are strongly supported by our organizations. The direct final rule sets two regional efficiency standards for residential furnaces (north and south), and three standards for central air conditioners and heat pumps (north, southeast, and southwest).¹

The Energy Independence and Security Act (EISA) directs the FTC to initiate a rulemaking within 90 days after the publication of a final rule establishing regional standards for a product to determine "the appropriate 1 or more methods for disclosing information so that consumers, distributors, contractors, and installers can easily determine whether a specific piece of equipment that is installed in a specific building is in conformance with the regional standard that applies to the building." 42 U.S.C. 6295(o)(6)(H). As contemplated in EISA, an effective regional labeling scheme is important both to inform consumer decision making and to enhance legal compliance

¹ Products that satisfy the most demanding efficiency standard (i.e. the northern standard for furnaces, and the standard of one or both southern regions for central air conditioners and heat pumps) are compliant nation-wide.

by helping consumers and industry members avoid installations that violate regional standards. We note that unlike many other consumer products, residential furnaces and central air conditioners are generally not sold through display models in retail stores, with the exception of some manufacturer sponsored displays in certain stores. Instead, this type of equipment is most often sold directly from a contractor to a consumer, who may or may not have done previous research about the product options. Consumers can also buy HVAC equipment directly online from sites such as eBay and Amazon as well as online retailers that specialize in HVAC equipment, although we do not have data on what percentage of the market online sales comprise. The way these products are brought to market is an important consideration when determining an appropriate and informative labeling scheme. We appreciate the opportunity to submit the following comments in response to the questions posed in the Federal Register notice.

II. Summary of Comments

We believe there are several key components to an effective labeling scheme for regional standards for furnaces and central air conditioners:

- FTC should add a map to the EnergyGuide label clearly indicating which states the equipment can be installed in.
- FTC should also list the states the product can be legally installed in.
- Labels should be permanently affixed to the product in a location that is likely to be seen after installation (e.g. adjacent to the nameplate).
- Labels should also be affixed to the product package and provided as a link for products sold online. Online retailers should clearly display what states a product can be legally installed in.

We elaborate on these points in the discussion below.

III. Contents of EnergyGuide Label

In the Federal Register notice, the FTC seeks comments on what kind of information is necessary to inform consumers and industry members on whether a piece of equipment complies with the standard for a given region. Specifically, FTC seeks comment on whether an image should be used and if there are any needed changes to the EnergyGuide label. 76 Fed. Reg. 72874 (November 28, 2011).

We believe that FTC should continue to use the general format for the EnergyGuide labels for these products with the following additions and modifications:

1. FTC should add a map to the EnergyGuide label with shading to indicate the states in which a model complies with the standard. ENERGY STAR has adopted a similar approach for its residential furnace specification, which has regional criteria. [EPA Memorandum on ENERGY STAR Version 3.0 and 4.0 Specifications for Furnaces](#) (June 13, 2011). Under the EPA's approach, furnaces compliant in the South but not the North may only be labeled with the "Regional Label", which "clearly shows the unit

only meets requirements for Southern states.” *Id.* Products that satisfy the stricter U.S. North standard “may be labeled using the general ENERGY STAR certification mark.” *Id.* An example of the ENERGY STAR Regional label for furnaces is shown in Figure 1.

While the ENERGY STAR approach only requires a map in the case of a product that meets a less stringent regional standard, we think it would be clearer to consumers to include a map for all products. This is because a consumer in a state with a less stringent standard may be comparing options that include products that meet a different region’s more stringent standard and could be confused if the product has different labels. This is particularly true in the case of central air conditioners, which have three regions. For example, the EnergyGuide label for a furnace with an AFUE of 90 should include a US map with all 50 states shaded, whereas the label for a furnace with an AFUE of 80 should include a map with only the southern region shaded. For air conditioners there should be three maps: 1) products that meet the standards for the southwest and therefore can be installed in any state would have a map with all 50 states shaded; 2) products that meet the standards in all but the southwestern region would include a map shaded in the northern and southeastern regions; and 3) products that only meet the standards in the northern region would include a map only shaded in that region.



Figure 1: ENERGY STAR Regional Label. *Id.*

2. FTC should include a list of states where the product complies.

For products only compliant in certain states (e.g. an 80 AFUE furnace), the EnergyGuide label should list these states, as in the ENERGY STAR regional label. For these products, it may also be useful to include a statement that installation in any state other than those listed is prohibited by federal law. For products that comply with standards in all states (e.g. a 90 AFUE furnace), these could simply be labeled with the phrase: “Federal Law allows installation of this unit in any U.S. state” as proposed by the FTC in the Federal Register and would not need to list all 50 states. 76 Fed. Reg. 72872 (November 28, 2011).

3. FTC should indicate the regional standard(s) on the energy efficiency range of similar models on the Energy Guide label.

Another potential area of confusion is the efficiency range of similar models on the EnergyGuide label. Given that consumers in regions with less efficient standards are likely to also consider products that meet the more stringent standard of another region, we think it makes the most sense to keep the full spectrum of efficiencies on the EnergyGuide label, but to clearly indicate the regional standards on the label. For

furnaces, this could be an additional hash mark on the spectrum marked “Federal law requires furnaces installed in northern states to meet a minimum AFUE of 90.” This hash mark could appear as a vertical arrow on the lower side of the horizontal line indicating the efficiency range. Another option would be to include a hashed region on the AFUE spectrum from 80 to 90 marked “Installation legal in Southern states only” or something to that effect.

Central air conditioners are somewhat more complicated since there are three regions and two efficiency metrics in the southwest. The FTC should continue to include an energy efficiency range of similar models for central air conditioners based on the SEER rating. This spectrum should be similar to that recommended above for furnaces, starting at a minimum of 13 SEER and indicating either with a hash mark or shaded region that central air conditioners with a SEER of less than 14 can only legally be installed in the north. In addition to the SEER, the central air conditioner’s EER should also be listed on the EnergyGuide label, but not as part of the efficiency range. We do not have a definitive opinion as to where on the label this should be listed, but the font should be the same size as the SEER rating. FTC could consider modifying the sentence describing the SEER to read “SEER, the Seasonal Energy Efficiency Ratio, is a measure of energy efficiency for central air conditioners that estimates energy performance over a typical cooling season.” Similarly, the EnergyGuide label could include a sentence describing the EER such as, “EER, the Energy Efficiency Ratio, is a measure of energy efficiency for central air conditioners at specific operating conditions.” The EnergyGuide label should also indicate that Federal law requires central air conditioners installed in CA, AZ, NM, and NV to meet minimum EER requirements that depend on size and capacity.

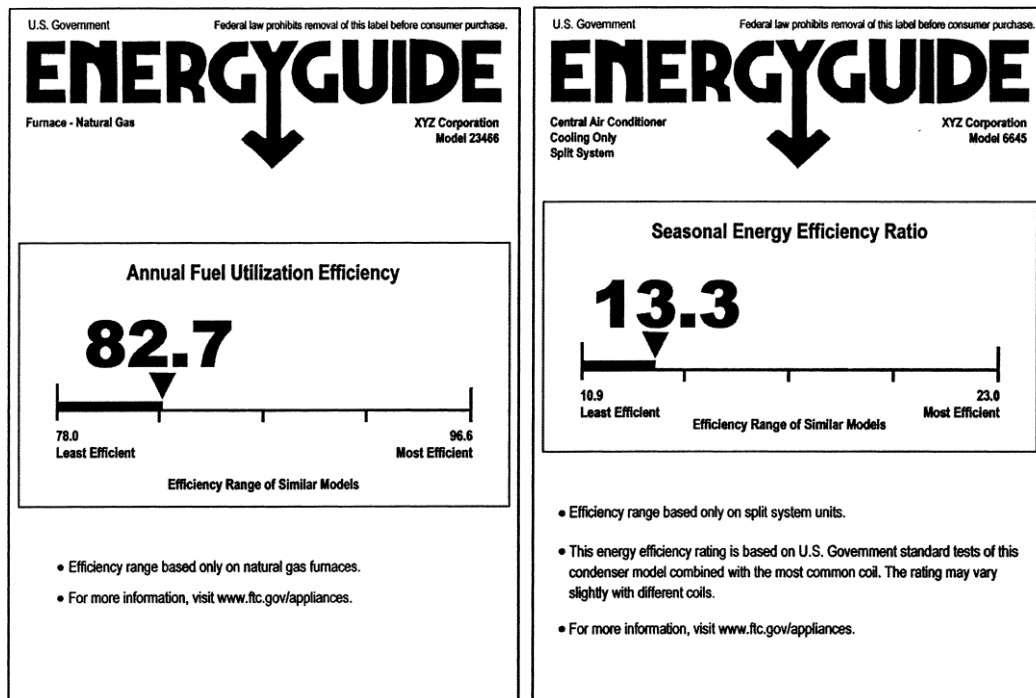


Figure 4: Sample Current EnergyGuide label for furnaces (left) and central air conditioners (right). FTC Appliance Labeling Rule, 16 C.F.R. §305.

4. *FTC should design the EnergyGuide label in a way that avoids confusion with the ENERGY STAR regional label for these products.* Finally, we note that FTC’s proposed disclosures differ from EPA’s regional Energy Star label in that the former would list those states where a product is “prohibited”, whereas the latter lists those where the product is “qualified”. 76 Fed. Reg. 72872 (November 28, 2011). The difference has little significance for the layout of the label – it shortens the list of states in the case of regional labels for central air conditioners, while lengthening it in the case of furnaces. However, this could be a source of significant confusion for consumers. We encourage FTC to list the states where the product is allowed rather than where it is prohibited and, further, recommend that any map used on the EnergyGuide regional label be designed to avoid confusion with that used on the ENERGY STAR regional label (i.e., “prohibited” unshaded regions should not be mistaken for “compliant” regions).

IV. Location and Format of the EnergyGuide Label

The FTC seeks comments on where the required disclosures should appear (on product, packaging, point of sale materials, internet, etc). 76 Fed. Reg. 72874 (November 28, 2011).

We urge the FTC to require that the EnergyGuide label be affixed to the product and the packaging as well as displayed on the Internet. The label affixed to the product should be placed in a conspicuous location (e.g. adjacent to the nameplate) and be designed to remain attached for the lifetime of the product. Permanent labels aid enforcement and voluntary compliance by consumers and other market participants. They are imperative for products subject to regional standards, which can only be installed legally in one region but could be shipped illegally to another. Therefore, being able to verify the efficiency of equipment post-installation could provide substantial benefits.² Finally, because furnace and central air conditioners are unlikely to be installed in plain view, permanent labels will not inconvenience consumers as they might on other frequently viewed appliances.

We also recommend that manufacturers be required to affix a label indicating the product’s efficiency and states in which it can be installed onto the product package. As with permanent product labeling, package labeling is especially important in the context of regional efficiency standards, as it not only aids official enforcement, but helps distributors, installers and consumers avoid violations before they invest significant time or money in transporting non-compliant products. Package labeling could be printed directly on the package or by affixing a sticker to the package when it is assembled with the equipment. The affixed package label should include the EnergyGuide label and could include a Quick Response (QR) scan code that would link to further product information.

We note that the placement of the physical label is a complicated question for split system central air conditioners and heat pumps, which are comprised of multiple

² For example, on average houses sell more frequently than the service life of furnaces. The regional label will be helpful in revealing non-compliance for real estate transactions, energy rating, and similar issues.

components and assembled in the field. The efficiency for these systems depends on that of their components and therefore may vary depending on assembly. We do not have specific recommendations for how to overcome this issue at this point, but urge the FTC to seek technical guidance from the DOE on how to develop an effective labeling scheme for split system central air conditioners.

Finally, required disclosures should be easily accessible online. Given the common consumer practice of “pre-shopping” appliances on the internet, online advertisement and official product descriptions should include an EnergyGuide icon and a link to the EnergyGuide label and any other relevant product information. Additionally, the states in which a product can legally be installed should be prominently displayed on the website (ideally on the product information page, without having to link to the EnergyGuide label). Both the icon and accompanying link should appear at the front of the product description (i.e. consumers should not have to scroll to find the information) to ensure effective disclosure. The FTC final rule governing online sale of Televisions offers a useful model. The rule requires Internet sellers to “display the EnergyGuide label prepared in accordance with § 305.17.” 75 Fed. Reg. 1051 (January 6, 2011). The seller has the option of providing a hyperlink to the label “as long as it leads directly to the label and the hyperlink is an icon in the form [prescribed by the FTC].” *Id.* As to placement, the “EnergyGuide label or the icon must appear clearly and conspicuously, and in close proximity to the television’s price, on each webpage that contains a detailed description of the television and its price.” *Id.* Although the existing EnergyGuide labels for furnaces and central air conditioners do not contain monetary information, proximity to price is still desirable as it emphasizes the connection between energy use and annual cost.

V. Schedule for EnergyGuide Label Compliance

While the FTC’s Proposed Rulemaking does not explicitly address the issue of timing, we encourage the FTC to establish compliance deadlines of May 1, 2013 for non-weatherized gas and oil-fired furnaces and mobile home gas furnaces, and January 1, 2015 for weatherized furnaces and central air conditioners and heat pumps. These dates coincide with the effective date of the relevant federal regional efficiency standards for these products, and would apply to the date of manufacture.

VI. Conclusion

In conclusion, an effective labeling scheme is important to inform consumers and industry professionals for both purchasing decisions and for compliance and enforcement of regional standards. FTC should continue to use the EnergyGuide label as the primary means of communicating efficiency information, but should add a map and list of states indicating in which states a product can legally be installed. The FTC should continue to use the full range of efficiencies for similar models (starting at the base national standard) on the EnergyGuide label and indicate with a hash mark or notched section where the regional standard falls on the spectrum. It is important that the information on the EnergyGuide label be accessible post-installation and to

consumers purchasing or researching products online. FTC should require the EnergyGuide label to be permanently affixed on the product and to be provided as a link for products sold or advertised online. FTC should seek technical guidance from DOE to determine an effective labeling scheme for split system central air conditioners and heat pumps, whose efficiency depends on the assembly of various components in the field.

We appreciate the opportunity to submit these comments,

Jeffrey Harris
Senior Vice President for Programs
Alliance to Save Energy

Charlie Harak
Staff Attorney
National Consumer Law Center

Harvey M. Sachs, Ph.D.
Senior Fellow
**American Council for an Energy-
Efficient Economy**

Meg Waltner
Energy Efficiency Advocate
Natural Resources Defense Council

Andrew deLaski
Executive Director
**Appliance Standards Awareness
Project**

Susan E. Coakley
Executive Director
**Northeast Energy Efficiency
Partnerships**

Mel Hall-Crawford
Energy Projects Director
Consumer Federation of America

Charlie Stephens
Senior Energy Codes and Standards
Engineer
Northwest Energy Efficiency Alliance

Jonathan Wiener
Associate Attorney
Earthjustice

Tom Eckman
Manager, Conservation Resources
**Northwest Power and Conservation
Council**