

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL TRADE COMMISSION**

**Rule Concerning Disclosures Regarding
Energy Consumption and Water Use of Certain
Home Appliances and Other Products Required
Under the Energy Policy and Conservation Act**

RIN 3084 – AB03

**COMMENTS OF THE
AMERICAN GAS ASSOCIATION**

Introduction

Pursuant to the notice issued in the Federal Register on June 6, 2012,¹ the American Gas Association (“AGA”) is pleased to submit comments in response to the Proposed Rule issued by the Federal Trade Commission (“Commission” or “FTC”) to establish the labels and disclosures required on certain appliances to help consumers, distributors, contractors and installers determine whether a specific appliance meets applicable regional efficiency standards set by the U.S. Department of Energy (“DOE”). AGA respectfully requests that the Commission delay finalizing this appliance labeling rulemaking until DOE has issued a final rule implementing a plan to enforce the regional standards that are the subject of this proceeding. Moreover, in the event DOE includes a waiver process as part of such enforcement plan, AGA urges the Commission to modify the proposed labels regarding gas furnaces to reflect the availability of a waiver of the regional standard. Finally, AGA recommends that the Commission work with DOE to provide consumers with information regarding the full-fuel-cycle energy use and emissions impacts associated with appliance choices.

AGA, founded in 1918, represents more than 200 local energy companies committed to the safe delivery of clean natural gas to the more than 65 million customers throughout the United States. There are more than 71 million residential, commercial and industrial natural gas customers in the U.S., of which 92 percent — more than 65 million customers — receive their gas from AGA members. AGA is an advocate for local natural gas utility companies and provides a broad range of programs and services for member natural gas pipelines, marketers, gatherers, international gas companies and industry associates. Today, natural gas meets almost one-fourth of the United States’ energy needs. For more information, please visit www.aga.org. AGA members are directly affected by the manner in which the Commission establishes label and disclosure requirements applicable to natural gas appliances such as gas furnaces as well as standards applicable to appliances where there is a choice of fuel, such as furnaces and water heaters.

¹ *Rule Concerning Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act (“Appliance Labeling Rule”)*, Proposed Rule, 77 Fed. Reg. 33,337 (June 6, 2012).

Background

In this proceeding, the Commission is seeking comment on proposed labeling requirements for gas furnaces, central air-conditioners and heat pumps to help consumers and industry members install products that comply with DOE's regional minimum efficiency standards.² The Commission proposes to amend the Energy Guide labels for the relevant appliances and to expand the label's availability by requiring information to be provided on manufacturer websites, on product packaging and at the point of sale.³ Under the proposal, the Energy Guide label would have two parts: (1) an upper portion designed primarily for consumers resembling the current label that discloses the product's efficiency rating (*e.g.*, Annual Fuel Utilization Efficiency [AFUE] for gas furnaces), a range of efficiency ratings for similar products (*i.e.*, other gas furnaces), and a link to an online energy cost calculator; and (2) a lower portion to help installers comply with DOE's regional efficiency standards that communicates standards information through text, a map (in certain cases), and a link.⁴ In particular, a color map illustrating regional standards information would appear on the label for products that do not meet the standards in at least one region (*e.g.*, 80 percent AFUE gas furnaces); however, the proposed label for products that are legal to install in any state (*e.g.*, 90 percent AFUE gas furnaces) would not have a map but would state that, "Federal law allows this unit to be installed in all U.S. states and territories."⁵

The Commission also proposes to require that the label be included on the product itself and on retail websites, and further proposed to require it on packaging (for products subject to regional standards) and on manufacturer websites.⁶ Further, the Commission proposes that retail sellers be required to make the Energy Guide labels available to consumers prior to purchase, noting that contractors can comply with this requirement by showing the labels to consumers or providing instructions to view the labels online.⁷

Under the Commission's proposal manufacturers must begin using the new labels no later than May 1, 2013, for equipment subject to new standards effective on that date, and no later than January 1, 2015, for any equipment subject to new standards effective on that date.⁸ Noting that the regional standards apply to the installation of products sold on or after the effective date of the new standards, the Commission is seeking comment on whether to require manufacturers to begin using the new labels earlier to provide a lead time for newly labeled units to enter retailer inventories before the regional standards take effect.⁹

² Proposed Rule, 77 Fed. Reg. at p. 33,338.

³ *Id.* at p. 33,340.

⁴ *Id.* at pp. 33,340-41.

⁵ *Id.* at p. 33,341.

⁶ *Id.* at p. 33,342.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* at p. 33,342-43.

Comments

I. The Commission Should Not Finalize Labeling Requirements Until DOE's Process Is Complete.

As the Commission noted in its proposal, DOE has promulgated new efficiency standards for residential gas furnaces, residential central air conditioners and heat pumps,¹⁰ using authority granted to it under the Energy Independence and Security Act of 2007 to develop regional standards for certain products.¹¹ Under that statute, DOE is required to develop and implement an enforcement plan for any regional standards that it promulgates.¹² In addition, the enforcement plan must specify the entities that are legally responsible for compliance “and for making any required information or labeling disclosures.”¹³

On December 7, 2011, DOE issued in the Federal Register a Notice of Data Availability advising that it was considering a number of possible approaches to enforcement of the regional standards for furnaces, central air conditioners and heat pumps and seeking public input on such approaches.¹⁴ DOE also sought comment on whether to include a “possible waiver process to permit installation of units [that] do not meet the applicable regional standard in limited circumstances.”¹⁵ On February 6, 2012, several parties (the Furnace Waiver Design Group)¹⁶ filed joint comments in the DOE enforcement proceeding arguing that DOE's enforcement plan should include a well-designed process for obtaining a waiver of the new regional furnace efficiency standards where the installation of a condensing natural gas furnace in an existing building is infeasible or prohibitively expensive. Moreover, on July 30, 2012, the Air-Conditioning, Heating, and Refrigeration Institute (“AHRI”) submitted a petition to DOE for an 18-month extension of the May 1, 2013 effective date of the regional conservation standards for gas furnaces. AHRI argued that the extension was needed in order for manufacturers to have adequate time to prepare for compliance with the new regional standards, related enforcement requirements, and, as relevant here, new product labeling requirements.

DOE has not yet completed its rulemaking proceeding to develop and implement a plan for the enforcement of the regional standards for furnaces, central air conditioners and heat pumps. As a result, it is not yet known with certainty what labeling requirements may be necessary to fully implement DOE's energy conservation standards with respect to furnaces,

¹⁰ See *Energy Conservation Program: Energy Conservation Standards for Residential Furnaces and Residential Air Conditioners and Heat Pumps*, 76 Fed. Reg. 67,037 (Oct. 31, 2011).

¹¹ Energy Independence and Security Act of 2007 § 306, Pub. L. No. 110-140, 121 Stat. 1492, 1556 (Dec. 19, 2007) (*amending* 42 U.S.C. § 6295(o)).

¹² See 42 U.S.C. § 6295(o)(6)(G)(ii)(I).

¹³ 42 U.S.C. § 6295(o)(6)(G)(ii)(II).

¹⁴ See *Energy Conservation Program: Enforcement of Regional Standards for Residential Furnaces and Central Air Conditioners and Heat Pumps*, 76 Fed. Reg. 76,328 (Dec. 7, 2011).

¹⁵ *Id.* at p. 76,329.

¹⁶ The Furnace Waiver Design Group included the Air Conditioning Contractors of America, the Alliance to Save Energy, the American Council for an Energy-Efficient Economy, the American Gas Association, the Appliance Standards Awareness Project, the Consumer Federal of America, the National Consumer Law Center, the Natural Resources Defense Council, and the Plumbing, Heating, Cooling Contractors – National Association.

central air conditioners or heat pumps. If DOE includes as part of its enforcement plan the waiver process advocated by the Furnace Waiver Design Group, after having specifically sought comment on whether to include such a waiver process, the availability of the waiver will need to be documented on the new Energy Guide labels. In addition, DOE has before it a request for an extension of the existing May 1, 2013 effective date of the regional furnace standards. Accordingly, AGA contends that the Commission should not finalize its current appliance labeling rulemaking until DOE has issued a final rule implementing a plan to enforce the regional standards that are the subject of this proceeding.

AGA appreciates that the statute imposes deadlines on the Commission to initiate¹⁷ and to complete¹⁸ this rulemaking proceeding. AGA urges the Commission, however, not to impose labeling requirements that may be inaccurate or misleading to consumers simply to meet a statutory deadline. The Commission should work with DOE to ensure that any labeling, waiver or disclosure requirements established in DOE's rulemaking to enforce the regional standards for gas furnaces, central air conditioners and heat pumps are adequately reflected in the Commission's appliance labeling rules.

II. The Commission Should Revise The Labeling Requirements For Gas Furnaces To Reflect The Availability Of A Waiver.

The Commission proposes to implement the regional standard by requiring the lower portion of the label for a gas furnace less than 90 percent AFUE to include a notice listing the states in which the unit is only permitted to be installed, a map of the United States illustrating those states, and the warning, "Federal law prohibits installation of this unit in other states."¹⁹ AGA believes that if DOE includes a waiver process as part of its rulemaking plan for enforcement of the regional energy conservation standards for gas furnaces, the Commission's proposed label for gas furnaces less than 90 percent AFUE will be inaccurate. In those circumstances, Federal law will *not* prohibit the installation of such units in states outside the southern U.S. region, if the installation qualifies for a waiver.

In the proceedings before DOE establishing the energy conservation standards for gas furnaces, AGA explained that gas furnaces available in the marketplace capable of achieving a 90 percent AFUE standard are condensing gas furnaces that require positive venting and draining of the condensate produced by the natural gas combustion process. AGA further explained that installation of condensing gas furnaces in some homes may be infeasible where venting options may be limited, such as in row houses, historic homes, or multi-story housing complexes. AGA added that installation of condensing gas furnaces may be cost prohibitive in other homes given the need to address venting and condensate disposal issues. In particular, AGA noted, many homes have a common vent for the gas furnace and the gas water heater, in which case the installation of a condensing gas furnace (with a separate, positive vent) might "orphan" the water heater in that the remaining flue for the water heater would be improperly sized to handle the reduced air flow.

¹⁷ See 42 U.S.C. § 6295(o)(6)(H)(i) (not later than 90 days after the date of publication of a final rule that establishes a regional energy conservation standard).

¹⁸ See 42 U.S.C. § 6295(o)(6)(H)(iii) (not later than 15 months after the date of publication of a final rule that establishes regional energy conservation standard).

¹⁹ 77 Fed. Reg. at p. 33,357.

These considerations led the Furnace Waiver Design Group to seek a waiver process as part of the rulemaking proceeding to develop an enforcement plan for the regional energy conservation standards. The Furnace Waiver Design Group argued that DOE should allow for waivers from the new regional furnace efficiency standards in those situations where the installation of condensing gas furnaces in existing buildings would be infeasible or prohibitively expensive due to the physical characteristics of the building and regulatory restrictions. More specifically, a waiver would be available: (1) where the installation of a condensing gas furnace would be technically infeasible or precluded by applicable state or local regulatory requirements, such as building codes, historic preservation ordinances, or zoning ordinances; or (2) where the incremental cost of installing a condensing gas furnace versus a non-condensing gas furnace exceeded a specified threshold due to documented characteristics or conditions in the building. The furnace installer would make a determination as to whether the waiver criteria are met in order to install a less than 90 percent AFUE furnace in the northern U.S. region, and must document the eligibility on a standardized form which would be submitted to DOE.

If DOE includes a waiver process in its rulemaking to enforce the regional standards for gas furnaces, then the Commission must reflect the availability of the waiver in the labeling requirements for such appliances. AGA respectfully requests that the Commission be prepared to revise its labeling requirements for gas furnaces less than 90 percent AFUE in two ways. First, the Commission should delete the word “only” from the following statement in the lower portion of the label specifying that “Federal law allows this unit to be installed ~~only~~ in: [the listed states in the southern region].”²⁰ Inclusion of the word “only” in that phrase may lead to confusion by customers and installers about the ability and lawfulness of installing a less than 90 percent AFUE gas furnace in the northern U.S. region in a building that is eligible for a waiver. Second, the Commission should modify the statement in the lower portion of the label specifying that “Federal law prohibits the installation of this unit in other states” by adding the following phrase at the end, “except in the case of an eligible waiver. See [DOE website] for information on eligibility requirements for a waiver.” For similar reasons, an unequivocal prohibition may lead to confusion by consumers and installers in circumstances where a waiver of the 90 percent AFUE standard is available. Instead, clear language is needed to inform consumers that a waiver may be available and to guide them to a source of information on the eligibility requirements for the waiver. It is reasonably expected that DOE will include such information on its website if it develops a waiver process as part of its enforcement plan for the regional furnace standards.

Accordingly, AGA recommends that the lower portion of the label for non-weatherized natural gas furnaces less than 90 percent AFUE should include a notice that reads, “Federal law allows this unit to be installed in: [listed states]” and further provides that “Federal law prohibits installation of this unit in other states, except in the case of an eligible waiver. See [DOE website] for information on eligibility requirements for a waiver.”

III. The Commission Should Include Full-Fuel-Cycle Information.

The Commission’s proposal in this proceeding includes no information on the label or in the required disclosures reflecting the energy use, life-cycle cost, and associated emissions on a full-fuel-cycle basis of the relevant appliances. In August 2011, DOE issued a policy statement

²⁰ Under the Commission’s proposal, the phrase, “only in” in the notice is bolded. As a consequence of deleting the word “only,” the word “in” would no longer need to be bolded.

providing that it will use full-fuel-cycle measures of energy use and emissions in estimating the likely impacts of proposed energy conservation standards and will work with the Commission to make readily available to consumers information on the full-fuel-cycle energy use and greenhouse gas emissions of specific products so that consumers can make cross-class comparisons of the energy use and emissions of appliances.²¹ AGA urges the Commission to work with DOE to make available to consumers through the Commission’s appliance labeling and disclosure requirements information on full-fuel-cycle energy use and emissions impacts of appliances so that consumers can make adequate comparisons among various appliance choices.

“Site” energy only measures the energy consumed by an appliance at the place of its use. “Source” or “primary” energy includes the energy consumed on site as well as the losses that occur in the transportation and distribution of the fuel or the generation, transmission and distribution of electricity to the appliance. “Full-fuel-cycle” energy includes the source or primary energy as well as the energy consumed in producing or extracting primary energy fuels. AGA believes that full-fuel-cycle metrics would enable a more comprehensive analysis of the total energy usage and environmental impacts of energy conservation standards. For appliances that use natural gas, nearly all of the energy losses and emissions occur at the point of use. The overall natural gas delivery system on a full-fuel-cycle basis is highly efficient – approximately 92 percent of the energy produced reaches the consumer as usable energy. Because energy conservation standards are established on a site energy basis, AGA remains concerned that natural gas appliance labels may mislead consumers into thinking that such appliances are less efficient because the high-efficiency of the production and delivery system upstream of the site is ignored.

In its policy statement, DOE stated that it will use the Greenhouse Gases, Regulated Emissions, and Energy Use in Transportation (“GREET”) model developed by the Argonne National Laboratory to convert on a full-fuel-cycle basis estimates of energy use and emissions impacts of covered products.²² DOE explained that while it may be possible to compare the energy use and efficiency ratings of comparable products on a site energy basis, such comparisons are difficult and often not feasible for products that use different fuels.²³ DOE, therefore, stated that it would make available to the Commission the full-fuel-cycle energy and emissions factors that it generates in rulemakings to establish energy conservation standards.²⁴

DOE’s policy statement resulted from a study by the National Academy of Sciences to examine whether the goals of energy conservation standards were best served by measurement of energy consumption on a site or full-fuel-cycle basis.²⁵ With respect to labeling requirements, the Academy study stated that appliance labels are of critical importance in conveying information to consumers about the energy consumption of an appliance, and that specifically

²¹ *Energy Conservation Program for Consumer Products and Certain Commercial and Industrial Equipment: Statement of Policy for Adopting Full-Fuel-Cycle Analyses Into Energy Conservation Standards Program*, 76 Fed. Reg. 51,281 (Aug. 18, 2011).

²² *Id.* at p. 51,282.

²³ *Id.* at p. 51,288.

²⁴ *Id.*

²⁵ *Id.* at pp. 51,282-83 (citing National Research Council of the National Academies of Science, “Review of Site (Point-of-Use) and Full-Fuel-Cycle Measurement Approaches to DOE/EERE Building Appliance Energy-Efficiency Standards” (May 15, 2009).

“information on the impacts of energy consumption on greenhouse gas emissions will be useful to consumers and will positively affect consumers’ purchasing behavior and their ability to participate in national energy conservation.”²⁶

DOE’s full-fuel-cycle policy statement expressed the concern that, to date, consumers have not had ready access to information on either the primary energy or full-fuel-cycle energy consumption and emissions impacts of appliances, and that making such information available to consumers in a manner that would enable them to make cross-fuel and cross-class comparisons of comparable products could provide significant new information for consumers.²⁷ DOE, therefore, agreed to work with the Commission to improve upon the Commission’s existing on-line databases, to increase consumer access to energy use and emissions data through web-based information tools, and to collaboratively determine if changes to the Energy Guide labeling requirements would be beneficial to consumers.

The Commission’s labeling program is intended to assist consumers in making informed decisions regarding their appliance purchases. Consumers rely on these labels for accurate and complete information. The information on the Commission’s proposed labels in this proceeding is incomplete with respect to energy consumption efficiency and emissions impacts and may be misleading to consumers. The Commission should provide information on the full-fuel-cycle energy consumption and greenhouse gas emissions associated with appliance use so that consumers can make informed decisions regarding their appliance choices based on complete information.

AGA believes that the Commission should begin the process of working with DOE to effectuate the DOE’s full-fuel-cycle policy statement. AGA recommends that the Commission work with DOE to obtain full-fuel-cycle energy use and emissions information on a regional basis corresponding to the regional standards. In addition, as the National Academy of Sciences noted, just as annual operating cost is an important element of an appliance label easily understood by the consumer, the range of operating costs is an equally important indicator that consumers can use in comparing a selection of products from different manufacturers. The Commission should determine how to provide such information to consumers through web-based information tools, disclosure requirements and additional information on the Energy Guide labels. The National Academy of Sciences believes that additional information on the Energy Guide label is the most effective means for conveying the environmental impact of energy consumption to the public.²⁸ Although significant issues may need to be resolved to ensure that the information provided to consumers is meaningful and accurate, AGA contends that in light of DOE’s policy statement, both DOE and this Commission must begin to take the steps necessary to resolve such issues and provide consumers with better information regarding the energy use and environmental impacts of their appliance choices.

²⁶ Report at p. 9.

²⁷ 76 Fed. Reg. at p. 51,289.

²⁸ Report at p. 10.

Conclusion

For the reasons stated above, the American Gas Association respectfully requests that the Commission delay finalizing its current appliance labeling rulemaking until DOE has issued a final rule implementing a plan to enforce the regional standards that are the subject of this proceeding. Moreover, in the event DOE includes a waiver process as part of such enforcement plan, AGA urges the Commission to modify the proposed labels regarding gas furnaces to reflect the availability of a waiver of the regional standard. Finally, AGA recommends that the Commission work with DOE to provide consumers with information regarding the full-fuel-cycle energy use and emissions impacts associated with comparable appliances.

Respectfully submitted,

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