

Regional Labeling for Heating and Cooling Equipment—Proposed Rule (16 CFR Part 305) (Project No. P114202)
Comments from American Public Gas Association
July 27, 2012

INTRODUCTION

The American Public Gas Association (APGA) appreciates this opportunity to submit comments in response to the proposed revisions to the Federal Trade Commission's (FTC or Commission) proposed Regional Labeling for Heating and Cooling Equipment—Proposed Rule (16 CFR Part 305).

APGA is the national association for publicly-owned natural gas distribution systems. There are approximately 1,000 public gas systems in 36 states and over 700 of these systems are APGA members. Publicly-owned gas systems are not-for-profit, retail distribution entities owned by, and accountable to, the citizens they serve. They include municipal gas distribution systems, public utility districts, county districts, and other public agencies that have natural gas distribution facilities.

SUMMARY

APGA believes implementing these new labels for furnaces is premature. APGA filed an appeal of the DOE rule that established these regional standards for furnaces (the "Furnace Rule") in the U.S. Court of Appeals for the D.C. Circuit on December 23, 2011. APGA believes that the FTC should not incorporate the regional standards into the new appliance labels until the dispute surrounding the regional standards is resolved.

APGA APPEAL OF DOE FURNACE RULE

The FTC proposes to change the EnergyGuide labels that are required for residential furnaces, central air conditioners, and heat pumps. These changes would provide, on the labels, a U.S. map showing where the product can be installed legally, a format for efficiency ratings, and a link to an online energy cost calculator. The proposed changes would also require the labels on manufacturers' websites, product packaging, and, as currently required, on the products themselves.

APGA believes implementing these new labels for furnaces is premature. As stated by the FTC, these proposed changes are designed to comply with new DOE standards promulgated in 2011, that established regional efficiency standards for furnaces and other appliances. These new DOE standards will become effective in May 2013 for non-weatherized gas furnaces, mobile home gas furnaces, and non-weatherized oil furnaces, and in January 2015 for weatherized gas furnaces and all central air conditioners and heat pumps.

APGA filed an appeal of the DOE rule that established the Furnace Rule in the U.S. Court of Appeals for the D.C. Circuit on December 23, 2011. APGA opposes the Furnace Rule and the process by which DOE enacted it. APGA believes these energy efficiency regulations, in an attempt to increase efficiency, inadvertently deter consumers away from direct use natural gas appliances, which are more efficient than electric appliances.

APGA will be arguing that DOE erred in using the direct final rule process in the context of this case (versus normal notice and comment rulemaking), in issuing a rule that bans the non-condensing furnace in the northern region, and in adopting a new standard that will cause fuel switching and that is without economic justification.

The Court of Appeals has issued a briefing schedule for the case known as APGA vs. DOE. APGA filed its brief on May 14, 2012, and DOE's brief is due on July 27, 2012. The court is unlikely to rule until next year.

As the outcome of APGA's appeal of the Furnace Rule is as yet undermined, it is premature for the FTC to issue labels based on the regional standards introduced in the disputed rule.

U.S. MAP ON LABEL

The proposed changes would require the inclusion of a U.S. map and a list of states where the product can be legally installed and a warning that federal law prohibits installation in any other state. For 80 AFUE furnace models, the proposed labels would feature a U.S. map with the southern states shaded accompanied by the statement "Federal law allows this unit to be installed only in AL, AZ, AR, CA, DC, DE, FL, GA, HI, KY, LA, MD, MS, NC, NM, NV, OK, SC, TN, TX, VA and U.S. territories." For 90 AFUE furnace models, the proposed label would state, "Federal Law allows installation of this unit in any U.S. state."

Most of the furnaces in the northern region today are non-condensing furnaces (which can meet the current 80 AFUE efficiency standard); only condensing furnaces meet the new 90 AFUE standard. To replace a non-condensing furnace with a condensing furnace, as the DOE Furnace Rule requires, will cost consumers an additional estimated \$1500-\$2200 in installation costs (plus an increased purchase price of around \$200). These additional costs are attributable to the fact that the condensing furnace requires a dedicated vent and cannot be commonly vented with other gas appliances. For consumers who lives in a row houses, town houses and other such multi-family dwellings, side-venting (which is the recommended venting technique for condensing furnaces) is frequently not an option due to physical and/or code issues and vertical venting is not practical for cost reasons. Thus, enforcement of the regional standard will promote fuel switching as consumers switch to less efficient electric appliances over natural gas appliances, due to installation costs.

As discussed above, APGA filed an appeal of the Furnace Rule that established these regional standards on December 23, 2011, and while the outcome of that appeal is undermined, it is premature for the FTC to issue labels based on the regional standards.

Furthermore, regardless of the outcome of the appeal, DOE has discussed the possibility of a waiver process for individuals who live in the northern states, but for whom, due to structural or code limitations, a non-condensing 90 AFUE gas furnace is not an option. Should that waiver process be implemented, the map on the labels will be misleading and will cause greater confusion for the consumer.

APGA believes that the FTC should not incorporate the regional standards into the new appliance labels until the dispute surrounding the regional standards is resolved.

SITE v. SOURCE BASED EFFICIENCY ANALYSIS

APGA has long supported a full fuel cycle (source based) approach to energy analysis. FTC products labels are intended to communicate appliance energy efficiency information to consumers, to enable consumers and businesses to compare appliances based on energy efficiency, and to help consumers install equipment that is appropriate under applicable DOE standards.

A full fuel cycle approach is most appropriate when comparing the energy efficiency of various appliances. A full fuel cycle analysis examines all impacts associated with energy use, including those from extraction/ production, conversion/generation, transmission, distribution, and ultimate energy consumption. Site (or point-of-use) measurement fails to account for the energy losses expended between the processes of energy extraction through delivery to the point of final consumption, when comparing energy use intensity of optional fuels. In 2011, the Department of Energy (DOE) issued a Statement of Policy announcing its plans to adopt full-fuel-cycle analyses into their Energy Conservation Standards Program, based on recommendations to that effect by The National Academies of Sciences. Specifically, DOE intends to use fuel-cycle measures of energy use and emissions, rather than site energy measures. FTC should begin the process of working with DOE to develop

the metrics and labeling requirements to provide consumers with full-fuel-cycle information. APGA applauds the FTC for using a source-based approach in its proposed changes to the EnergyGuide labels.

Respectfully submitted,

Bert Kalisch, APGA

202.464.2742

bkalisch@apga.org