



April 18, 2024

Mr. Hampton Newsome
Division of Enforcement
Bureau of Consumer Protection
Federal Trade Commission
600 Pennsylvania Ave., NW
Washington, DC 20850
(202) 326-2158

SUBMITTED VIA THE FEDERAL E-RULEMAKING PORTAL AT REGULATIONS.GOV

Re: Energy Labelling Rule [Matter No. R611004] [RIN 3084-AB15]

Dear Mr. Newsome:

The American Gas Association (“AGA”), American Public Gas Association (“APGA”), and National Propane Gas Association (“NPGA”) (collectively, “Joint Commenters”) respectfully submit this comment in response to the Federal Trade Commission (“FTC”) Notice of Proposed Rulemaking: Energy Labelling Rule.¹ The FTC proposed the rule to consider energy labels for several new consumer product categories and changes to label display requirements.²

AGA, founded in 1918, represents more than 200 local energy companies that deliver clean natural gas throughout the United States. There are more than 77 million residential, commercial, and industrial natural gas customers in the U.S., of which 96 percent — more than 74 million customers — receive their gas from AGA members. AGA is an advocate for natural gas utility companies and their customers and provides a broad range of programs and services for member natural gas pipelines, marketers, gatherers, international natural gas companies, and industry associates. Today, natural gas meets more than one-third of the United States’ energy needs.³

APGA is the trade association for more than 730 communities across the U.S. that own and operate their retail natural gas distribution entities. They include not-for-profit gas distribution systems owned by municipalities and other local government entities, all locally accountable to the citizens they serve. Public gas systems focus on providing safe, reliable, and affordable energy to their customers and support their communities by delivering fuel to be used for cooking, clothes drying, and space and water heating, as well as for various commercial and industrial applications.⁴

NPGA is the national trade association of the propane industry with a membership of about 2,400 companies, and 36 state and regional associations that represent members in all 50 states. Membership in NPGA includes retail marketers of propane gas who deliver the fuel to the end user, propane producers, transporters and wholesalers, and manufacturers and distributors of equipment, containers, and appliances. Propane gas fuels millions of installations nationwide for home and commercial heating and cooking, in agriculture, industrial processing, and as a clean air alternative engine fuel for both over-the-road vehicles and industrial lift trucks. Roughly 75% of NPGA’s members have fewer than 100 employees, and are

¹ Notice of Proposed Rulemaking, Energy Labelling Rule, 89 Fed. Reg. 7566 (Feb. 2, 2024) (hereinafter, “NPRM”).

² *Id.*

³ For more information, please visit www.aga.org.

⁴ For more information, please visit www.apga.org.



considered small businesses. NPGA members include producers and suppliers of products covered and affected by the Proposed Rule.

PROCEDURAL HISTORY AND 2022 ADVANCE NOTICE OF PROPOSED RULEMAKING

On October 25, 2022, the FTC published an Advance Notice of Proposed Rulemaking (ANPRM) seeking comment on potential improvements to the Energy Labeling Rule.⁵ Joint Commenters provided significant comments on the ANPRM, recommending a full fuel cycle (“FFC”) analysis, a QR code, and more descriptive words on the label.⁶ In the NPRM, the FTC rejected Joint Commenter’s submission, claiming that adopting a QR code is likely to decrease the label’s utility for consumers.⁷ Further, the FTC rejected adopting a FFC analysis, questioning whether such additional technical information is helpful or whether the information already on the label provides an adequate proxy for relative comparisons of the FFC impacts of competing products.⁸ The FTC claims that the information may change as the grid evolves, and could serve to confused consumers. As an alternative, the FTC stated that it could explore, with DOE, creating online consumers resources to provide FFC and/or GHG information for individual covered products, even if such information is not included on EnergyGuide labels. However, before committing resources to such a combined agency effort, the FTC invites comment on such an approach.⁹

WATER HEATERS

Joint Commenters support the proposed inclusion of the label on the packaging for instantaneous gas heaters.¹⁰ Joint Commenters believe the label would serve to enhance consumer information without excessively burdening manufacturers. Joint Commenters continue to stress the importance of utilizing a QR code directing consumers to an online information database, similar to the resource described by Air-Conditioning, Heating and Refrigeration Institute (“AHRI”)¹¹. The QR code approach has the potential to unite manufacturers and suppliers in enhancing consumer information, and the FTC should not dismiss the opportunity to increase consumer education and awareness.

BOILERS

Similar to water heater, Joint Commenters support manufacturer proposals on the label, and specifically endorse Crown and Burnham’s suggestion of a QR code.¹² Joint Commenters agree that consumer attention should not be diverted on the appliance, and that EnergyGuide labels should not be in a position to confuse consumers with other necessary labels. Joint Commenters believe the FTC’s dismissal of the QR code opportunity on boilers to be shortsighted, with the justification that it would require consumers to take additional steps to access the information.¹³ The FTC fails to understand the gravity of the purchase of a new appliance, and the willingness of customers to research information. While the FTC may believe consumers only look at the EnergyGuide at face value, providing enhanced information and education to consumers will only be to their benefit.

⁵ NPRM at 7566 *citing* 87 Fed. Reg. 64399 (Oct. 25, 2022).

⁶ NPRM at 7581.

⁷ *Id.*

⁸ *Id.* at 7582.

⁹ *Id.* at 7582.

¹⁰ NPRM at 7575.

¹¹ NPRM at 7568, 7576-77.

¹² *Id.* at 7576-77.

¹³ *Id.* at 7577.

ELECTRONIC LABELS

The FTC notes the increasing tendency of consumers to research major appliances online,¹⁴ including the use of information linked to QR codes.¹⁵ The NPRM notes Whirlpool's research that consumers liked QR codes as an alternative to paper, and that QR codes would be helpful to the shopping experience.¹⁶ Manufacturers themselves, as well as AHAM, support the shift to QR codes and electronic information, along with enhanced flexibility on the label.¹⁷ The manufacturers are supported by the AHRI who also advocates for an electronic label with enhanced information.¹⁸

Despite this deluge of support, the FTC, without support, claims that abandoning physical labels would likely degrade the label's effectiveness and reduce the program's benefits for consumers.¹⁹ In doing so, the FTC ignores the research and data provided by Whirlpool, AHAM, AHRI, and others. The FTC claims that switching to an electronic label would allow only a self-selected portion of shoppers (i.e., those that have mobile internet access and take the extra effort to retrieve the information online) access to the label.²⁰

This argument is bereft of facts. 97% of American adults own a smart phone²¹ which contradicts FTC's claim that an electronic label would limit the portion of shoppers who could access the label. Furthermore, the research provided shows that the consumers who rely on that information printed on a physical label has diminished over time, and more American adults would benefit from electronic labels due to the number of Americans who own smartphones. Additionally, other federal agencies have embraced the use of QR codes. For example, the Federal Communications Commission (FCC) recently adopted the U.S. Cyber Trust Mark Report & Order (R&O) on a 5-0 bipartisan vote.²² The FCC rule allows for allows QR codes on the U.S. Cyber Trust Mark.²³ The FTC's analysis is without a basis in fact and is unsupported in the NPRM.²⁴

PRIOR COMMENTS FROM THE ANPRM

Joint Commenters would like to note that they provided input on the ANPRM on the label previously.²⁵ In our previous comments, we advocated for a FFC energy label accessed through a QR code to best inform

¹⁴ *Id.* at 7577-78.

¹⁵ *Id.* at 7578.

¹⁶ *Id.*

¹⁷ *Id.* at 7578-79.

¹⁸ *Id.* at 7580.

¹⁹ *Id.* at 7581.

²⁰ *Id.*

²¹ [Demographics of Mobile Device Ownership and Adoption in the United States | Pew Research Center](#) (last accessed March 6, 2024).

²² In the Matter of Cybersecurity Labeling for Internet of Things, Federal Communications Commission, PS Docket No. 23-239, available at <https://docs.fcc.gov/public/attachments/FCC-24-26A1.pdf>.

²³ *Id.*

²⁴ Importantly, other federal agencies utilize QR codes to relay pertinent information to Americans. This includes, among others: the Internal Revenue Service uses QR technology to balance due notices to help taxpayers (<https://www.irs.gov/newsroom/irs-adds-qr-technology-to-key-balance-due-notices-to-help-taxpayers>); the Department of Transportation, Pipeline and Hazardous Materials Safety Administration uses QR technology when marking packages to provide a direct link to the most recent revision to special permits (<https://www.phmsa.dot.gov/hazmat/documents/offer/SP20710.pdf/offerserver/SP20710>); and the Environmental Protection Agency uses QR codes for most of its publications such as wildfires and indoor air quality (<https://www.epa.gov/system/files/documents/2023-06/Wildfires-One-Pager.pdf>) (last accessed March 20, 2024).

²⁵ NPRM at 7581.



consumers regarding relevant costs in different areas of the country.²⁶ In the NPRM, the FTC rejected the Joint Commenters’ suggestion claiming it would not enhance utility.²⁷ The FTC does not propose to amend the existing label, questions the relevance of the data, questions whether or not the technical information would be helpful, and is concerned that the QR code would clutter the label.²⁸ The FTC offered to explore, with DOE, creating online consumer resources to provide FFC and/or GHG information for individual covered products, and invites comments on such an approach.²⁹

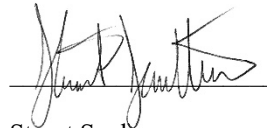
Joint Commenters urge the FTC to both create and promote online consumer resources to better inform consumers about the FFC impact and GHG impact of individual products.

CONCLUSION

Thank you for your consideration of these comments.



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²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.* at 7582.

²⁹ *Id.*