



Michael L. Murray
(202) 824-7071
mmurray@aga.org

Via Electronic Delivery to FOIA-Central@hq.doe.gov

Via Overnight Commercial Delivery

March 31, 2015

Ingrid A. Kolb
Chief FOIA Officer
Freedom of Information Request

Alexander Morris
FOIA Officer
Freedom of Information Request

Freedom of Information Request
FOIA Requester Service Center
Mail Stop MA-90
1000 Independence Avenue, SW
Washington, DC, 20585
Telephone, 202/ 586-3159
Fax, 202/ 586-0575
FOIA-Central@hq.doe.gov

Re: Freedom of Information Request

Dear Mr. Morris,

Type of Requestor and Purpose of Request

The American Gas Association (AGA) is a nonprofit tax-exempt 501(c)(6) membership organization that is incorporated and conducts business at 400 N. Capitol St., N.W., Suite 450, Washington, DC. Founded in 1918, AGA primarily represents state regulated and municipal natural gas utilities that deliver natural gas to consumers via state authorized tariffs. The AGA's members are accountable to state or local legislative or regulatory bodies and the citizens within the geographic jurisdictions they serve.

There are more than 72 million residential, commercial and industrial natural gas customers in the U.S., of which 94 percent — over 68 million customers — receive their gas from AGA members.

The Department of Energy's (DOE) Notice of Proposed Rulemaking on Energy Conservation Standards for Residential Furnaces, 80 Fed. Reg. 13120 (March 12, 2015) (NOPR) proposes the adoption of a 92 percent AFUE standard for non-weatherized gas furnaces. The NOPR references and relies on, but does not provide, documents that would disclose methodologies, models and/or conclusions used in the rulemaking and which would explain what DOE considered and why it did or did not take particular actions. Their absence from the public record prevents meaningful public participation in the rulemaking.¹

This FOIA request is made for non-commercial purposes and on behalf of AGA, AGA's members, AGA member customers and the general public welfare. Each of those parties has an interest in the dissemination of the documents listed below to further its rights under the Administrative Procedure Act, the Due Process Clause of the U.S. Constitution and to understand and comment on the NOPR.

Description of Documents Requested

The following documents are requested and may be in the possession of the DOE's Office of Energy Efficiency and Renewable Energy, or its contractors, including the Lawrence Berkeley National Laboratory or Navigant Consulting. These documents all relate to the NOPR, and the related Technical Support Document (TSD) and Crystal-Ball driven spreadsheet issued February 10, 2015 in support of the NOPR:

- **Request #1:** The TSD, Chapter 8, Section 8.4, PRODUCT SWITCHING, p 8-34, states,

“For NWGFs, DOE developed a *consumer choice model* to estimate the response of builders and home owners to potential amended furnace standards.[Footnoted omitted]The model considers the options available to each sample household, which are to purchase and install: (1) a furnace that meets a particular standard level, (2) a heat pump, or (3) an electric furnace. In addition, DOE allowed for the possibility that households for which installation of a condensing furnace would leave an “orphaned” gas water heater that would require expensive re-sizing of the vent system might choose instead to purchase an electric water heater when they choose any of the above three options.”

(Emphasis added)

Referring to the “consumer choice model” referenced above, the TSD on p, 8-35 states,

¹ See, for example, *Chamber of Commerce v. SEC*, 443 F.3d 890, 899 (D.C. Cir. 2006) (“Among the information that must be revealed for public evaluation are the ‘technical studies and data’ upon which the agency relies.”).

“The decision criteria in the model are based on proprietary data from Decision Analysts, which identified the willingness of a representative sample of consumers to purchase more-efficient space-conditioning systems. [End-notes omitted.] From these data, DOE deduced”

Please provide:

- The “consumer choice model” referenced above itself and any documents that explain or describe how the model functions or the data that was included in the model to come to conclusion(s) based on the model and included in the NOPR.
 - Documents that indicate, reflect, describe or provide the data, research, or supporting documentation for the inputs or assumptions in the model.
 - Documents that identify the “decision criteria” referenced above.
 - Documents that contain or identify the “proprietary data” referenced above as required under 10 C.F.R. 1004.3(e).
 - Documents that reflect, record, identify, or which communicated to DOE the “the willingness of a representative sample of consumers to purchase more-efficient space-conditioning systems.” as stated above.
- **Request #2:** The NOPR, Product Switching Section, 80 F.R. 13152, left column of three states,

“For this NOPR, DOE developed a *consumer choice model* to estimate the response of builders and homeowners to potential amended furnace standards.”

(Emphasis added)

Please provide

- The “consumer choice model” itself and any documents that explain or describe how the model functions or the data that was included in the model to come to conclusion(s) based on the model and referenced in the quote above or included in the NOPR, (if separate and distinct from that requested in the preceding Request).
 - Documents that indicate, reflect, describe or provide the data, research, or supporting documentation for the inputs or assumptions in the model,” (if separate and distinct from that requested in the preceding Request).
- **Request #3:** The NOPR, 80 F.R. 13153, left column of three, states

“DOE also used Decision Analysts data for *consumer choice model* in the June 27, 2011 direct final rule for residential central air conditioners and residential furnaces. 76 FR 37408. From these data, DOE deduced that consumers would expect a payback period of 3.5 years or less for a more-expensive but more efficient product (see appendix 8J of the NOPR TSD for further discussion.)”

(Emphasis added)

Please provide:

- Documents that indicate, reflect, describe or provide the data, research, or supporting documentation for the inputs or assumptions in the “consumer choice model,” (if separate and distinct from the preceding Requests).
 - Any documents that explain, describe or support how the “consumer choice model” arrives at the payback period of 3.5 years referenced on 80 F.R.13153, left of three columns, (if separate and distinct from the preceding Requests).
- **Request #4:** The NOPR, 80 F.R. 13152, center of three columns, states,

“The *consumer choice model* uses the *installed cost* of each option as would be likely for each sample household, and the *operating costs*, taking into account the space heating load and the water heating load for each household and the energy prices it will pay over the equipment lifetime of the available product options.”

(Emphasis added)

Please provide:

- The documents that provide or describe the “installed costs” or “operating costs” referenced above.
 - Any documents that explain, describe or support how the “consumer choice model” arrives at the “installed costs” or “operating costs”.
 - The “consumer choice model” itself and any documents that explain or describe how the model functions, or the data that was included in the model to come to the conclusions provided by the model and included or relied upon in the NOPR, (if distinct from that requested in the preceding Requests).
 - Documents that indicate, reflect, describe provide the data, research, or supporting documentation for the inputs or assumptions in the “consumer choice model, (if distinct from that requested in the preceding Requests).
- **Request #5:** The TSD, Chapter 9.3, DATA INPUTS AND SUPPORTING CALCULATIONS, Section 9.3.1, Historical Shipments, p. 9-6, states,

“DOE used historical shipments data (i.e., domestic shipments and imports) to populate its *shipments model* for NWGFs and MHGFs. As part of its data submittal to DOE’s 2011 furnace standards rulemaking, the Air-Conditioning, Heating, and Refrigeration Institute (AHRI) provided combined NWGF and MHGF historical shipments data from 2005-2009.2. [End-noted omitted.]”

(Emphasis added)

Please provide:

- Any documents that explain or describe how the “shipments model” functions, or the data that was included in the model to come to conclusion(s) based on the model and included in the NOPR.
 - Documents that support data or conclusions in the “shipments model” on furnace shipments nationally or for any region(s) of the country.
 - Documents that indicate, reflect, describe or provide the data, research, or supporting documentation for the inputs or assumptions in the “shipments model.”
- **Request #6:** The NOPR 80 F.R. 13152, right column of three, footnote 64 states, “Decision Analysts, 2006, 2008, 2010 and 2013 American Home Comfort Studies.”

- Please provide each of these studies and any supporting documentation on which they are based as required under 10 C.F.R. 1004.3(e).

- **Request #7:** The NOPR, 80 F.R.13148, center of three columns, footnote 47, states,

“Crystal Ball is a commercial software program developed by Oracle and used to conduct stochastic analysis using Mode Carlo simulation.”

Please provide:

- Any peer review studies of Crystal Ball and of its application in the NOPR proceeding.
- Any peer review studies of the LCC model referenced on 80 F.R. 13148, including any use of Crystal Ball.
- Documents that indicate, reflect, describe or provide the data, research, or supporting documentation for the inputs or assumptions in the Crystal Ball software.

- **Request #8:** The NOPR, 80 F.R. 13149, center column of three, states,

“DOE conducted a *detailed analysis of installation costs* when a non-condensing fugas furnace is replaced with a gas condensing furnace, with particular attention to venting issues in replacement applications.”

(Emphasis added)

Please provide:

- Any documents that reflect the referenced “detailed analysis of installation costs”.
- Documents that indicate, reflect, describe or provide the data, research, or supporting documentation for the inputs or assumptions that led to any

conclusions in the NOPR that were based on the “detailed analysis of installation costs.”

- **Request 9:** The NOPR, 80 F.R., 13149 Table IV.12-Additional Installation Costs for Non-Weatherized Gas Furnaces in Replacement Applications, under the column labeled “Replacement installations impacted” there is a column of percentages, “2%, 100%, 59, 9, 19, 100”.

Please provide:

- Documents that indicate, reflect, describe or provide the data, research, or supporting documentation for the percentages that are provided in that column.
- **Request #10:** The NOPR, 80 F.R., 13149 Table IV.12-Additional Installation Costs for Non-Weatherized Gas Furnaces in Replacement Applications, under the column labeled “Average cost (2013\$)”

Please provide:

- Documents that indicate, reflect, describe or provide the data, research, or supporting documentation for the “Average cost(s)” that are provided in that column.
- **Request #11:** The NOPR, 80 F.R. 13149, right of three columns, states,

“The costs were based on 2013 RS Means data. [Footnote 50] Chapter 8 of the NOPR TSD describes in detail how DOE *estimated the cost for each installation item.*”

(Emphasis added)

Footnote 50 cites “RS Means Company Inc. RS Means Residential Cost Data. Kingston, MA (2013).”

Please provide:

- Documents that indicate, reflect, describe or provide the data, research, or supporting documentation for the inputs or assumptions in the referenced RS Means data that led to the DOE determining the “estimated cost for each installation item”.
- The “2013 RS Means data” referenced above.
- The “RS Means Company Inc. RS Means Residential Cost Data. Kingston, MA (2013),” referenced above.

- **Request #12:** Please provide the following two documents referenced in Appendix 8I of the TSD, p. 8I-13:
 - Dave C. Delaquila, *Updated Shipments Data for Residential Furnaces and Boilers*, April 2005, 2005 [SIC]. Gas Appliance Manufacturers Association. Arlington, VA.
 - Stanonik, F. A., *Data Submittal to DOE: Regional Furnace Shipments*. 2010, Air Conditioning Heating and Refrigeration Institute.

Fees and Format

AGA requests that the DOE waive or reduce any fees under 10 C.F.R. 1004.9(a)(8), Waiving or Reducing Fees, as the disclosure is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government and disclosure is not primarily in the commercial interest of AGA. In addition, disclosure is required of the DOE, inter alia, under the Administrative Procedures Act which was developed to further the public interest by, among other things, ensuring the public has adequate notice of proposed rules.

If the waiver request is denied or the reduced fee request is denied or granted, AGA will pay charges up to five thousand dollars (\$5,000) related to the direct cost of searching for, reviewing the release and duplicating the records sought via this request and as provided by law and regulation. If the estimated cost is greater than five thousand dollars, please contact me at mmurray@aga.org and AGA will give you a prompt response as to whether greater expenditures are authorized. Requests for payment should also be directed to me at mmurray@aga.org.

AGA requests the documents in the format that they are maintained by the DOE or its contractor(s) or the form which is the most efficient and least costly method to comply with this request.

Request for Expedited Processing Due to Exceptional Need and Urgency

AGA requests that DOE respond to this FOIA as promptly as the law, review and circumstances permit, including, contacting AGA by phone at (202) 824-7071 or email at mmurray@aga.org with any questions, comments or requests so AGA is informed of them and may respond in a timely manner.

AGA has an urgent need for the documents because the comment period for the proposed ends June 10, 2015 and in the interim, AGA must receive and review these highly technical and complex documents, well before that date so that it may draft and file any comments that AGA's review shows are warranted.

Please direct any questions, comments or requests relating to this FOIA request to my attention.

Respectfully yours,

A handwritten signature in black ink that reads "Michael L. Murray". The signature is written in a cursive style with a horizontal line extending from the end.

Michael L. Murray | Deputy General Counsel
American Gas Association
400 North Capitol St., NW | Washington, DC 20001
P: 202.824.7071 | F: 202-824-9132 | mmurray@aga.org

Copy:

Dr. Ernest Moniz
Secretary of Energy
U.S. Department of Energy
1000 Independence Ave., SW
Washington, DC 20585

Daniel Cohen
Assistant General Counsel
For Legislation, Regulation, and Energy Efficiency
Department of Energy
Via Email Alone: daniel.cohen@hq.doe.gov