

**UNITED STATES OF AMERICA
BEFORE THE
DEPARTMENT OF ENERGY**

Energy Conservation Program: Procedures for)
Use in New or Revised Energy Conservation)
Standards and Test Procedures for Consumer) EERE-2020-BT-STD-0004
Products and Commercial/Industrial Equipment;)
Prioritization Process)

**COMMENTS OF THE
AMERICAN PUBLIC GAS ASSOCIATION**

The American Public Gas Association (“APGA”) submits these comments in response to the request for information and comment concerning prioritization of rulemakings (“Prioritization Request”) of the Department of Energy’s Office of Energy Efficiency and Renewable Energy (“DOE”), pursuant to its updated and modernized rulemaking methodology (“Process Rule”),¹ published in the Federal Register on February 19, 2021 (86 Fed. Reg. 10211).

I. SUMMARY

APGA is the national, non-profit association of publicly owned natural gas distribution systems, with more than 740 members in 38 states.² The members of APGA serve primarily residential and commercial customers, which rely heavily on natural gas-fired furnaces, water heaters, cooking ranges, and dryers, and hence they have a direct and vital interest in both the minimum efficiency standards and related test procedures for such products. APGA members

¹ Formally referred to as the “*Procedures for Use in New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Commercial/Industrial Equipment*,” the updated Process Rule was issued as a final rule on February 14, 2020. *See* 85 Fed. Reg. 31 (Feb. 14, 2020). A supplemental final rulemaking for the Process Rule, titled the “*Procedures for Evaluating Statutory Factors for Use in New or Revised Energy Conservation Standards*,” was also issued on August 19, 2020. *See* 85 Fed. Reg. 50937 (Aug. 19, 2020).

² Overall, there are approximately 1,000 public gas systems in the United States. Public gas systems are not-for-profit retail distribution entities that are owned by, and accountable to, the citizens they serve. They include natural gas municipal gas distribution systems, public utility districts, county districts, and other public agencies that have distribution facilities.

are especially concerned that such efficiency standards be adopted only after consideration of all relevant points of view, including the distributors of natural gas, whose desire for the efficient use of natural gas is matched only by their commitment to ensure that minimum standards do not have the consequence of preventing consumers from choosing clean and economical natural gas instead of less efficient and more costly energy sources.³

In that vein, APGA has actively participated throughout the development and finalization of the Process Rule.⁴ APGA appreciates DOE publishing final and supplemental rules that update and streamline aspects of the Appliance and Equipment Standards Program's current rulemaking process. This modernization will improve appliance energy usage, benefiting American consumers and business owners, as well as reducing greenhouse gas emissions and improving the environment.

APGA welcomes this opportunity to provide its recommendations on prioritizing rulemakings pursuant to the updated Process Rule, especially as DOE begins its preparation of the 2021 Spring Regulatory Agenda. Accordingly, APGA recommends that DOE prioritize review of those appliance efficiency rulemakings that directly impact gas-fired appliances per the updated Process Rule, which should help in complying with the statutorily mandated timelines for updates to Energy Conservation Standards and Test Procedures. Of most importance to APGA members is the Energy Conservation Standards for Residential Furnaces ("Furnace

³ DOE's most recent forecast for the representative average unit costs of five residential energy sources for the year 2019, which again shows that natural gas remains the most affordable residential energy source, less than one-third the cost of electricity and half the cost of heating oil and propane. Energy Conservation Program for Consumer Products: Representative Average Unit Costs of Energy, 84 Fed. Reg. 8516 (March 8, 2019).

⁴ APGA involvement in the development of the updated and modernized Process Rule included participating in the January 2018 Public Meeting and submitting comments, jointly with the American Gas Association, on March 5, 2018, in addition to submitting comments on May 7, 2019. APGA also submitted comments on March 16, 2020, in response to DOE's SNOPR for the Process Rule, which was published on February 14, 2020, the same day the Process Rule was issued as a Final Rule.

Rule”).⁵ Importantly, as DOE undertakes (or resumes) any gas-fired appliance rulemakings, it must be sure to apply its recently finalized interpretative rule impacting separate product classes of a class of gas-fired appliances.⁶

II. COMMENTS

Section 4 of the Process Rule outlines the criteria by which DOE must consider when prioritizing rulemaking activities for energy conservation standards (“ECSs”) and test procedures (“TPs”). Section 4 reads as follows:

Setting Priorities for Rulemaking Activity

(a) In establishing its priorities for undertaking energy conservation standards and test procedure rulemakings, DOE will consider the following factors, consistent with applicable legal obligations:

- (1) Potential energy savings;
- (2) Potential social and private, including environmental or energy security, benefits;
- (3) Applicable deadlines for rulemakings;
- (4) Incremental DOE resources required to complete the rulemaking process;
- (5) Other relevant regulatory actions affecting the products/equipment;
- (6) Stakeholder recommendations;
- (7) Evidence of energy efficiency gains in the market absent new or revised standards;
- (8) Status of required changes to test procedures; and
- (9) Other relevant factors.⁷

Because of its growing domestic supply and safe, reliable, and efficient delivery system, the direct use of natural gas continues to be an important part of our country’s energy future. With the improved DOE appliance rulemaking process, natural gas will continue to be an environmentally-friendly energy choice for Americans in their homes and businesses. Notably, a focus on gas-fired appliance ECSs and TPs would meet most, if not all, of the factors outlined

⁵ Docket Number EERE-2014-BT-STD-0031.

⁶ *Energy Conservation Program for Appliance Standards: Energy Conservation Standards for Residential Furnaces and Commercial Water Heaters*, 86 Fed. Reg. 4776 (January 15, 2021).

⁷ *Energy Conservation Program for Appliance Standards: Procedures for Use in New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Commercial/Industrial Equipment*, 85 Fed. Reg. 31 (Feb. 14, 2020).

in Section 4 of the Process Rule. Furthermore, DOE’s 2020 Fall Regulatory Agenda already included many active rulemakings and long-term actions impacting gas-fired appliances. Consequently, APGA believes that DOE should continue to and more acutely focus on reviewing those appliance efficiency rulemakings directly impacting gas-fired appliances. Importantly, for DOE to appropriately address any gas-fired appliance ECS or TP rulemakings, it must apply its recently finalized legal interpretation, which found that condensing and non-condensing combustion technologies must be treated as separate product classes under the Energy Policy and Conservation Act of 1975 and its amendments (collectively, “EPCA”).⁸

A. Separate Product Classes Legal Interpretation

In January 2021, DOE published a final interpretive rule in response to a 2018 Gas Industry Petition⁹ finding the following:

“DOE interprets the statute to preclude the adoption of energy conservation standards that would limit the market to natural gas, propane gas, and/or oil-fired furnaces, water heaters, or similarly-situated covered products/equipment (where permitted by EPCA) that use condensing combustion technology, as that would result in the unavailability of a performance related feature within the meaning of 42 U.S.C. 6295(o)(4) and 42 U.S.C. 6313(a)(6)(B)(iii)(II)(aa) (and as applicable in certain cases through 42 U.S.C. 6316(a)). Stated differently, DOE has determined that non-condensing technology (and associated venting) constitutes a performance-related “feature” for such appliances covered under EPCA.”¹⁰

APGA feels that DOE’s final interpretive rule appropriately recognizes the differences

⁸ *Energy Conservation Program for Appliance Standards: Energy Conservation Standards for Residential Furnaces and Commercial Water Heaters*, 86 Fed. Reg. 4776 (January 15, 2021).

⁹ *Energy Conservation Program: Energy Conservation Standards for Residential Furnaces and Commercial Water Heaters, Notice of Petition for Rulemaking*, Docket No. EERE-2018-BT-STD-0018, 83 Fed. Reg. 54883 (Nov. 1, 2018) (“Gas Industry Petition”). As noted in the NOPIR, the Gas Industry Petition asked DOE to “(1) Issue an interpretive rule stating that DOE’s proposed energy conservation standards for residential furnaces and commercial water heaters would result in the unavailability of ‘performance characteristics’ within the meaning of the Energy Policy and Conservation Act of 1975 (EPCA; 42 U.S.C. 6291 et seq.), as amended (i.e., by setting standards which can only be met by condensing combustion technology products/equipment and thereby precluding the distribution in commerce of non-condensing combustion technology products/equipment) and (2) withdraw the proposed energy conservation standards for residential furnaces and commercial water heaters based upon such findings.”

¹⁰ *Energy Conservation Program for Appliance Standards: Energy Conservation Standards for Residential Furnaces and Commercial Water Heaters*, 86 Fed. Reg. 4776 (January 15, 2021).

between condensing and non-condensing appliances as separate product classes and that its application is fundamental to the appropriate review and development of future gas-fired appliance efficiency rulemakings, especially the Furnace Rule- a driving impetus behind DOE's issuance of the final interpretive rule.

B. Furnace Rule

APGA and other stakeholders' serious concerns that DOE has in the past overstated the potential benefits associated with a proposed standard and understated the costs can now be appropriately addressed, starting with the Furnace Rule.¹¹ Flawed analyses have historically resulted in proposed standards that failed to meet the economic justification requirement under the governing statute, the EPCA.¹² In the case of the Furnace Rule, APGA has proven that DOE's flawed proposal would have lessened competition by removing the choice that natural gas consumers currently have and would have likely forced many consumers to use less efficient, and ultimately more costly, electric alternatives.¹³

Since 2011, APGA has been forced to utilize extensive resources in pushing back against DOE's flawed proposed Furnace Rule. Though notably, the Furnace Rule appeared on DOE's most recent 2020 Fall Regulatory Agenda as an active rulemaking,¹⁴ which is impacted by the above discussed final interpretive rule.¹⁵ As the agency prepares its 2021 Spring Regulatory

¹¹ Docket Number EERE-2014-BT-STD-0031.

¹² 42 U.S.C. 6291, *et seq.*

¹³ APGA has long said that the DOE's Appliance and Equipment Standards Program, while effectively advancing the development and availability of higher efficiency product offerings good for consumers in its early years, has reached the point at which much smaller incremental changes in the minimum standards actually can reduce consumer welfare. For example, achieving efficiency levels that exceed 88% Annual Fuel Utilization Efficiency ("AFUE") (fully condensing furnace) for residential natural gas furnaces requires new venting systems and condensate removal equipment that furnaces below this level of efficiency do not require, resulting in increased costs in most instances.

¹⁴ *See* Energy Conservation Standards for Residential Non-Weatherized Gas Furnaces and Mobile Home Gas Furnaces (RIN [1904-AD20](#)).

¹⁵ *See* Energy Conservation Standards for Residential Furnaces and Commercial Water Heaters, Response to Petition for Rulemaking and Notice of Proposed Interpretive Rule (RIN [1904-AE39](#)). This activity also impacts commercial water heaters.

Agenda, not only should the Furnace Rule remain an active rulemaking, but it should also be prioritized above other active rulemakings, as final regulatory action has been significantly delayed on this particular rule. With the finalization of the Process Rule, the finalization of the interpretive rule,¹⁶ and the subsequent withdraw of the original Furnace Rule proposal,¹⁷ DOE is now presented with the opportune time to re-issue and finalize a final Furnace Rule (that both takes into account the final interpretive rule and abides by the updated Process Rule). APGA urges the agency to do so.

C. Other Gas-Fired Appliance Rulemakings

In addition to the Furnace Rule, focus should be given to all other rulemakings that impact gas-fired appliances to be reviewed according to the updated Process Rule, allowing for compliance with their statutorily mandated timelines. Several active rulemakings appeared on the 2020 Fall Regulatory Agenda that impacted gas-fired appliances,¹⁸ including but not limited to ECSs and TPs impacting water heaters,¹⁹ clothes dryers,²⁰ cooking products,²¹ furnaces,²² and heating equipment.²³ All are rules that APGA believes the DOE should continue to appropriately move forward, ensuring that each rulemaking takes into account the final interpretive rule (if applicable) and is conducted in accordance to the new, balanced procedures

¹⁶ *Energy Conservation Program for Appliance Standards: Energy Conservation Standards for Residential Furnaces and Commercial Water Heaters*, 86 Fed. Reg. 4776 (January 15, 2021).

¹⁷ *Energy Conservation Program for Appliance Standards: Energy Conservation Standards for Residential Furnaces and Commercial Water Heaters; Withdrawal*, 86 Fed. Reg. 3873 (January 15, 2021).

¹⁸ DOE's 2020 Fall Regulatory Agenda is available at

https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST¤tPub=true&agencyCode=&showStage=active&agencyCd=1900&Image58.x=33&Image58.y=5&Image58=Submit

¹⁹ *E.g.*, Energy Conservation Standards for Consumer Water Heaters (RIN [1904-AD91](#)); Test Procedure for Consumer Water Heaters and Certain Commercial Water Heaters (RIN [1904-AE77](#)).

²⁰ *E.g.*, Energy Conservation Standards for Clothes Dryers (RIN [1904-AD99](#)); Test Procedure for Residential Clothes Dryers (RIN [1904-AD46](#)).

²¹ *E.g.*, Energy Conservation Standards for Residential Conventional Cooking Products (RIN [1904-AD15](#)).

²² *E.g.*, Energy Conservation Standards for Residential Non-Weatherized Gas Furnaces and Mobile Home Gas Furnaces (RIN [1904-AD20](#)); Test Procedures for Commercial Warm Air Furnaces (RIN [1904-AE57](#)).

²³ *E.g.*, Energy Conservation Standards for Direct Heating Equipment (RIN [1904-AE31](#)); Test Procedures for Direct Heating Equipment (RIN [1904-AE30](#)).

outlined in the Process Rule.

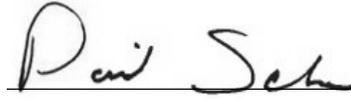
APGA also encourages DOE to add any additional gas-fired appliance rulemakings to the active rulemakings, but at the very least to the long-term action portion of the agenda, to ensure that other such rulemaking processes can be lined up to be reviewed after those that are already on DOE's existing agenda. All other ECS and TP rulemakings listed as active rulemakings on the 2020 Fall Regulatory Agenda should be moved to long-term actions to accommodate the focus on the above rulemakings. By enabling review of rulemakings for appliances that offer a gas-fired option (per the updated Process Rule), DOE is choosing to enable access to energy efficient appliances, while still allowing for consumer choice and complying with their statutory mandates according to EPCA.

While APGA recommends that DOE focus on the above rulemakings, we will not provide recommended sequencing beyond requesting that the Furnace Rule receive highest priority, as discussed above in section II.A. However, specific sequencing should take into account any potential efficiencies within the agency or elsewhere that help to ensure that as many rulemakings can be reviewed as possible.

III. CONCLUSION

APGA appreciates the opportunity to submit comments on the Prioritization Request and respectfully requests that DOE consider the above comments, considering the agency, just like public natural gas utilities, aims to provide energy as efficiently and cost-effectively as possible to support consumers and the environment.

Respectfully submitted,



Dave Schryver
American Public Gas Association
201 Massachusetts Avenue, NE
Suite C-4
Washington, DC 20002
(202) 464-2742
Email: dschryver@apga.org

Dated: March 11, 2021