

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

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

**COMMENTS OF THE
AMERICAN GAS ASSOCIATION**

Pursuant to the request for comments concerning prioritization of rulemakings issued by the Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy (“the Department” or “DOE”) in the above referenced proceeding and published in the *Federal Register* on April 15, 2020,¹ the American Gas Association (“AGA”) respectfully submits these comments. The notice seeks input concerning the prioritization of rulemakings pursuant to the Department’s updated and modernized rulemaking methodology, “Procedures, Interpretations, and Policies for Consideration of New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Commercial/Industrial Equipment” (“Process Rule”).² AGA appreciates the opportunity to provide the Department with feedback on this initiative.

¹ *Energy Conservation Program: Procedures for Use in New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Commercial/Industrial Equipment; Prioritization Process*, 85 Fed. Reg. 20886 (April 15, 2020) (“Request for Comment”).

² *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. 8626 (Feb. 14, 2020).

I. IDENTITY AND INTERESTS

The American Gas Association, founded in 1918, represents more than 200 local energy companies that deliver clean natural gas throughout the United States. There are more than 75 million residential, commercial and industrial natural gas customers in the United States, of which 95 percent — more than 71 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-fourth of the United States' energy needs.³

AGA's members serve residential and commercial customers, the majority of which use natural gas furnaces, boilers and/or water heaters, and other natural gas appliances and therefore have a direct and vital interest in both the minimum efficiency standards for these products and the procedures used by DOE to adopt these standards. The Process Rule is an integral procedure in DOE's rulemaking process, therefore, DOE's priorities pursuant to the Process Rule can and will have an impact on DOE's rulemakings to establish new energy conservation standards and test procedures

II. BACKGROUND

The Department's Process Rule was developed to guide implementation of the Appliance Standards Program, which is conducted pursuant to Energy Policy and Conservation Act of 1975 ("EPCA") for consumer products, and for certain industrial equipment.⁴ Under EPCA, DOE's

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

⁴ See Energy Policy and Conservation Act of 1975, Public Law 94-163 (42 U.S.C. 6291-6309, as codified), for consumer products, and for certain industrial equipment (42 U.S.C. 6311-6317, as codified), added by Public Law 95-619, Title IV, § 441(a).

energy conservation program for covered products consists essentially of four parts: (1) testing; (2) labeling; (3) the establishment of Federal energy conservation standards; and (4) certification and enforcement procedures.⁵

The modernized Process Rule provides that stakeholders will have the opportunity to provide input on the prioritization of rulemakings as DOE begins its preparation of the Spring Regulatory Agenda.⁶ DOE, via the April 15, 2020 Request for Comment, initiated the aforementioned stakeholder process and is seeking input concerning which appliance rulemaking proceedings should be in particular action categories for the Spring Agenda, such as active and long-term, as well as the timing of such rulemakings relative to other competing priorities.⁷

III. COMMENTS

A. **DOE SHOULD PRIORITIZE FINALIZING THE PENDING PETITION FOR SEPARATE PRODUCT CLASSES BEFORE ISSUING A PROPOSED RULEMAKING ON ENERGY CONSERVATION STANDARDS**

The Fall Unified Agenda of Regulatory and Deregulatory Actions (Fall Agenda) for 2019⁸ includes three related proceedings: Energy Conservation Standards for Residential Furnaces and Commercial Water Heaters, Response to Petition for Rulemaking and Notice of Proposed Interpretive Rule (“Petition”),⁹ Energy Conservation Standards for Residential Non-Weatherized

⁵ Process Rule at 8627.

⁶ *Id.* at 8648.

⁷ Request for Comment at 20887.

⁸ Office of Information and Regulatory Affairs Office of Management and Budget, *Department of Energy Agency Rule List – Fall 2019* (“Fall Agenda”),

https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST¤tPub=true&agencyCode=&showStage=active&agencyCd=1900&csrf_token=946D353BA47144C1B1AA8F1DBD203537E98CB923227035537273CF3EEB549156C1F1CB36B4164CCCE09CC8C7D7791B0B7ABE (last visited May 15, 2020).

⁹ *Energy Conservation Standards for Residential Furnaces and Commercial Water Heaters, Response to Petition for Rulemaking and Notice of Proposed Interpretive Rule*, RIN 1904-AE39, 84 Fed. Reg. 33011 (July 11, 2019).

Gas Furnaces and Mobile Home Gas Furnaces;¹⁰ and Energy Conservation Standards for Commercial Water Heating Equipment.¹¹ For the reasons discussed below, AGA believes that the Department should prioritize finalizing its agreement with recognizing separate product classes in the Petition proceeding before initiating proposed energy conservation standards rulemakings for natural gas furnaces, water heaters or similarly situated products/equipment that use condensing combustion technology.

In 2018, the American Public Gas Association, Spire, Inc., the Natural Gas Supply Association, AGA, and the National Propane Association requested that DOE 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 EPCA, and withdrawing the proposed energy conservation standards for residential furnaces and commercial water heaters based on such findings.¹² In July 2019, the Department granted the request, in part, to the extent that the Department prospectively interpreted EPCA to provide that adoption of energy conservation standards that would limit the market of natural gas and/or propane gas furnaces, water heaters, or similarly situated products/equipment that use condensing combustion technology would result in unavailability of a performance related feature.¹³ However, the Department denied the Petition's request to withdraw proposed rules for residential furnaces and commercial water heaters because the Department anticipated developing supplemental notices of proposed rulemakings that would implement the new legal interpretation

¹⁰ *Energy Conservation Standards for Residential Non-Weatherized Gas Furnaces and Mobile Home Gas Furnaces Supplemental Notice of Proposal Rulemaking and Announcement of Public Meeting*, RIN 1904-AD20, 81 Fed. Reg. 65720 (Sept. 23, 2016); *Re-opening of Public Comment Period*, 81 Fed. Reg. 87493 (Dec. 5, 2016).

¹¹ *Energy Conservation Program: Energy Conservation Standards for Commercial Water Heating Equipment; Proposed Rule*, 81 Fed. Reg. 34440 (May 31, 2016).

¹² *Energy Conservation Program for Appliance Standards: Energy Conservation Standards for Residential Furnaces and Commercial Water Heaters*, 84 Fed. Reg. 33011 (July 11, 2019) ("Petition").

¹³ *Id.*

for those two rulemakings.¹⁴ Based on the Fall Agenda, the Department expected to issue a final action on the Petition in the beginning of 2020; however, this proceeding is still pending.¹⁵

The Fall Agenda includes the Department's proposed amendments to its energy conservation standards for residential non-weatherized gas furnaces and mobile home gas furnaces in partial fulfillment of a court-ordered remand of the Department's 2011 rulemaking for these products.¹⁶ In 2015, the Department proposed standards that would increase the minimum efficiency standard for indoor residential gas furnaces and mobile home gas furnaces from 80% to 92% annual fuel utilization efficiency ("AFUE").¹⁷ Based on stakeholder comments, DOE issued a supplemental proposed furnace rulemaking in 2016,¹⁸ which is still pending. The current timetable indicated that a supplemental notice of proposed rulemaking would be issued in 2020.¹⁹

Further, the Fall Agenda includes the Department's proposed amendments to its energy conservation standards for commercial water heaters.²⁰ In 2016, the Department proposed standards that would increase the minimum thermal efficiency required of gas-fired storage and instantaneous water heaters from 80% to either 94% or 95% AFUE, depending on the equipment

¹⁴ *Id.* at 33021.

¹⁵ See Fall Agenda, *Energy Conservation Standards for Residential Furnaces and Commercial Water Heaters, Response to Petition for Rulemaking and Notice of Proposed Interpretive Rule*, <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201910&RIN=1904-AE39> (last visited May 15, 2020).

¹⁶ See Fall Agenda, *Energy Conservation Standards for Residential Non-Weatherized Gas Furnaces*, <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201510&RIN=1904-AD20> (last visited May 15, 2020).

¹⁷ *Energy Conservation Program: Energy Conservation Standards for Residential Furnaces; Supplemental Notice of Proposed Rulemaking and Announcement of Public Meeting*, 81 Fed. Reg. 65720, 722 (Sept. 23, 2016).

¹⁸ *Id.*

¹⁹ See Fall Agenda, *Energy Conservation Standards for Residential Non-Weatherized Gas Furnaces*, <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201510&RIN=1904-AD20> (last visited May 15, 2020).

²⁰ Fall Agenda, *Energy Conservation Standards for Commercial Water Heating Equipment*, <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201910&RIN=1904-AD34> (last visited May 15, 2020).

type.²¹ This proceeding is still pending and based on the Fall Agenda, the Department anticipates issuing a final rule in 2020.²²

While these proceedings are pending and listed on the Fall Agenda, AGA believes that, consistent with factors the Department considers in making its priority-setting decisions,²³ the Department should prioritize the Petition proceeding before initiating proposed rulemakings establishing energy conservation standards for natural gas furnaces, water heaters, or similarly situated products/equipment (where permitted by EPCA) that use condensing combustion technology. The Department's final order on the Petition will determine whether the Department considers venting of non-condensing furnaces and water heaters as a product "feature," and therefore would justify a different standard from condensing products/equipment.²⁴ For example, the Department has previously analyzed only two product classes for residential furnaces: (1) non-weatherized gas-fired furnaces and (2) mobile home gas-fired furnaces.²⁵ The Department did not additionally separate non-weatherized gas-fired furnaces and mobile home gas-fired furnaces into condensing and noncondensing product classes.²⁶ However, if the Department adopts its interpretive rule as proposed, the pending proposals in the Department's residential furnace and commercial water heater rulemaking proceedings would be no longer consistent with DOE policy

²¹ *Energy Conservation Program: Energy Conservation Standards for Commercial Water Heating Equipment; Proposed Rule*, 81 Fed. Reg. 34440 (May 31, 2016).

²² Fall Agenda, *Energy Conservation Standards for Commercial Water Heating Equipment*, <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201910&RIN=1904-AD34> (last visited May 15, 2020).

²³ Process Rule, Section 4, 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.

²⁴ Petition at 33013.

²⁵ *Id.* at 33014.

²⁶ *Id.*

and could not be adopted as proposed. Implementation of the Department’s evolved interpretation of EPCA’s “features” provision in the context of energy conservation standards for residential furnaces and commercial water heaters would therefore affect the Department’s other rulemakings addressing these products, in addition to other related proceedings involving similarly situated products/equipment that use condensing combustion technology. Even if the Department determines not to adopt its interpretive rule as proposed, the Department must still evaluate and respond to the Petition and then implement any revised interpretation in the context of its ongoing rulemaking obligations.²⁷ AGA understands that the Department’s statutory deadlines for promulgating final furnace and water heater standards expired in March 2017 and May 2018, respectively.²⁸ Therefore, AGA recommends that the Department expeditiously issue a final rule on the Petition, and then issue proposals on energy conservation standards for natural gas furnaces, water heaters, and any other similarly situated products/equipment that use condensing combustion technology, based on the Department’s determinations with regard to the Petition.

B. DOE SHOULD CONSIDER INITIATING A PROCEEDING TO DEVELOP ANALYTICAL GUIDANCE FOR MINIMUM EFFICIENCY RULEMAKINGS

AGA recommends that the Department consider developing specific analytical guidance for estimating consumer costs and benefits of proposed minimum efficiency standards which, in part, address the Department’s statutory requirement to assess “economic justification” of proposed minimum efficiency standards for inclusion into the Process Rule.²⁹ Additionally, in the near-term, AGA recommends that the Department convene a workshop for all stakeholders to provide input on developing guidance and use information in addition to the recommendations that

²⁷ *Id.* at 33020.

²⁸ *Id.* at 33019.

²⁹ 42 U.S.C. § 6295(o).

the National Academy of Sciences (“NAS”) is developing in its review of the Department’s analytical procedures.³⁰

The NAS has assembled an expert committee (“NAS Project Committee”) to conduct a peer review study of the analytical methods employed by the Department in setting efficiency standards regulations for the performance of buildings and associated equipment and products.³¹ Once the study is completed, the NAS Project Committee will provide a report that provides findings and recommendations for improving the Department’s regulatory analysis with best practices for cost-benefit analysis.³² The NAS Project Committee has held several meetings to discuss and develop the report.³³ Further, AGA has provided its own recommendations to NAS for potential improvements to the Department’s regulatory analysis.³⁴

Since NAS is undertaking this study, stakeholders should have the opportunity to provide additional recommendations for improving the Department’s regulatory analysis consistent with the foregoing effort. For example, there is an opportunity for additional improvements to DOE’s Office of Energy Efficiency and Renewable Energy (“EERE”) and contractor procedures for evaluating consumer costs and benefits of proposed minimum efficiency standards, such as:

- EERE should hold stakeholder workshops at the onset of the rulemaking process to develop the analytical design for calculating consumer costs and benefits and before any calculations of consumer costs and benefits are performed. AGA supports EERE’s past use of Monte Carlo simulation methods for accounting for economic and consumer diversity and uncertainty. However, initial review and comment of simulation designs are essential to help to better represent variables while eliminating or controlling through “correlated variable” procedures for variables that are not independent. Failure to do so produces many of the classic errors in applying Monte Carlo methods. Within such

³⁰ See The National Academies of Sciences, Engineering and Medicine, *Review of Methods for Setting Building and Equipment Performance Standards*, <https://www.nationalacademies.org/our-work/review-of-methods-for-setting-building-and-equipment-performance-standards> (last visited May 15, 2020).

³¹ *Id.*

³² *Id.*

³³ *Id.* (Dec. 16, 2019, March 2-3, 2020, and May 4-5, 2020).

³⁴ AGA letter to the NAS Project Committee, “Review of Methods for Setting Building and Equipment Performance Standards,” PIN: DEPS-BICE-19-02 (Feb. 24, 2020).

workshop, data sources and constructed variable data should be fully reviewed by stakeholders.

- EERE should provide for public review the descriptions of all consumer classes affected by establishment or revision of minimum efficiency standards. Too often, narrow and simplistic representations of affected consumers have been used for assessing consumer benefits and costs, missing entirely customer classes that have different and perhaps unique project installation and related cost hurdles. As a consequence, minimum efficiency standards analyzed as generating positive outcomes for broad categories of consumers may, in fact, miss unintended negative impacts for consumer groups not represented in the analysis.
- Intermediate simulation and other preliminary analysis results should be reviewed with stakeholders for validity and reasonableness prior to completing calculations through to final cost and benefit calculations. This is a basic requirement of good Monte Carlo method practice and should be implemented through a workshop or other consensus-oriented venue.
- Many analytical difficulties for EERE's analyses arise from mixing analytical characterizations of covered product market histories (involving different effects of rational economic decision making, "agency-related" market decision making, and other market failure influences) with future decision making based exclusively upon rational economic decision making. One influencing factor in this discontinuity is EERE's need to forecast nationwide energy savings and other impacts of rulemaking beginning with historical data for affected markets and customers. However, EERE would be better served by analyzing consumer cost and benefits (simulated based on sampling "representative consumers") under a consistent treatment of rational consumer behavior. Doing so would require simulation of a base case on rational economic decision making, regardless of any lack of consistency with historical behavior, but it would be analytically consistent to do so and better represent the consumer costs and benefits of higher minimum efficiency requirements. The crucial change would be the simulation of the base case using rational economic choice criteria.

Therefore, AGA recommends that the Department, in the short-term, convene a workshop for all stakeholders to begin development of guidance and use information to complement the recommendations that will be issued by NAS. In conjunction with the NAS effort, AGA recommends that the Department consider initiating a proceeding to develop specific analytical guidance that EERE staff and contractors can use for estimating consumer costs and benefits of proposed minimum energy efficiency standards.

IV. CONCLUSION

For the reasons stated above, the American Gas Association respectfully requests that the Department consider these comments in this proceeding.

Respectfully submitted,

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