

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

**Energy Conservation Program for)
Appliance Standards: Energy) EERE-2018-BT-STD-0018
Conservation Standards for Residential)
Furnaces and Commercial Water Heaters)**

**JOINT COMMENTS OF
THE AMERICAN GAS ASSOCIATION, SPIRE INC., SPIRE MISSOURI, INC.,
AMERICAN PUBLIC GAS ASSOCIATION, NATIONAL PROPANE GAS
ASSOCIATION, NATURAL GAS SUPPLY ASSOCIATION, PLUMBING-
HEATING-COOLING CONTRACTORS - NATIONAL ASSOCIATION, AND
NATIONAL ASSOCIATION OF HOME BUILDERS**

Pursuant to the notice of supplemental proposed interpretive rule and request for comment issued by the Department of Energy (“Department” or “DOE”) in the above captioned proceeding, *Energy Conservation Program for Appliance Standards: Energy Conservation Standards for Residential Furnaces and Commercial Water Heaters*, 85 Fed. Reg. 60090 (Sept. 24, 2020) (Docket No. EERE-2018-BT-STD-0018) (the “Notice”),¹ the American Gas Association (“AGA”), Spire Inc. and Spire Missouri, Inc. (collectively “Spire”), the American Public Gas Association (“APGA”), the National Propane Gas Association (“NPGA”), the Natural Gas Supply Association (“NGSA”), the Plumbing-Heating-Cooling Contractors - National Association (“PHCC”), and the National Association of Home Builders (“NAHB”) (collectively, “Joint Commenters”) respectfully submit these comments.

¹ See also, *Energy Conservation Program for Appliance Standards: Energy Conservation Standards for Residential Furnaces and Commercial Water Heaters*, 85 Fed. Reg. 67312 (Oct. 23, 2020) (extending the public comment period to November 9, 2020).

I. IDENTITY AND INTEREST

AGA, 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 U.S., 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 three-tenths of the United States' energy needs. AGA's members serve residential and commercial customers, the majority of which use natural gas furnaces, boilers and/or water heaters, 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.

Spire Inc. owns and operates Spire Missouri, Inc., the largest natural gas distribution company in the state of Missouri, Spire Alabama, Inc., the largest natural gas distribution company in the state of Alabama, Spire Gulf, Inc. and Spire Mississippi, Inc., operating in the Gulf Coast region of Alabama and in Mississippi, respectively. Spire's utility companies have been distributing gas in one form or another in their respective service areas for more than a century and a half. Today, they collectively provide natural gas distribution service to more than 1.7 million residential, commercial and industrial customers.

APGA is the trade association for approximately 1,000 communities across the U.S. that own and operate their retail natural gas distribution entities. They include municipal gas distribution systems, public utility districts, county districts, and other public agencies, all locally accountable to the citizens they serve. Public gas systems provide 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.

NPGA is the national trade association of the propane industry with a membership of about 2,500 companies, and 38 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 is a clean air alternative engine fuel for both over-the-road vehicles and industrial lift trucks. Residents throughout the country utilize propane to fuel home furnaces, but propane is uniquely popular in rural regions. Thus, the potential impact of the regulatory action on residential furnaces, especially in the South and among low-income residents, is an important concern to members of NPGA.

NGSA represents integrated and independent companies that supply natural gas. Founded in 1965, NGSA is the only national trade association that solely focuses on producer-marketer issues related to the downstream natural gas industry.

PHCC is a 135-year old association representing over 3200 contractor members who employ approximately 60,000 technicians. These contractor members believe in providing the best products and services for their consumer clients and support a practical and achievable approach to energy conservation.

Representing more than 140,000 members, NAHB is a Washington, D.C. based trade association that works to ensure housing is a national priority and that all Americans have access to safe, decent and affordable housing. The federation includes more than 700 affiliated state and local associations in all fifty states, the District of Columbia, and Puerto Rico. NAHB's membership includes, among others, those who design, construct, and supply single-family homes, build and manage multifamily projects, and remodel existing homes. Each year, NAHB's members construct about 80 percent of the new homes built in the United States.

II. COMMENTS

A. DOE Should Immediately Resolve the Core Question Raised by the Petition for Rulemaking

The issues raised by the Notice are important and will need to be addressed in the development of new standards for residential furnaces, commercial water heaters, and other gas or propane-fueled products. However, these issues do not need to be addressed to apply the “unavailability” provisions of the Energy Policy and Conservation Act of 1975 (“EPCA”), 42 U.S.C. 629, *et seq.*, to specific proposed standards as requested by the Petition for Rulemaking submitted on October 18, 2018,² (the “Petition”) by the APGA, Spire Inc., NGSA, AGA, and NPGA (collectively, “Petitioners”) in Docket No. EERE–2018–BT–STD–0018.

The Joint Commenters, which includes all the signatories to the Petition as well as other entities, respectfully request action to resolve the core issue raised by the Petition: Whether energy conservation standards that would limit the market to natural gas and/or propane gas furnaces or water heaters that use condensing combustion technology would result in the unavailability of a performance related feature within the meaning of 42 U.S.C. §§ 6295(o)(4) and 6313(a)(6)(B)(iii)(II)(aa).³ More than a year has passed since DOE tentatively concluded that such standards would have that effect,⁴ but the question remains to be finally resolved.

This issue is directly presented by DOE’s pending proposals to adopt standards for residential furnaces and commercial water heaters,⁵ both of which would impose standards that could only be

² See *Energy Conservation Program: Energy Conservation Standards for Residential Furnaces and Commercial Water Heaters, Notice of Petition for Rulemaking*, 83 Fed. Reg. 54883 (November 1, 2018) (Notice of petition for rulemaking; request for comment).

³ See 83 Fed. Reg. at 54888.

⁴ *Energy Conservation Program for Appliance Standards: Energy Conservation Standards for Residential Furnaces and Commercial Water Heaters*, 84 Fed. Reg. 33011 (July 11, 2019) (granting in part and denying in part a petition for rulemaking; notice of proposed interpretive rule).

⁵ See *Energy Conservation Program for Consumer Products: Energy Conservation Standards for Residential Furnaces*, 80 Fed. Reg. 13120 (March 12, 2015) (Docket No. EERE–2014–BT–STD–0031–0032) (standards for non-weatherized

achieved by products that use condensing combustion technology. The need to resolve the issue in the specific context of these proposals is now of immediate concern, because litigation has been filed seeking to compel prompt final action in a number of rulemaking proceedings, including the proceedings in which these proposals were issued.⁶

Petitioners have demonstrated that (1) DOE’s proposed standards for residential furnaces and commercial water heaters would result in the unavailability of residential furnaces and commercial water heaters that are compatible with atmospheric venting systems and (2) the compatibility of such products with atmospheric venting systems is a performance characteristic within the meaning of 42 U.S.C. §§ 6295(o)(4) and 6313(a)(6)(B)(iii)(II)(aa). In short, Petitioners “established by a preponderance of the evidence that the [standards are] likely to result in the unavailability in the United States . . . of performance characteristics that are substantially the same as those” now generally available in the United States. Petitioners specifically requested that DOE publish findings to that effect pursuant to 42 U.S.C. §§ 6295(o)(4) (in the case of residential furnaces) and 6313(a)(6)(B)(iii)(II)(aa) (in the case of commercial water heaters), and – because the proposed standards could not be lawfully adopted in the face of such findings⁷ – requested that the proposed rules be withdrawn.⁸ DOE has acknowledged that the requested findings are justified, but has not published the findings or withdrawn the pending proposals as requested.

residential furnaces); *Energy Conservation Program: Energy Conservation Standards for Residential Furnaces*, 81 Fed. Reg. 65720 (Sept. 23, 2016) (Docket No. EERE–2014–BT–STD–0031–0230) (supplemental notice of proposed rulemaking); *Energy Conservation Program: Energy Conservation Standards for Commercial Water Heating Equipment*, 81 Fed. Reg. 34440 (May 31, 2016) (Docket No. EERE–2014–BT–STD–0042) (standards for commercial water heating equipment).

⁶ See the complaint filed in Case No. 20-cv-9127 in the U.S. District Court for the Southern District of New York on October 30, 2020.

⁷ See 42 U.S.C. §§ 6295(o)(4) (in the case of residential furnaces) and 6313(a)(6)(B)(iii)(II)(aa) (in the case of commercial water heaters).

⁸ See 83 Fed. Reg. 54883, 54888 (November 1, 2018).

DOE has proposed broader interpretive rules and indicated that withdrawal of the pending proposals is “unnecessary.”⁹ However – even if DOE does not withdraw the pending proposals – it is now necessary and timely for DOE to resolve the core issue raised by the Petition by the mechanism specified by statute, *i.e.*, through the publication of findings that Petitioners have “established by a preponderance of the evidence that” the proposed residential furnace and commercial water heater standards are “likely to result in the unavailability in the United States . . . of performance characteristics that are substantially the same as those” now generally available in the United States for purposes of 42 U.S.C. §§ 6295(o)(4) and 6313(a)(6)(B)(iii)(II)(aa). Prompt publication of these findings is warranted on the merits and would resolve the question of whether DOE’s proposed standards for residential furnaces and commercial water heaters can be adopted as final.

DOE will need to address the issue of what separate product classes should be considered as it develops new proposals in its residential furnace and commercial water heater rulemaking proceedings, but these issues *do not need to be addressed* “to adequately resolve the question at hand, as raised by the Petition.”¹⁰ To the contrary, the Petition expressly envisioned that issues with respect to separate product classes would be addressed after the narrower issue presented by the Petition had been fully resolved.¹¹ Again, the core question raised by the Petition was whether DOE’s proposed standards for residential furnaces and commercial water heaters – which would make products compatible with atmospheric venting systems unavailable – would result in the unavailability of a performance-related feature within the meaning of 42 U.S.C. §§ 6295(o)(4) and 6313(a)(6)(B)(iii)(II)(aa). The Department has already recognized that the answer to that question is yes, and it should publish the findings contemplated by statute to resolve that discrete but important issue without further delay.

⁹ See 85 Fed. Reg. at 60094 and 84 Fed. Reg. at 33021.

¹⁰ 85 Fed. Reg. at 60095.

¹¹ See 83 Fed. Reg. at 54888.

B. DOE Should Consider Separate Product Classes in its Development of New Proposed Standards

The publication of findings, as specified above, will confirm that DOE cannot impose standards that can only be achieved by requiring condensing products unless separate product classes are created to preserve the availability of atmospherically vented products. With the threshold issue resolved, it would be clear – at a minimum – that more stringent standards for condensing products could be imposed only if separate product classes (with separate standards) are provided for atmospherically vented products and power-vented products. The question – as DOE has recognized – is whether separate standards for atmospherically vented products and power vented products would be sufficient to preserve the full range of venting-related performance characteristics currently available to consumers. This is the basic question raised by the Notice. The Joint Commenters appreciate the Department’s recognition of the need to consider this issue and are pleased to provide these technical comments in response.

The Department should consider product class definitions for residential products capturing venting requirements that are established and codified under national consensus standards. Specifically, DOE should consider separate product classes for appliances as defined by the national consensus standard for residential gas furnaces¹² and commercial gas water heaters¹³ and assess the need for separate minimum efficiency standards for these classes.

Pertaining to the residential and commercial gas products discussed above, these products are design-certified for safety based on the venting characteristics. There are four venting criteria that these gas furnaces and commercial gas water heaters identified in the American National Standard Institute (“ANSI”) Z21.47, Central Gas Furnace and ANSI Z21.10.3, and Commercial Gas Water

¹² CSA/ANSI Z21.47/CSA 2.3 Ed. 8 - Gas fired central furnaces.

¹³ See Annex F of 2021 edition of NFPA 54/Z223.1 available at <https://www.nfpa.org/codes-and-standards/all-codes-and-standards/list-of-codes-and-standards/detail?code=54&year=2018>.

Heater performance standards respectively; these criteria categorize the gas furnaces and gas commercial water heaters based on vent characteristics. Each furnace and commercial gas water heaters are required to be listed in the appropriate category and marked as such to help ensure proper installation and operation in the field. Additionally, the installation codes for gas furnaces, the ANSI Z223.1/NFPA 54 National Fuel Gas Code and International Fuel Gas Code, include the requirements for proper installation, such as vent sizing, termination, and clearance requirements. These product categories would appear to provide an appropriate starting point for the technical and economic analysis needed to determine whether separate minimum efficiency standards are appropriate for each product class. Rulemaking on these issues should be undertaken pursuant to the recently updated “Process Rule”¹⁴ and all analytical inputs need to be updated on the basis of current information. In particular, the Joint Commenters note that energy costs are substantially lower than DOE projected in the most analyses DOE performed in the residential furnace or commercial water heater rulemaking proceedings.¹⁵

III. CONCLUSION

The Joint Commenters respectfully request that DOE take prompt action to publish appropriate findings in response to the Petition and consider these comments in its further deliberations with respect to the issues raised in the Notice. The Joint Commenters look forward to working with DOE with regard to efficiency standards for residential furnaces and commercial water heaters, and other natural gas and/or propane appliances and equipment.

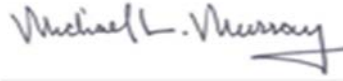
¹⁴ See, e.g., *Energy Conservation Program for Appliance Standards: Procedures for Use in New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Commercial/Industrial Equipment*, 85 Fed. Reg. 8626 (Feb. 14, 2020).

¹⁵ See *Energy Conservation Program for Consumer Products: Energy Conservation Standards for Residential Furnaces*, 80 Fed. Reg. 13120 (March 12, 2015) (Docket No. EERE-2014-BT-STD-0031-0032); *Energy Conservation Program: Energy Conservation Standards for Residential Furnaces*, 81 Fed. Reg. 65720 (Sept. 23, 2016) (Docket No. EERE-2014-BT-STD-0031-0230); *Energy Conservation Program: Energy Conservation Standards for Commercial Water Heating Equipment*, 81 Fed. Reg. 34440 (May 31, 2016) (Docket No. EERE-2014-BT-STD-0042).

Respectfully submitted,



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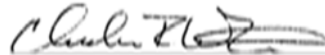
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