

**COMMENTS OF THE NATIONAL CONSUMER LAW CENTER AND  
CONSUMER FEDERATION OF AMERICA**

**DEPARTMENT OF ENERGY DOCKET EERE-2018-BT-STD-0018  
RE: ENERGY STANDARDS FOR RESIDENTIAL FURNACES AND COMMERCIAL  
WATER HEATERS, NOTICE OF PETITION FOR RULEMAKING<sup>1</sup>**

**Comments Submitted March 1, 2019**

**I. INTRODUCTION**

The National Consumer Law Center® (“NCLC”) and Consumer Federation of America (“CFA”) (collectively, “Consumer Groups”) file these comments in response to the petition of the American Public Gas Association and various other parties (collectively, “APGA et al.”) submitted to the Department of Energy (“Department”) on or about October 18, 2018. The APGA et al. petition seeks the opening of a rulemaking that would result in the issuance of “an interpretive rule confirming that energy conservation standards effectively limiting the market for natural gas and/or propane gas (‘fuel gas’) furnaces or water heaters to products using condensing combustion technology would result in the unavailability of ‘performance characteristics’ within the meaning of the Energy Policy and Conservation Act of 1975.”<sup>2</sup>

Consumer Groups read this petition, if granted, as effectively requiring the Department, in the future, to maintain separate standards for non-condensing furnaces and water heaters.<sup>3</sup> Consumer Groups assert that granting the petition would be both illegal and quite harmful to the economic interests of consumers, especially low-income consumers.

**II. INTEREST OF THE CONSUMER GROUPS**

NCLC is a 501(c)(3) non-profit organization founded 50 years ago, with the mission of advocating for justice and economic security for low-income consumers. Throughout its history, NCLC has worked to ensure that these households can afford the home energy they need for heating, cooling, lighting, refrigeration and other essential needs. Support for energy efficiency programs and policies has been a key part of our strategy, since cost-effective efficiency reduces both energy consumption and households bills. NCLC has been actively involved in DOE

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<sup>1</sup> See 83 Fed. reg. 54,883 (Nov. 1, 2018).

<sup>2</sup> APGA et al. Petition (10/18/19).

<sup>3</sup> The petitioners clearly state that a major premise of their petition is to ensure that “conventional atmospheric venting systems” remain available on the market. APGA et al. Petition.

rulemaking dockets, including those involving furnace standards, for the past 15 years. We have taken a particular interest in furnaces for two key reasons: for many households in colder climates, the heating bill is the single largest energy bill; and for low-income tenants,<sup>4</sup> standards ensure that the owner installs at least minimally efficient heating equipment.

CFA is an association of more than 250 nonprofit consumer organizations that was established in 1968 to advance the consumer interest through research, advocacy, and education. CFA has long advocated for cost-effective energy efficiency standards for consumer products as they save consumers money on their energy bills and defer the need for new power plants and utility infrastructure which can lead to higher electricity and gas costs.

### **III. OVERVIEW OF CONSUMER GROUPS COMMENTS**

As detailed more fully below, Consumer Groups make these main points:

1. Consumers – especially low-income consumers – will suffer substantial financial harm if the Department grants the APGA et al. petition and effectively precludes itself from even considering whether a condensing-level standard for furnaces and water heaters should be adopted. Prior furnace-related proceedings before the Department have shown that standards requiring condensing-level furnaces would provide billions of dollars of aggregate benefits, and that the vast majority of consumers would be better off if such a standard was adopted.
2. The primary concern of consumers – especially low-income consumers -- regarding their heating and hot water systems is the cost of their energy bills, not whether the equipment is condensing or non-condensing. The Department routinely adopts standards that do not mandate but result in changes in materials, controls, technology and siting or installation considerations, no different than whether equipment must be condensing or non-condensing.
3. The APGA et al. petition is contrary to law.

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<sup>4</sup> Renters are, by far, disproportionately of low-income. For example, data collected by the Department of Housing and Urban Development (“Economic and Market Analysis Division-HUD – Special Tabulations of 2016 ACD 5-year Survey Data – Households by income, Tenure, Age of Householder, and Housing Conditions”) shows that 57% of owner households had income of \$60,000 or greater annually, whereas only 27% of renter households had income of \$60,000 or greater annually. [See: [https://www.huduser.gov/ast/odb/Select\\_Parameters.odb](https://www.huduser.gov/ast/odb/Select_Parameters.odb)].

#### **IV. PRIOR PROCEEDINGS SHOWS THAT A CONDENSING FURNACE STANDARD WOULD SAVE CONSUMERS BILLIONS**

Consumer Groups have been filing comments for several years in the various Department proceedings regarding furnace standards, generally supportive of the adoption of condensing-level standards and highlighting the significant benefits consumers would gain. In comments filed November 22, 2016, and based on the data generated by the Department itself, Consumer Groups noted that between 83% and 89% of low-income households would benefit if the standard was set, respectively, at 92% AFUE for the whole country, or 92% for larger furnaces and 80% for smaller furnaces.<sup>5</sup> The comments also noted that, even in the South, where heating loads and potential energy savings are smaller, three-quarters of consumers would still benefit from a condensing-level standard of 92%. Those comments also underscored the critical point that “Federal furnace standards are particularly important for low-income households because they are disproportionately renters.” In the absence of strong furnace standards, landlords will buy less expensive and less efficient equipment that can saddle low-income tenants with unaffordable heating bills for decades.<sup>6</sup>

Adopting condensing-level furnace standards is the largest potential source for reducing the multi-billion dollar energy bill now incurred by consumers in using natural gas for space and water heating. The Appliance Standards Awareness Project has estimated that potential standards for gas-fired heating products could reduce residential and business energy bills by \$100 billion by the year 2050. Were the Department to grant the APGA et al. petition, it would

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<sup>5</sup> Consumer Groups comments in Docket EERE-2014-BT-STD-0031 (Nov. 22, 2016). Note that a standard at or above 90% AFUE requires the use of condensing technology.

<sup>6</sup> See also “Joint Comments of the Consumer Federation of America, National Consumer Law Center, Massachusetts Union of Public Housing Tenants and Texas Ratepayers’ Organization to Save Energy, docket EERE-2014-BT-STD-0031 (July 10, 2015).

take away its own ability to even consider whether condensing-level standards should be adopted. That would be a tremendous loss for consumers, and contrary to law.

**V. CONSUMERS CARE ABOUT THE SIZE OF THEIR ENERGY BILLS, NOT THE TECHNOLOGY THAT ALLOWS THE APPLIANCE TO MEET THE EFFICIENCY STANDARD**

The APGA et al. assert that “conventional atmospheric venting systems” are a “performance characteristic” that must be preserved, as a matter of law, and therefore that its petition must be granted. Consumer Groups briefly address below the legal arguments. Here, we urge the Department to consider that consumers do not focus on the technology that industry employs to meet revised efficiency standards. To address changes in standards, industry often must employ different insulating material, include new controls, or even adjust to changed on-site requirements. For example, in a 2015 Notice of Proposed Rulemaking regarding furnaces and the argument, like the one APGA et al. makes here, that there should be separate product classes for condensing and non-condensing furnaces, the Department noted:

Water heaters that utilize heat pump technology did not need to be put in a separate product class from conventional types of hot water heaters that utilize electric resistance technology, even though water heaters utilizing heat pumps require the additional installation of a condensate drain that a hot water heater utilizing electric resistance technology does not require. 74 FR 65852, 65871 (Dec. 11, 2009). DOE found that regardless of these installation factors, the heat pump water heater and the conventional water heater still had the same utility to the consumer: Providing hot water. *Id.*<sup>7</sup>

These site-related issues regarding handling of condensate were not considered a sufficient basis for creating separate product classes for heat pump and traditional water heaters.

The Department further noted its concern that:

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<sup>7</sup> 80 Fed. Reg. 13120, 13138 (Mar. 12, 2015).

determining features solely on product technology could undermine the Department's Appliance Standards Program. **If DOE is required to maintain separate product classes to preserve less-efficient technologies, future advancements of covered products would become largely voluntary, an outcome which seems inimical to Congress's purposes and goals in enacting EPCA.**<sup>8</sup>

That highlighted concern is equally applicable here. Congress intended for the Department to continually review standards as technology changes, yet APGA et al. would have the Department preclude consideration of condensing technology for all furnaces, now and forever. Consumer Groups maintain that efficiency standards should be technology neutral. They should not get in the way of the march of progress nor should they insulate a particular technology from change. To limit the ability of DOE to address inefficient and costly non-condensing technology kills the potential for significant advances in long overdue furnace efficiency. That is directly contrary to the interests of consumers in having more affordable energy bills.

While a condensing-level standard can result in site-specific installation adjustments that also impose costs, those costs have been thoroughly analyzed by the Department in prior proceedings and compared to the benefits of lower energy bills. The Department has always concluded that the benefits far outweigh any costs. There is no basis for treating non-condensing technology as a feature that requires the creation of a separate product class.

## **VI. THE APGA PETITION HAS NOT BASIS IN LAW**

The Department long ago considered and rejected the arguments made here that condensing and non-condensing furnaces should be in their own product classes:

DOE has no statutory basis for defining a separate class based on venting and drainage characteristics. NWGF and MHGF venting methods do not provide unique utility to consumers beyond the basic function of providing heat, which all furnaces perform. The possibility that installing a non- condensing furnace may be less costly than a condensing

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<sup>8</sup> 80 Fed. Reg. 13120, 13138 (Mar. 12, 2015) (emphasis added).

furnace due to the difference in venting methods does not justify separating the two types of NWGFs into different product classes.<sup>9</sup>

Reversing that thoroughly-reasoned decision would be bad public policy, given the adverse economic impacts it would have on consumers, especially low-income consumers. It would also be wrong as a matter of law.<sup>10</sup>

## **VII. CONCLUSION**

Adopting the APGA petition would be significantly harmful economically for consumers. The APGA et al. petition should be rejected.

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<sup>9</sup> 80 Fed. Reg. 13120, 13138 (Mar. 12, 2015).

<sup>10</sup> The legal arguments are made in detail in comments filed by Earthjustice et al. Consumer Groups concur in those comments.