



October 12, 2021

Catherine Rivest  
U.S. Department of Energy  
Office of Energy Efficiency and Renewable Energy  
Building Technologies Office, EE-5B  
1000 Independence Avenue, SW  
Washington, DC 20585

**RE: Docket Number EERE-2018-BT-STD-0018/RIN 1904-AE39: Proposed Interpretive Rule for Energy Conservation Standards for Residential Furnaces and Commercial Water Heaters**

Dear Ms. Rivest:

This letter constitutes the comments of the Appliance Standards Awareness Project (ASAP), American Council for an Energy-Efficient Economy (ACEEE), Consumer Federation of America (CFA), Evergreen Action, FSi Engineers, Green Energy Consumers Alliance, Midwest Energy Efficiency Alliance (MEEA), National Consumer Law Center, on behalf of its low-income clients (NCLC), Rocky Mountain Institute (RMI), and Southwest Energy Efficiency Project (SWEEP) on the proposed interpretive rule for energy conservation standards for residential furnaces and commercial water heaters. 86 Fed. Reg. 48049 (August 27, 2021). We appreciate the opportunity to provide input to the Department.

Updated energy conservation standards reflecting condensing-level performance for a range of gas space- and water-heating equipment have the potential to save U.S. consumers and businesses more than \$100 billion on their energy bills through 2050 while reducing cumulative CO<sub>2</sub> emissions by more than 500 million metric tons.<sup>1</sup> However, in a January 2021 final interpretive rule, DOE determined that the use of non-condensing technology (and associated venting) constitutes a performance-related

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<sup>1</sup> ASAP analysis based on Mauer, J. and A. deLaski, "A Powerful Priority: How Appliance Standards Can Help Meet U.S. Climate Goals and Save Consumers Money." 2020. Available at [https://appliance-standards.org/sites/default/files/Powerful\\_Priority\\_Report.pdf](https://appliance-standards.org/sites/default/files/Powerful_Priority_Report.pdf). Products evaluated included residential and commercial gas-fired furnaces, boilers, and water heaters.

“feature” under the Energy and Policy Conservation Act (EPCA) that cannot be eliminated through the adoption of an energy conservation standard,<sup>2</sup> which prevents the Department from even considering condensing-level standards. In the proposed interpretive rule, DOE proposes to revert to the Department’s previous and long-standing interpretation that the use of non-condensing technology is not a performance-related “feature.” We strongly support DOE’s proposal, which would help protect consumers and allow the Department to carry out EPCA’s goal of increasing the energy efficiency of covered products and equipment through energy conservation standards. We urge DOE to promptly publish a final rule.

**We agree with DOE’s conclusion that non-condensing technology (and associated venting) is not a performance-related “feature.”** As DOE describes in the proposed interpretive rule, the Department has historically “viewed utility as an aspect of the product that is accessible to the layperson and is based on user operation and interaction with the product.”<sup>3</sup> We agree with DOE that all furnaces and water heaters provide the same basic utility—heated air or water—and that non-condensing technology (and the associated venting) does not provide unique utility to consumers separate from an appliance’s function of providing heated air or water.<sup>4</sup>

Replacing a non-condensing furnace or water heater with a condensing product can require venting modifications. However, as some of us described in our comments (“ASAP et al. comments”) on the July 2019 proposed interpretive rule,<sup>5</sup> and as DOE tentatively concludes in the current proposed interpretive rule,<sup>6</sup> any impacts on venting associated with the installation of a condensing gas furnace or water heater are purely cost considerations. Specifically, as described in the ASAP et al. comments on the September 2020 supplemental proposed interpretive rule, there are a range of solutions to address challenging installation scenarios, including solutions that allow for venting a condensing product along with an atmospheric water heater through an existing vent.<sup>7</sup> As DOE explains in the proposed interpretive rule, consumers also have the option of installing an electric alternative (e.g., a heat pump).<sup>8</sup>

In the ASAP et al. comments on the November 2018 notice of petition for rulemaking, we described how in each rulemaking for gas space- and water-heating equipment, DOE has conducted a rigorous economic analysis of potential standard levels. In particular, DOE has conducted detailed analyses of installation costs, which incorporate impacts on commonly-vented appliances associated with replacing a non-condensing furnace with a condensing furnace, for example.<sup>9</sup> These cost impacts are appropriately considered in the context of individual rulemakings, which can consider the specific circumstances of each product. In contrast, the January 2021 interpretive rule effectively short-circuits DOE’s decision-making process by preventing the Department from even considering whether condensing-level standards are economically justified.

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<sup>2</sup> 86 Fed. Reg. 4776 (January 15, 2021).

<sup>3</sup> 86 Fed. Reg. 48051.

<sup>4</sup> 86 Fed. Reg. 48053-54.

<sup>5</sup> <https://www.regulations.gov/document?D=EERE-2018-BT-STD-0018-0095>.

<sup>6</sup> 86 Fed. Reg. 48054.

<sup>7</sup> <https://www.regulations.gov/comment/EERE-2018-BT-STD-0018-0118>.

<sup>8</sup> 86 Fed. Reg. 48055-56.

<sup>9</sup> <https://www.regulations.gov/comment/EERE-2018-BT-STD-0018-0061>.

We also support DOE’s tentative conclusion that potential fuel switching alone cannot be a basis to support a determination that non-condensing technology and associated venting constitute a performance-related “feature.”<sup>10</sup> As DOE notes in the proposed interpretive rule, nothing in EPCA requires that DOE take regulatory action to preclude fuel switching, and fuel switching “is a natural part of market operation for the subject appliances.”<sup>11</sup> In addition, the costs and benefits of switching to an electric heat pump can and should be evaluated as part of DOE’s economic analysis, as the Department has done in prior rulemakings.<sup>12</sup>

**DOE’s proposed interpretive rule would help protect consumers.** As explained in comments from the Consumer Federation of America and the National Consumer Law Center on the July 2019 proposed interpretive rule, low-income households are disproportionately renters and therefore must pay the energy bills for whatever heating equipment the landlord chooses to install. Since landlords will typically purchase less expensive, non-condensing furnaces, renters often end up having to pay significantly more to heat their homes.<sup>13</sup> The January 2021 interpretive rule is thus harmful to consumers—and especially low-income consumers—by preventing DOE from adopting a condensing-level standard even if that standard were cost-effective for consumers. DOE’s proposed interpretive rule would help protect consumers by allowing DOE to consider standard levels that have the potential to significantly reduce household energy bills.

**DOE’s proposed interpretive rule would align with EPCA’s goal of energy conservation.** As described above, the January 2021 interpretive rule prohibits DOE from even considering whether significant efficiency improvements are economically justified. We share DOE’s concern as stated in the proposed interpretive rule that “tying the concept of ‘feature’ to a specific technology would effectively lock in the currently existing technology as the ceiling for product efficiency and eliminate DOE’s ability to address technological advances that could yield significant consumer benefits in the form of lower energy costs while providing the same functionality/utility for the consumer.”<sup>14</sup> As DOE further states, maintaining separate product classes to preserve less efficient technologies thus conflicts with Congress’s purposes and goals in enacting EPCA.<sup>15</sup> The proposed interpretive rule would align with EPCA’s goal of energy conservation by allowing DOE to consider condensing-level standards based on an extensive economic analysis of whether such standards would be justified.

**We urge DOE to promptly publish a final rule.** We urge DOE to comply with the deadline for final action on this proposal contained in Executive Order 13990, “Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis.”<sup>16</sup> In February, DOE identified the interpretive rule and others as potentially contrary to the Executive Order.<sup>17</sup> The Executive Order directs DOE to complete its work on this and other actions DOE listed for review by December 31, 2021. As DOE notes in the proposed interpretive rule, completing a final interpretation will allow the Department to again consider whether amended standards for gas space- and water-heating equipment would be justified.<sup>18</sup>

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<sup>10</sup> 86 Fed. Reg. 48056.

<sup>11</sup> Ibid.

<sup>12</sup> For example, DOE incorporated fuel switching in the economic analysis for the 2016 supplemental proposed rule for furnaces.

<sup>13</sup> <https://www.regulations.gov/document/EERE-2018-BT-STD-0018-0093>.

<sup>14</sup> 86 Fed. Reg. 40854.

<sup>15</sup> Ibid.

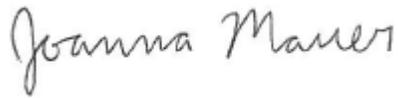
<sup>16</sup> 86 Fed. Reg. 7037 (January 25, 2021).

<sup>17</sup> [https://www.energy.gov/sites/prod/files/2021/02/f82/eere\\_eo13990\\_memo\\_1.pdf](https://www.energy.gov/sites/prod/files/2021/02/f82/eere_eo13990_memo_1.pdf).

<sup>18</sup> 86 Fed. Reg. 48049.

Thank you for considering these comments.

Sincerely,



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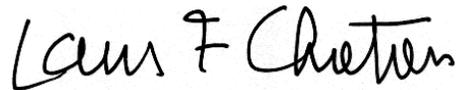
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