



Consumer Federation of America

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Advancing Fairness
in the Marketplace for All

September 9, 2019

By email: ResFurnaceCommWaterHeater2018STD0018@ee.doe.gov

RE: Energy Conservation Standards for Residential Furnaces and Commercial Water Heaters; Granting in Part and Denying in part a petition for rulemaking; notice of proposed interpretive rule; request for comment, EERE-2018-BT-STD-0018-0065

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

The Consumer Federation of America (CFA)¹ and the National Consumer Law Center (NCLC)² are writing to provide comments on the Department of Energy's proposed interpretive rule regarding the term "feature" in the context of condensing and non-condensing residential furnaces, published at 84 Fed. Reg. 33011 (July 11, 2019). The Department has proposed to prospectively interpret the governing statute "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 the unavailability of a performance 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 42 U.S.C. 6316(a)."³ In simpler terms, DOE's interpretation would prohibit the setting of a standard for residential furnaces that would preclude furnaces using non-condensing technology from being sold.

CFA and NCLC are aware that other commenters will provide extensive comments, covering a broad range of legal and technical points, in opposition to the Department's proposed interpretation. CFA and NCLC, as organizations working in the consumer interest, will more narrowly focus on a few points regarding the interests of low-income and moderate-income consumers, adding our voices to others opposing the Department's proposed interpretation.

Contrary to the concerns raised by the Department about the purportedly adverse impacts on low-income households of adopting standards that could limit the sale of non-condensing furnaces, we will explain how the Department's proposed interpretation will harm many more low-income and moderate-income households than it helps. This is especially true because these households are

¹ The Consumer Federation of America (CFA) is an association of more than 250 non-profit consumer groups that, since 1968, has sought to advance the consumer interest through research, education, and advocacy.

² The National Consumer Law Center (NCLC) is a non-profit organization with a broad mission of seeking economic justice in the marketplace for low-income households. NCLC has a particular focus on making sure that low-income consumers can obtain the essential amounts of energy they need, and that their homes and appliances are as efficient as reasonably possible.

³ 84 Fed. Reg. 33021.

disproportionately renters, not homeowners, and therefore must pay the energy bills for whatever furnace equipment the property owners chooses to install. If the Department uses this proposed interpretation to ensure that non-condensing furnaces will continue to be sold, regardless of the net costs this imposes on consumers and society at large, there is no doubt low-income and moderate-income consumers will be harmed.

I. The Department's Interpretation Will Harm Lower-Income Households

According to the Census Bureau, in recent years (2017 through second quarter of 2019), approximately 78% of households with income greater than median family income were homeowners, in contrast to 50% of households with income less than median family income.⁴ Moreover, the 50% homeownership rate for households below median family income significantly overstates homeownership for truly low-income households. Median household income in 2017, for example, was \$60,336.⁵ The federal poverty level for a family of four was \$24,600 in 2017.⁶ Thus, even families with income at 200% of the federal poverty level (\$49,200) would have income well below the median income of \$60,336 and, since homeownership rates decline as household income declines, they would have homeownership rates well below 50%. Moreover, homeownership rates are significantly lower for non-white families, in large part because they are also lower-income families. In the past two years, homeownership rates for “non-Hispanic White” households averaged 73%, while homeownership rates for “Black alone” households were approximately 42% , and approximately 47% for “Hispanic (of any race)” households.⁷

Renters do not purchase central heating furnaces – owners do. If the Department rejects a furnace standard which analysis shows is cost effective, solely on the basis that the standard would eliminate non-condensing furnaces from the market, this would ensure that low-income households, in particular, will suffer economic harm. Most owners, particularly those who rent apartments to lower income tenants, will choose less expensive, less efficient non-condensing furnaces that will result in those tenants paying significantly more to heat their homes. Depending on exactly which non-condensing unit is actually installed, compared to which condensing unit would have been installed, the low-income tenants will pay at least 10% more for their heat and as much as 20% more.⁸

As comments CFA and NCLC submitted to the Department on October 14, 2015 showed, were the Department to adopt a two-tiered standard of 80% AFUE for smaller furnaces – those used in warmer climates and smaller living units – and 92% AFUE⁹ for larger furnaces used in cold climates, 89% of low-income households would benefit. Conversely, if the Department follows through with its proposed interpretation and prohibits a standard that requires condensing technology for larger furnaces used in cold climates, millions of low-income households will be saddled with significantly higher energy bills for the useful life of the purchased furnaces.

⁴ U.S. Census Bureau, Current Population Survey/Housing Vacancy Survey, July 25, 2019, Table 17, “Homeownership Rates by Family Income, 1994 to Present.”

⁵ American Community Survey/Gloria Guzman, “Household Income: 2017”, Table 1 (Sept. 2018), *available at*: <https://www.census.gov/library/publications/2018/acs/acsbr17-01.html>.

⁶ <https://aspe.hhs.gov/2017-poverty-guidelines>.

⁷ U.S. Census Bureau, Quarterly Residential Vacancies and Homeownership, Second Quarter 2019, Table 8, “Homeownership Rates by Race and Ethnicity of Households; 2016 to 2019”.

⁸ For example, an 80% AFUE non-condensing furnace will consume approximately 20% more natural gas than a 96% condensing furnace.

⁹ To reach an efficiency of 92%, the furnace would need to have condensing technology.

The Department does assert, without any analysis, that “for consumers who rent (including low-income consumers) energy savings from mandatory energy conservation standards set at condensing levels are likely to be offset, at least in part, by higher rents to cover the landlord/owner’s first cost of the more expensive appliance.”¹⁰ We disagree strongly, for two reasons. First, the incremental costs for condensing versus non-condensing furnaces are in the range of several hundred dollars, including both higher equipment and higher installation costs.¹¹ Given that the assumed useful life of the furnace is over 20 years,¹² the owner would need to raise rent less than perhaps \$3 per month to recover the full incremental cost over the useful life of the unit.¹³ Second, in a much earlier filing made with the Department, NCLC included the affidavit of a non-profit housing developer which made these two key points: (i) the incremental costs of a more efficient furnace are so small compared to the owner’s overall operating costs so as not to be directly and immediately reflected in rent and (ii) rents are generally set in accordance with governing regulations, in rent-regulated low-income housing, or by external market conditions, for unregulated properties. Small, incremental changes in the cost of one appliance will not lead to a rent increase.

There are of course many low-income homeowners who directly bear the installation costs for new or replacement furnaces. But the Department long ago concluded that any increased installation costs are paid back in the form of lower energy operating costs fairly quickly (generally 4 years or less¹⁴), compared to the useful life of the furnaces. NCLC and CFA note that low-income homeowners frequently face termination of utility service for non-payment, and inefficient, non-condensing furnaces will only increase the risk of utility termination.

II. The Department’s Interpretation Runs Contrary to Statutory Intent

As the Department’s July 11, 2019 notice here makes clear, a previous Department notice “set forth in detail its [the Department’s] rationale for why it did not considering [sic] the venting of non-condensing furnaces to constitute a product ‘feature’ under 42 U.S.C. 6295(o)(4).”¹⁵ To the extent the Gas Industry Petition has any legal merit, the Department’s proposed interpretation of whether furnace venting is, or is not, a “feature” under the statute is a novel one, directly contrary to the history of the Department’s parsing of that term. The proposed and novel interpretation errs on the side of stemming improvements in furnace efficiency standards, directly contrary to the purposes of the relevant appliance efficiency acts.

The Energy Policy and Conservation Act (“EPCA”) of 1975¹⁶ was the first law to direct a federal agency¹⁷ to set “an energy efficiency improvement target” and, if certain conditions applied, an “energy efficiency standard” for certain products.¹⁸ The central purposes of EPCA included “to

¹⁰ 84 Fed. Reg. 330019 (July 11, 2019).

¹¹ See, for example, Technical Support Document: Energy Efficiency Program for Consumer Products and Commercial and Industrial Equipment: Residential Furnaces (Aug. 30, 2016), table 8.2.4 (incremental manufacturer production costs) and table 8.2.13 (additional installation costs).

¹² Technical Support Document: Energy Efficiency Program for Consumer Products and Commercial and Industrial Equipment: Residential Furnaces (Aug. 30, 2016), section 8.2.2.5.

¹³ The energy savings from the tenant having a more efficient furnace would handily exceed any insignificant rent increase.

¹⁴ Technical Support Document: Energy Efficiency Program for Consumer Products and Commercial and Industrial Equipment: Residential Furnaces (Aug. 30, 2016), table 8.7.1, p. 8-85.

¹⁵ 84 Fed. Reg. 33013 (July 11, 2019), *citing* 80 Fed. Reg. 13120, 13137-13138.

¹⁶ Public Law 94-163, 89 Stat. 871.

¹⁷ The Federal Energy Administration, the Department’s predecessor.

¹⁸ Public Law 94-163, § 325.

provide for improved energy efficiency of . . .major appliances and certain other consumer appliances.”¹⁹ Three years later, Congress passed the National Energy Conservation Policy Act (“NECPA”), mandating that the Secretary of Energy implement a far more rigorous appliance standard regime.²⁰ The purposes of NECPA closely aligned with those of EPCA, and included “to reduce the growth of demand for energy in the United States and to conserve nonrenewable energy resources. . . .”²¹

The Department’s proposed interpretation flies in the face of the purposes which caused Congress to mandate the appliance standards program. By focusing on the unquantified burdens that might be imposed on a very small percentage of residential households that would be required to install condensing furnaces, and ignoring the vast majority of households that would unquestionably benefit – under the Department’s own analysis – from adoption of a condensing furnace standard, the Department is taking a giant step backward and failing to carry out Congressional intent. Moreover, it will saddle consumers with potentially billions of dollars of excess energy costs while impeding efforts across the country to help consumers use less energy.

III. CONCLUSION

In conclusion, CFA and NCLC request the Department to withdraw its harmful proposed interpretation, which would be harmful to consumers – especially low-income consumers.

Respectfully submitted,



Mel Hall-Crawford
Energy Projects Director
Consumer Federation of America



Charles Harak
Senior Attorney for Energy Issues
National Consumer Law Center
On behalf of its low income clients

¹⁹ *Id.*, § 2.

²⁰ Public Law 95-619, § 422, amending EPCA § 325.

²¹ Public Law 95-619, § 102(b).