

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

Energy Conservation Program for)	
Appliance Standards: Procedures for)	
Evaluating Statutory Factors for Use in)	EERE-2017-BT-STD-0062-0080
New or Revised Energy Conservation)	
Standards)	

**COMMENTS OF THE
AMERICAN PUBLIC GAS ASSOCIATION**

The American Public Gas Association (“APGA”) submits these comments in response to the Supplement Notice of Proposed Rulemaking (“SNOPR”) of the Department of Energy Office of Energy Efficiency and Renewable Energy (“DOE”) concerning modification of its “Process Rule,”¹ as published in the *Federal Register* on February 14, 2020 (85 Fed. Reg. 8483).

I. SUMMARY

APGA is the national, non-profit association of publicly owned natural gas distribution systems, with more than 740 members in 37 states.² The members of APGA serve primarily residential and commercial customers, which rely heavily on natural gas-fired furnaces, water heaters, cooking ranges, and dryers, and hence they have a direct and vital interest in both the minimum efficiency standards and the procedures used by DOE to adopt new minimum efficiency standards for such products. APGA members are especially concerned that such efficiency standards be adopted only after consideration of all relevant points of view, including

¹ See 10 C.F.R Part 430, Subpart C, Appendix A

² Overall, there are approximately 1,000 public gas systems in the United States. Public gas systems are not-for-profit retail distribution entities that are owned by, and accountable to, the citizens they serve. They include municipal gas distribution systems, public utility districts, county districts, and other public agencies that have natural gas distribution facilities.

the distributors of natural gas, whose desire for the efficient use of natural gas is matched only by their commitment to ensure that minimum standards do not have the consequence of preventing consumers from choosing clean and economical natural gas instead of other less efficient and more costly energy sources.³ In that vein, APGA participated in this proceeding concerning the Process Rule.

The Process Rule revision was a monumental effort by the DOE that will improve in many ways the department's fulfillment of its responsibilities under the Energy Policy and Conservation Act of 1975, as amended ("EPCA"). On January 16, 2020, APGA issued this statement:

APGA appreciates DOE and its Office of Energy Efficiency and Renewable Energy for publishing a final rule that updates and streamlines aspects of the Appliance and Equipment Standards Program's current rule making process. This modernization will improve appliance energy usage, benefiting American consumers and business owners, as well as reducing greenhouse gas emissions and improving the environment. APGA's members serve many Americans, who rely on natural gas-fired furnaces and water heaters, so these public natural gas utilities have a direct and vital interest in both the minimum efficiency standards for such products and the procedures used by DOE to establish them. Because of its growing domestic supply and safe, reliable, and efficient delivery system, the direct use of natural gas is an important part of our country's energy future. With an improved DOE appliance rulemaking process, natural gas will be an environmentally-friendly energy choice for Americans in their homes and businesses.

APGA has long said that the DOE's Appliance and Equipment Standards Program ("Program"), while effectively advancing the development and availability of higher efficiency

³ DOE's most recent forecast for the representative average unit costs of five residential energy sources for the year 2019, which again shows that natural gas remains the most affordable residential energy source, less than one-third the cost of electricity and half the cost of heating oil and propane. Energy Conservation Program for Consumer Products: Representative Average Unit Costs of Energy, 84 Fed. Reg. 8516 (March 8, 2019).

product offerings good for consumers in its early years, has reached the point at which much smaller incremental changes in the minimum standards actually can reduce consumer welfare.⁴

As stated in its original comments on the Process Rule filed last year, APGA and other stakeholders expressed serious concerns that DOE overstates the potential benefits associated with a proposed standard and understates the costs. Flawed analysis has resulted in proposed standards that fail to meet the economic justification requirement under the statute that governs the Program. In the case of the proposal regarding residential gas furnaces, APGA has proven that DOE's flawed proposal will lessen competition by removing the choice that natural gas consumers currently have, and will likely force many consumers to use less efficient, and ultimately more costly, electric alternatives.

Accordingly, APGA supported of DOE's new focus on the "walk-down" approach previewed in the original Process Rule NOPR. In its comments on the proposed changes to the Process Rule, APGA agreed "that the most logical way to determine if a particular consumer option is 'economically justified' is to compare it to the full range of available consumer choices," and APGA supported "requiring determinations of economic justification to consider comparisons of economically relevant factors across trial standard levels." Consistent with those comments, APGA now supports the refined SNOPR proposals.

II. COMMENTS

A. The SNOPR Will Improve DOE Analytical Methodologies

DOE now proposes to modify the "Policies on Selection of Standards" section of the Process Rule to clarify that a determination of economic justification for a specific trial standard

4 For example, achieving efficiency levels that exceed 88% Annual Fuel Utilization Efficiency ("AFUE") (fully condensing furnace) for residential natural gas furnaces requires new venting systems and condensate removal equipment that furnaces below this level of efficiency do not require, resulting in increased costs in most instances.

level (“TSL”) must be based on a comparison of the “benefits and burdens” of that standard, determined by considering the seven factors listed in EPCA, against the benefits and burdens of the baseline case (no new standards case) and all other TSLs as an incremental comparison. DOE will continue to begin the TSL evaluation process with the max-tech TSL and “walk down” to less-stringent TSLs; economic justification would be determined through a comparative analysis of the benefits and burdens of all of the proposed TSLs, including relative comparisons of each TSL’s benefits and burdens as part of an holistic analysis among all TSLs as outlined in 42 U.S.C. 6295(o)(2)(B). DOE emphasizes that this new comparative analysis “will inform the policy choice, based on the statutory factors, and DOE will no longer simply adopt the max-tech TSL without clear consideration of the results of the comparative analysis.”⁵

1. “Walk-Down” Approach Generally

Over the past several years, APGA and other stakeholders have expressed serious concerns regarding the materially flawed analysis DOE has been using to justify the proposed standard under review, which APGA believes has led DOE to overstate the potential benefits associated with a proposed standard and understate costs in the pending residential furnace Supplemental NOPR. The flawed analysis has resulted in a proposed standard that has failed to meet the economic justification requirement under the statute that governs the Program.⁶ In fact, in many cases, the market is working without a new regulation so that the practical effect of a proposed rule’s new minimum standards would be that consumers either are forced by the government to make an uneconomic choice (*i.e.*, they would incur a net cost to purchase a new

⁵ SNOPR, 85 Fed. Reg. at 8486.

⁶ In fact, technical analysis has been provided in several proceedings demonstrating that if DOE made reasonable and rationally-based corrections to key methodological and data flaws, the proposed standard would result in an increase in the life-cycle cost on a national basis.

appliance), or they would switch from natural gas to an alternative that, on a full fuel basis, is less efficient.

DOE's proposal to modify the "walk-down" approach is responsive to APGA's concerns. APGA agrees that the most logical way to determine if a particular consumer option is "economically justified" is to compare it to the full range of available consumer choices. Accordingly, APGA supports requiring determinations of economic justification to consider comparisons of economically relevant factors across TSLs.

2. Consumer Economic Impacts Are an Important Consideration

DOE's revised approach specially will incorporate the economic aspects of consumer welfare impacts. APGA long has focused on consumer-oriented and market-based approaches and supports DOE's focus on the "economically rational consumer." Although DOE will continue to start the TSL evaluation process with the max-tech TSL and "walk down" to less-stringent TSLs, economic justification will receive proper attention.

Congress requires DOE when determining whether a standard is economically justified, first to look at "the economic impact of the standard on the manufacturers and on the consumers of the products subject to such standard" including what consumers would save "in operating costs throughout the estimated average life of the covered product in the type (or class) compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered products which are likely to result from the imposition of the standard." 42 U.S.C. § 6295(o)(2)(B)(i)(I-II).

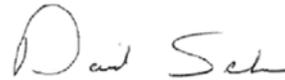
A comparative analysis rightly puts a spotlight on the statute section's first factor: consumer economic impact (and manufacturers). Technical feasibility is tethered to careful consideration of the real-life impact on the consumer including most importantly the economic impact of a new TSL. The SNOPR does not seek to elevate one above the other but to hold them

in balance.”⁷ APGA agrees that, along with the revised final Process Rule, “the revised procedures will allow DOE to better focus on standards that effectively provide for improved energy efficiency of major appliances and certain other consumer products.”⁸

III. CONCLUSION

APGA supports the proposals of the SNO PR and urges DOE to implement them at the earliest opportunity.

Respectfully submitted,



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⁷ SNO PR, 85 Fed. Reg. at 8487 (“concerns that this proposal will result in DOE selecting standards that are the most economically justified, instead of standards that result in the maximum improvement in energy efficiency that is technologically feasible and economically justified, are misplaced”).

⁸ *Id.* at 8487.