

**COMMENTS OF THE ATTORNEYS GENERAL OF NEW YORK,
CALIFORNIA, COLORADO, DISTRICT OF COLUMBIA, ILLINOIS, MAINE,
MARYLAND, THE COMMONWEALTH OF MASSACHUSETTS,
MINNESOTA, OREGON, VERMONT, WASHINGTON,
AND THE CORPORATION COUNSEL OF THE CITY OF NEW YORK**

November 9, 2020

Submitted via e-mail:

ResFurnaceCommWaterHeater2018STD0018@ee.doe.gov

U.S. Department of Energy

Building Technologies Program

**Re: Docket No. EERE-2018-BT-STD-0018
Energy Conservation Standards for Residential Gas Furnaces and
Commercial Water Heaters**

The undersigned state and local governments make this submission in response to the U.S. Department of Energy’s (DOE’s) September 24, 2020 supplemental proposed interpretive rule that would deem a residential gas furnace or commercial water heater’s compatibility with existing venting systems a “performance-related feature” of the device within the meaning of the Energy Policy and Conservation Act (EPCA), 42 U.S.C. §§ 6295(o)(4) and 6313(a)(6)B(iii)(II)(aa).¹ In its initial July 2019 proposed interpretive rule regarding EPCA’s “features” provision, which DOE issued in response to a petition by members of the gas industry, DOE proposed that a product characteristic narrower in scope – namely, use of non-condensing combustion technology typically found in less efficient furnaces and water heaters – constituted a protected “performance-related feature.”² EPCA prohibits DOE from prescribing a new or amended energy efficiency standard that is likely to result in the unavailability of a performance-related feature. 42 U.S.C. §§ 6295(o)(4) and 6313(a)(6)B(iii)(II)(aa).

Both of DOE’s proposed interpretations of EPCA’s “features” provision are inconsistent with EPCA and unsupported. As explained in our March 1, 2019³ and September 9, 2019⁴ comments in this rulemaking docket (incorporated herein by reference), a furnace or water heater’s combustion technology and its compatibility with existing drafting/venting systems are

¹ Notice of Supplemental Proposed Interpretive Rule and Request for Comment, Energy Conservation Standards for Residential Furnaces and Commercial Water Heaters, 85 Fed. Reg. 60090 (Sept. 24, 2020).

² Notice of Partial Grant of Petition for Rulemaking and Proposed Interpretive Rule, Energy Conservation Standards for Residential Furnaces and Commercial Water Heaters, 84 Fed. Reg. 33,011 (July 11, 2019).

³ Comments of Attorneys General of New York, District of Columbia, Illinois, Maine, Massachusetts, Minnesota, New Jersey, Oregon, Vermont, Washington, and the Corporation Counsel of New York City in Response to Gas Industry Petition (March 1, 2019), available at <https://www.regulations.gov/document?D=EERE-2018-BT-STD-0018-0049>.

⁴ Comments of Attorneys General of New York, California, Colorado, District of Columbia, Illinois, Maine, Maryland, the Commonwealth of Massachusetts, Minnesota, New Jersey, Oregon, Vermont, Washington, and the Corporation Counsel of New York City in Response to DOE’s Proposed Interpretive Rule (Sept. 9, 2019), available at <https://www.regulations.gov/document?D=EERE-2018-BT-STD-0018-0082>.

not performance-related features that would justify the creation of separate product classes subject to less stringent energy efficiency requirements. 42 U.S.C. § 6295(q)(1). The performance-related utility of furnaces and water heaters is their ability to provide heat and hot water, not the combustion or venting features that they use to do so. Indeed, DOE itself historically has rejected the notion that specific technology or design features can be used to preserve less-efficient technologies and thereby limit potential energy savings achievable through advancements in energy efficiency.⁵

For the reasons set forth here and in our prior comments, DOE's initial and supplemental proposed interpretive rules are arbitrary, capricious, and an abuse of discretion. DOE's consideration of these proposals also unlawfully delays the adoption of efficiency standards required by EPCA. We therefore urge DOE to withdraw these proposed interpretive rules and proceed instead with the issuance of final energy conservation standards for gas furnace and water heaters as mandated by law.

Respectfully submitted,

FOR THE STATE OF NEW YORK

LETITIA JAMES
ATTORNEY GENERAL

/s/ Lisa S. Kwong

LISA S. KWONG

TIMOTHY HOFFMAN

Assistant Attorneys General

MICHAEL J. MYERS

Senior Counsel

LINDA M. WILSON

Scientist

Office of the Attorney General

Environmental Protection Bureau

The Capitol

Albany, NY 12224

Tel: 518-776-2422

Email: Lisa.Kwong@ag.ny.gov

Timothy.Hoffman@ag.ny.gov

⁵ See Notice of Proposed Rulemaking and Announcement of Public Meeting, Energy Conservation Standards for Residential Furnaces, 80 Fed. Reg. 13119, 13138 (Mar. 12, 2015).

FOR THE STATE OF CALIFORNIA

XAVIER BECERRA
Attorney General

/s/ Jamie Jefferson

JAMIE JEFFERSON
SOMERSET PERRY
Deputy Attorneys General
DAVID ZONANA
Supervising Deputy Attorney General
Office of the Attorney General
1515 Clay Street, Suite 2000
Oakland, California 94706
Tel: (510) 879-0280
Email: Jamie.Jefferson@doj.ca.gov
Email: Somerset.Perry@doj.ca.gov

FOR THE STATE OF MAINE

AARON M. FREY
Attorney General

/s/ Katherine E. Tierney

KATHERINE E. TIERNEY
Assistant Attorney General
6 State House Station
Augusta, ME 04333
Tel: (207) 626-8897
Email: Katherine.tierney@maine.gov

FOR THE STATE OF WASHINGTON

ROBERT W. FERGUSON
Attorney General

/s/ Steve Scheele

STEVE SCHEELE
Assistant Attorney General
Agriculture & Health Division
P.O. Box 40109
Olympia, Washington 98504
Tel: (360) 586-4900
Email: steve.scheele@atg.wa.gov

FOR THE CITY OF NEW YORK

JAMES E. JOHNSON
Corporation Counsel

/s/ Hilary Meltzer

Hilary Meltzer
Chief, Environmental Law Division
New York City Law Department
100 Church Street
New York, NY 10007
Tel: (212) 356-2070
Email: hmeltzer@law.nyc.gov

FOR THE DISTRICT OF COLUMBIA

KARL A. RACINE
Attorney General

/s/ Brian R. Caldwell

BRIAN R. CALDWELL
Assistant Attorney General
Social Justice Section
Office of the Attorney General
for the District of Columbia
400 6th Street N.W. 10th Floor
Washington, D.C. 20001
Tel: (202) 727-6211 (desk)
Tel: (202) 445-1952 (mobile)
Email: brian.caldwell@dc.gov

FOR THE STATE OF ILLINOIS

KWAME RAOUL
Attorney General

/s/ Jason E. James

JASON E. JAMES
Assistant Attorney General
MATTHEW J. DUNN
Chief, Environmental Enf./
Asbestos Litigation Div.
Office of the Attorney General
Environmental Bureau
69 W. Washington St., 18th Floor
Chicago, IL 60602
Tel: (312) 814-0660
Email: jjames@atg.state.il.us

FOR THE STATE OF COLORADO

PHILIP J. WEISER
Attorney General

/s/ Jessica Lowrey

JESSICA L. LOWREY
Senior Assistant Attorney General
Natural Resources and Environment
Section
Office of the Attorney General
1300 Broadway, 7th Floor
Denver, Colorado 80203
Tel: (720) 508-6167
Email: Jessica.lowrey@coag.gov

FOR THE STATE OF MARYLAND

BRIAN FROSH
Attorney General

/s/ Steven J. Goldstein

STEVEN J. GOLDSTEIN
Special Assistant Attorney General
Office of the Attorney General
200 Saint Paul Place, 20th Floor
Baltimore, Maryland 21202
Tel: (410) 576-6414
Email: sgoldstein@oag.state.md.us

FOR THE STATE OF VERMONT

THOMAS J. DONOVAN, JR.
Attorney General

/s/ Laura B. Murphy

LAURA B. MURPHY
Assistant Attorney General
Environmental Protection Division
Vermont Attorney General's Office
109 State Street
Montpelier, VT 05609
Tel: (802) 828-3186
Email: laura.murphy@vermont.gov

FOR THE STATE OF OREGON

ELLEN F. ROSENBLUM
Attorney General

/s/ Steve Novick

STEVE NOVICK
Special Assistant Attorney General
Natural Resources Section
PAUL A. GARRAHAN
Attorney-in-Charge
Oregon Department of Justice
1162 Court Street NE
Salem, OR 97301
Tel: (503) 947-4590
Email: Steve.Novick@doj.state.or.us

FOR THE COMMONWEALTH OF
MASSACHUSETTS

MAURA HEALEY
Attorney General

/s/ I. Andrew Goldberg

I. ANDREW GOLDBERG
Assistant Attorney General
Environmental Protection Division
ASHLEY GAGNON
Assistant Attorney General
Energy and Telecommunications Division
Office of the Attorney General
One Ashburton Place, 18th Floor
Boston, Massachusetts 02108
Tel: (617) 963-2429
Email: andy.goldberg@mass.gov

FOR THE STATE OF MINNESOTA

KEITH ELLISON
Attorney General

/s/ Peter N. Surdo

PETER N. SURDO
Special Assistant Attorney General
Environmental Litigation
Minnesota Attorney General's Office
445 Minnesota Street, Suite 900
St. Paul, Minnesota 55101-2127
Tel: (651) 757-1061
Email: peter.surdo@ag.state.mn.us

FOR THE STATE OF NEVADA

AARON D. FORD
Attorney General

/s/ Heidi Parry Stern

HEIDI PARRY STERN
Solicitor General
Office of the Nevada Attorney General
555 E. Washington Ave., Ste. 3900
Las Vegas, NV 89101
Tel: (702) 486-3594
Email: HStern@ag.nv.gov