



State of West Virginia
Office of the Attorney General
John B. McCuskey
Attorney General

May 27, 2026

The Honorable Chris Wright
Secretary
U.S. Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585

Submitted Electronically via Regulations.gov

Re: Comments of State of West Virginia in Support of Amended Compliance Dates for Commercial Water Heating Equipment and Consumer Furnaces Rules and Further Revision to the Rules, *Energy Conservation Program: Notification of Petition for Rulemaking*, EERE-2026-BT-STD-0001, 91 Fed. Reg. 22477 (April 27, 2026)

Dear Secretary Wright:

West Virginia is grateful for the opportunity to write in support of DOE's proposed amendment pushing the compliance dates for two rules governing commercial water heating equipment¹ and consumer furnaces² to January 1, 2030. The proposed compliance delay is much needed, particularly in West Virginia.

West Virginia also writes to urge DOE to amend or rescind the commercial water heating equipment and consumer furnaces rules to ensure that customers do not experience undue hardship or burdens. West Virginia has a strong interest in protecting its residents from unnecessary increases in the cost of essential home heating and water heating equipment. So the State has an interest in protecting the consumer safeguards Congress embedded in the Energy Policy and Conservation Act. Absent an extension, these rules will impose serious and avoidable hardship on households, businesses, and communities across our State.

¹ *Energy Conservation Program: Energy Conservation Standards for Commercial Water Heating Equipment*, 88 Fed. Reg. 69,686 (Oct. 6, 2023).

² *Energy Conservation Program: Energy Conservation Standards for Consumer Furnaces*, 88 Fed. Reg. 87,502 (Dec. 18, 2023).

The federal government's position in Supreme Court litigation about the rules warrants prompt action, too. In its brief, DOE states that the rules rest on a flawed reading of EPCA's unavailability provision and are factually and legally flawed.³ This acknowledgment further confirms that the current compliance dates should not remain in place while DOE reassesses the rules' legal and factual premises.

I. The Biden Era Rules Impose Economic Hardship on Consumers and Disproportionately Burden Low-Income Households in Our Communities

The commercial water heating equipment and consumer furnaces rules impose severe economic burdens on West Virginia and similarly situated States, undermining EPCA's consumer protections. If left unchanged, the rules will make it illegal to manufacture popular natural gas commercial water heaters in October 2026 and residential furnaces in December 2028. These products are an affordable option for many homes and businesses nationwide.

Moreover, the Biden Era Rules' hardships and burdens will inequitably harm fixed-income households, low-income consumers, rural communities, and economically vulnerable consumers. The Biden Era Rules illustrate how abusive agency actions can push regressive costs onto low-income and rural households nationwide. Allowing the Biden Era Rules to stand unchanged will eliminate a widely used class of products that remain essential in many States. Congress did not envision widespread product elimination when it enacted EPCA's consumer protection provisions. Absent swift DOE action, the rules will burden the consumers that can afford it least. They will erase regionally appropriate technologies. And they will impose costs that ripple through local economies, disrupt state planning, and intrude upon choices traditionally left to States and their residents.

West Virginia provides a clear example; its socioeconomic profile magnifies the adverse effects of the Rules. According to the U.S. Census Bureau, the State's median household income is approximately \$59,600, which is roughly 15% below the national median.⁴ Nearly 17% of West Virginians live below the poverty line, a rate well above the national average.⁵ These figures reflect widespread income insecurity, especially in rural counties where economic opportunity is limited and household savings are often minimal. For families operating on tight budgets, a requirement to retrofit home heating systems or purchase expensive alternative appliances does not represent a marginal expense; it represents a substantial economic burden with real consequences for household stability.

³ Federal Resps'ts' Br. 8, 11, *Am. Gas Ass'n v. Dep't of Energy*, No. 25-879 (U.S. Apr. 2026).

⁴ *QuickFacts: West Virginia*, U.S. CENSUS BUREAU, <https://tinyurl.com/yhcf2ea2> (last visited May 27, 2026); see also Melissa Kollar & Zach Scherer, *Income in the United States: 2024*, U.S. CENSUS BUREAU 1, 1 (Sept. 2025), <https://tinyurl.com/bcztj4ub>.

⁵ *Id.*

A significant portion of West Virginia households rely on natural gas as their primary source of home heating and water heating. U.S. Energy Information Administration data show that over 335,000 West Virginia households—nearly forty percent—use natural gas for heating.⁶ Natural gas in West Virginia is also generally less expensive than electricity on a per-unit basis, making it an important source of affordable energy for working families and seniors on fixed incomes. The rules disrupt the availability of the non-condensing natural gas appliances that have long served West Virginia homes. That disruption is not merely a matter of efficiency; it materially alters the cost of living for West Virginia residents.

The demographic realities of West Virginia further exacerbate these economic effects. The State's population is notably older than the national average.⁷ A substantial number of households are headed by individuals over 65, many of whom live on fixed incomes and are particularly vulnerable to sudden, large household expenditures.⁸ And a large portion of the housing stock in West Virginia was built decades ago, often without infrastructure compatible with modern condensing appliances.⁹ In many homes, non-condensing furnaces and water heaters represent the only practical and affordable option for meeting consumer needs without extensive renovation. Unlike more affluent homeowners, these residents cannot easily absorb the cost of structural modifications, updated venting systems, or electrical upgrades necessary to install alternative appliances.

These burdens are not unique to West Virginia. Many States have substantial rural populations, older housing stock, and elevated poverty rates. These conditions make large, up-front retrofit costs particularly destabilizing when a federal standard eliminates a widely used product class. The rules would increase the cost of replacing home heating and water heating equipment, often for households with the least ability to absorb sudden expenses. These state-by-state impacts underscore why DOE should amend the compliance dates before the rules impose avoidable and uneven burdens across the U.S. DOE should ultimately revoke the rules to avoid these burdens altogether.

Multiple states, including Alabama, Arkansas, Kentucky, Louisiana, Mississippi, New Mexico, Oklahoma, and West Virginia, have poverty rates of 15% or higher.¹⁰ This reflects millions of households with limited capacity to absorb sudden capital expenditures for home energy systems. Persistent-poverty counties are overwhelmingly rural, underscoring that the

⁶ *West Virginia State Energy Analysis*, U.S. EIA (last updated March 19, 2026), <https://tinyurl.com/2f5wsbax>.

⁷ “QuickFacts: West Virginia,” *supra*.

⁸ Kollar & Scherer, *supra*, at 2 (showing that households headed by persons age 65 and over have lowest median income of any other age group).

⁹ U.S. Census Bureau, B25034: Year Structure Built (American Community Survey), <https://tinyurl.com/8ves4ddn> (last visited May 27, 2026).

¹⁰ Craig Benson, *Poverty in States and Metropolitan Areas: 2023*, U.S. Census Bureau 1, 4 (Sept. 2024), <https://tinyurl.com/5xemv43r>.

populations most exposed to these costs are concentrated in rural communities across the country.¹¹ Those same communities often face unusually high “energy burdens,” spending a larger share of income on basic energy needs.¹²

The interaction between poverty, age, and rurality matters. National research consistently shows that rural households tend to have lower median incomes, less access to credit, and fewer consumer protections than urban households. When regulatory actions increase the cost of basic home systems, they disproportionately burden those with the least ability to pay. DOE should amend the compliance dates to avoid forcing these costs onto consumers while the Department reassesses the legal and factual premises of the Rules.

II. The Biden Era Rules Should be Amended to Ensure Consistency with EPCA’s Unavailability Provision

The economic hardship caused by the rules underscores why EPCA’s unavailability provision matters. EPCA’s unavailability provision reflects Congress’s well-reasoned judgment that these economic and other burdens should not be imposed unnecessarily by regulatory agencies. The Biden Era Rules render a class of affordable natural gas products unavailable in violation of EPCA. As a result, consumers who need this equipment will be forced to either replace their appliances with electric alternatives or undertake costly renovations merely to replace older equipment.

EPCA’s unavailability provision imposes a substantive limit on DOE’s authority by prohibiting efficiency standards that eliminate product types or classes possessing protected “performance characteristics,” “features,” “sizes,” “capacities,” or “volumes.”¹³ Congress included the unavailability provision to prevent efficiency standards from eliminating entire product classes in ways that impose disproportionate burdens on consumers, particularly those with limited financial flexibility. The unavailability provision operates as a substantive and critical constraint on the agency’s regulatory authority, prohibiting DOE from adopting standards that are “likely to result in the unavailability ... in any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes.”¹⁴

The Biden Era Rules render unavailable non-condensing commercial water heating equipment and consumer furnaces, even though those products include performance characteristics and features that consumers need and that EPCA protects. Such performance characteristics and features include, for instance, the ability to integrate a product into an existing structure without significant alterations. In short, the rules do not merely require consumers to purchase replacement products. For many households and businesses, they will require costly changes to existing

¹¹ James C. Davis, et al., *Rural America at a Glance: 2023 Edition*, U.S. Dep’t of Agriculture (Nov. 15, 2023), <https://tinyurl.com/y37292mx>.

¹² See USDA Econ. Rsch. Serv., *Rural Poverty & Well-Being* (last updated Feb. 13, 2026), <https://tinyurl.com/2vctfky7> (providing trends in rural income, poverty, employment, and well-being).

¹³ See 42 U.S.C. § 6295(o)(4); see also 42 U.S.C. § 6313(a)(6)(B)(iii)(II)(aa).

¹⁴ 42 U.S.C. § 6295(o)(4); 42 U.S.C. § 6313(a)(6)(B)(iii)(II)(aa).

buildings, and significant renovations to homes or businesses, such as altering existing venting systems, making structural modifications, or abandoning a perfectly functional chimney. The impact of the Biden Era Rules on consumers is precisely the kind of harm Congress sought to protect consumers from with the creation of the unavailability provision—harm that falls with particular force upon fixed-income households, older residents, and economically vulnerable communities. That harm is especially painful in States like West Virginia, where reliance on existing natural gas infrastructure remains widespread.

DOE should not allow the current compliance dates to take effect while these serious statutory and affordability concerns remain unaddressed. At a minimum, DOE should amend the compliance dates while it reassesses the rules' consistency with EPCA's unavailability provision. Ultimately, the Department should revoke the Biden Era Rules in order to ensure that the economic hardship, inequity, and an unfair distribution of burdens do not fall on the most vulnerable U.S. citizens.¹⁵

III. CONCLUSION

In conclusion, the Biden Era Rules impose significant costs and hardships on consumers. If the compliance dates are unchanged, millions of homeowners and businesses will be left with a stark choice: incur substantial, unanticipated expenses or forgo access to natural gas appliances that remain affordable for their homes and buildings.

Given the federal government's acknowledgment that the Biden Era Rules are factually and legally flawed, DOE should not require consumers, businesses, manufacturers, distributors, contractors, and building owners to proceed toward compliance on the current schedule. DOE should instead delay the compliance dates to January 1, 2030. This pause will allow DOE the time to reassess the rules' consistency with EPCA.

Sincerely,



John B. McCuskey
West Virginia Attorney General

¹⁵ See 42 U.S.C. § 7194(a) (providing for adjustments to rules under EPCA “to prevent special hardship, inequity, or unfair distribution of burdens”).