

AIA Position on Appeals from the OGCV in the 2019 Code Development Cycle RE126-19

The American Institute of Architects (AIA) is proud of its active engagement with the International Code Council (ICC) during its initial creation and history of code development. AIA's public policies support the development and adoption of codes and standards using the following guidelines.

AIA's public policy on Building Codes and Standards states:

The AIA supports regulation by a single set of comprehensive, coordinated, and contemporary building codes and standards that establish sound threshold values of health, safety, and the protection of the public welfare throughout the United States and abroad. To that end, the AIA espouses the development and adoption of model building codes that:

- *Include participation by architects and the public in a consensus process;*
- *Are the product of informed education and research;*
- *Are without favoritism or bias to any special interest;*
- *Include provision for a prompt appeals procedure for all that might be aggrieved;*
- *Are cost-effective in relation to public benefit; and*
- *Promote building code provisions that set performance rather than prescriptive criteria.*

(emphasis added)

AIA's public policies support the development of codes and standards that improve the building environment using the following guidelines.

AIA's public policy on Energy and Carbon in the Built Environment states:

The AIA advocates for policies, programs, and incentives for energy efficiency and renewable energy for the planning, design, construction, and operations of buildings. These strategies reduce anthropogenic greenhouse gas emissions that cause climate change, lowering risks and costs for our clients and the public. Architects must prioritize energy efficiency and renewable energy to achieve carbon neutral new construction and major renovations by 2030 (2030 Commitment) and a carbon neutral built environment by 2050 (2050 Imperative).

(emphasis added)

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AGA, APGA, AHRI and NAHB Appeal of RE126-19

In the appeals by AGA and APGA dated May 5, 2020 and in its appeal dated May 8, 2020, and the NAHB appeal dated May 18, 2020 AHRI (herein after referred to as the appellants) claim that the use of a “first hour rating” in lieu of the uniform energy factor metric is a violation of the EPCA standard for product efficiency. The question of what the code change does in relation to a product efficiency standard set by the federal government is virtually identical to the question on RE107-19.

AGA and APGA jointly state:

This proposal seeks to set efficiency ratings for residential gas-fired storage water heaters that conflict with federal minimum efficiency ratings in terms of the uniform energy factor (UEF) metric and as set by federal minimum efficiency standards under EPCA.

AHRI states:

If adopted by state or local jurisdictions, the above provisions (RE126) would be facially preempted, would violate federal law, and would subject the enacting jurisdiction to litigation.

NAHB states:

NAHB believes a court is highly likely to find that RE126 is preempted by the Energy Policy and Conservation Act (EPCA) as amended by the National Appliance Energy Conservation Act (NAECA) and the Energy Policy Act of 1992 (hereinafter EPCA).

AIA believes that contrary to the appellants assertions, such claim is inaccurate. While they may be an interested party to the question, any judgement made related to a conflict with the law can only be resolved in the hands of a federal judge after a due process hearing on the validity of that claim. How the membership of ICC determines what is contained in the model it publishes does not in any way fall under the purview or control of the Energy Policy and Conservation Act of 1975 and its amendments (EPCA). As an independent body, ICC’s membership may place any requirement or restriction it feels is appropriate for inclusion and thus should not be allowed to be challenged as creating a conflict. The choice by a state or local jurisdiction to incorporate the ICC model into its legal application of codes and standards is theirs and theirs alone. Any question of conflict with other pieces of legislation, federal or local is best determined when adoption and enforcement would commence, and is, as a practice, done frequently. ICC is not in a position to make that decision.

The federal law states in PUBLIC LAW 110–140—DEC. 19, 2007 121 STAT. 1555

“(6) AMENDED ENERGY EFFICIENCY STANDARDS.—

“(A) IN GENERAL.—

“(i) ANALYSIS OF POTENTIAL ENERGY SAVINGS.—If ASHRAE/IES Standard 90.1 is amended with respect to any small commercial package air conditioning and heating equipment, large commercial package air conditioning and heating equipment, very large commercial package air conditioning and heating equipment, packaged terminal air conditioners, pack- aged terminal heat pumps, warm-air furnaces, pack- aged boilers, storage water heaters, instantaneous water heaters, or unfired hot water storage tanks, not later than 180 days after the amendment of the standard, the Secretary shall publish in the Federal Register for public comment an analysis of the energy savings potential of amended energy efficiency standards.

“(ii) AMENDED UNIFORM NATIONAL STANDARD FOR PRODUCTS.—

“(I) IN GENERAL.—Except as provided in sub- clause (II), not later than 18 months after the date of publication of the amendment to the ASHRAE/IES Standard 90.1 for a product described in clause (i), the Secretary shall establish an amended uniform national standard for the product at the minimum level specified in the amended ASHRAE/IES Standard 90.1.

“(II) MORE STRINGENT STANDARD.—Subclause (I) shall not apply if the Secretary determines, by rule published in the Federal Register, and supported by clear and convincing evidence, that adoption of a uniform national standard more stringent than the amended ASHRAE/IES Standard 90.1 for the product would result in significant additional conservation of energy and is technologically feasible and economically justified.

The DOE on 2020-02-14 announced:

The Department of Energy (DOE) is proposing amendments to its decision-making process for selecting energy conservation standards. More specifically, DOE is proposing changes that would require DOE to conduct a comparative analysis of the relative costs and benefits of all of the proposed alternative levels for potentially establishing or amending an energy conservation standard in order to make a reliable determination that the chosen alternative is economically justified.

<https://www.regulations.gov/document?D=EERE-2017-BT-STD-0062-0162>

Comments regarding the action were taken until March 16,2020. Even determining what the federal law is regarding an economically justified standard appears to be up for debate.

Second, the code provision in RE126-19 bears no connection to the issue of product efficiency standards. Any such standards within the EPCA remain the minimum standard for design and construction of such products however a code limiting the use of such products where storage water heaters and other products that affect the overall efficiency of the building in which the product is installed does not conflict with the “minimum” standard. The ICC’s Residential

Energy Code does not address how all appliances must performance, it simply applies limitations on the design, construction and use of the appliances in structures within the scope of the code to improve its energy efficiency.

The AIA believes that the argument put forth by the appellant is invalid and should be rejected, allowing the action by the membership on code change RE126-19 to stand.

Presented for your consideration.

A handwritten signature in black ink, appearing to read 'D. Collins', with a horizontal line extending to the right.

David S. Collins, FAIA

Representing the American Institute of Architects