



HEATING AIR-CONDITIONING REFRIGERATION DISTRIBUTORS INTERNATIONAL

July 21, 2025

Gregory Patterson

Secretary

Delaware Department of Natural Resources and Environmental Control

89 Kings Highway SW, Dover, Delaware 19901

RE: HARDI Comments for Delaware Department of Natural Resources and Environmental Control proposed Regulation for State Energy Conservation Code (Z DE Admin. Code 2101) (Docket #2025-R-CCE-0008)

Dear Secretary Patterson,

On behalf of Heating, Air-conditioning & Refrigeration Distributors International (HARDI), I would like to thank you for the opportunity to provide feedback and offer comments on the proposal, "Regulations for State Energy Conservation Code."

HARDI is a trade association comprising more than 1,150 member companies, with over 490 U.S.-based wholesale distribution companies. These include 11 wholesaler-distributor members in Delaware, with 21 locations serving heating, ventilation, and air conditioning (HVAC) contractors and technicians in the state. Over 80 percent of HARDI's distributor members are classified as small businesses, collectively employing more than 60,000 U.S. workers and representing an estimated 75 percent of the U.S. wholesale distribution market for HVAC and refrigeration equipment and supplies.

HARDI respectfully asks that the Delaware Department of Natural Resources and Environmental Control (DNREC)'s proposed updates for the "Regulations for State Energy Conservation Code" be revised to not prescriptively ban the installation of natural gas systems by increasing the costs of natural gas systems with needless requirements. If enacted as currently proposed, the "Regulations for State Energy Conservation Code" would effectively remove *consumer choice* for fossil fuel HVAC equipment, create an *adverse economic impact* for Delaware's citizens, and violate the *Environmental Policy and Conservation Act (EPCA)*.

The proposed requirements for new residential building construction limit consumers' choices for HVAC systems.

HARDI believes in protecting consumers' right to purchase and install whichever style of HVAC products they prefer. However, Section R409 of the proposed State Energy

Conservation Code imposes heat pump-ready requirements for HVAC systems, which restrict consumer choice in residential buildings by adding costs. These increased costs effectively eliminate all options for the building owners, even other options that may offer better efficiency and financial savings. Ironically, Section R409's proposed changes require residential construction to be heat pump-ready, which protects a future consumer's choice to transition to an electric appliance. However, the unnecessary costs of construction don't improve the energy use or efficiency of the HVAC equipment in the home, but effectively drive consumers away from their preferred option due to the added high costs.

As currently written, the DNREC would remove consumer choice by pricing out natural gas installations with unreasonable standards that the consumers could not afford to comply with, forcing consumers to purchase heat pumps, even if they prefer to install natural gas. Thus, HARDI believes the DNREC needs to revise the proposed standard and leave the U.S. Department of Energy's (DOE) Zero Energy Ready Home (ZERH) Program optional, as the DOE intended.

The proposed updates would have a significant adverse economic impact on businesses and residents statewide.

The DNREC-provided exhibits do not consider Section R409 requirements for participation in the DOE's ZEHR Program. The DOE itself describes the ZEHR program as having "rigorous requirements." As such, HARDI disagrees with any DNREC determinations that the proposed changes will not result in increased expenses for those who wish to use natural gas HVAC systems.

In Section R407.9, the DNREC effectively prohibits the use of natural gas furnaces by increasing the cost of a natural gas HVAC system without any actual benefits to the consumer. The requirement to implement a heat pump-ready home will undoubtedly have a dramatic economic impact in Delaware based on the comparison of energy prices between gas and electricity. Generally, under Section R407.9, the proposed requirements would mandate additional electrical work that is unnecessary for the operation of a natural gas HVAC system, amend home designs that go beyond installation scope requirements for a natural gas HVAC system's dimension, add ventilation volume beyond the needs of a natural gas HVAC system and apply condensate draining sized for a heat pump (not sized for the natural gas system being installed). The requirements are not necessary for a natural gas HVAC system to operate correctly. The requirements are unnecessary additional costs that make installing a

natural gas system unaffordable for the average citizen. Leaving the only heating system option as an electric heat pump.

If electric heat pump installations are mandated for Delaware residents, their cost of living will rise. Specifically, the average annual cost for an electric ducted heat pump in Delaware would be approximately \$2,062, compared to around \$1,632 for a natural gas furnace. We determined this using [Efficiency Maine's](#) virtual residential heating system cost calculator, along with the approximate average rates for electricity (kWh) and natural gas (therm) in Delaware. However, this does not consider the rise in electricity prices that would inevitably occur from the increased demand of the proposal.

This requirement is a blatant attempt to disincentivize natural gas appliances, a political decision being pushed through a safety body without any safety justification being provided. By design, the proposal intentionally leaves electric heat pumps as the only remaining HVAC option. The market would increase, so waitlists, delays, and backlogs of orders and installations would likely occur. The DNREC proposal could force citizens to live without HVAC systems while they wait for their heat pumps to be installed.

Thus, HARDI believes that the proposed regulation would have a significant statewide adverse economic impact on businesses, and the DNREC needs to revise the DOE's ZEHR program from being mandatory to being optional, as the DOE intended.

The proposed updates would force the electrification of all new residential construction and indirectly ban natural gas systems, preempting the Environmental Policy and Conservation Act (EPCA).

The U.S. Court of Appeals for the Ninth Circuit set a precedent by recently invalidating a Berkeley, California, prohibition on natural gas infrastructure in new construction buildings ([California Restaurant Association v. City of Berkeley](#)). The court applied EPCA's preemption clause, which states, "Once a federal energy conservation standard becomes effective for a covered product, no State regulation concerning the energy efficiency, energy use, or water use of such covered product shall be effective with respect to such product." EPCA defines "energy use" as "the quantity of energy directly consumed by a consumer product at point of use." "Energy" refers to "electricity" or "fossil fuels," such as natural gas. A "consumer product" is "any article" which "consumes, or is designed to consume," energy or water and is distributed for personal use. The preemption clause applies to any "covered product," which is defined as certain "consumer products," like refrigerators. Therefore, EPCA preempts regulations that relate



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to “the quantity of [natural gas] directly consumed by” certain consumer appliances at the place where those products are used. *Id.*

Energy Use. A regulation prohibiting consumers from using appliances impacts the “quantity of energy directly consumed by [the appliances] at point of use.” *Id.* In Section R409, the DNREC imposes electrification heat pump-ready requirements on new residential construction buildings that use natural gas HVAC systems. The requirements are unnecessary for properly operating a natural gas HVAC system and create additional costs that an average citizen cannot afford. Although the DNREC technically allows the natural gas system, the prescriptive requirements being mandated would essentially be a ban on natural gas HVAC systems because of the average citizen's inability to afford the additional and unnecessary requirements. Therefore, the DNREC violates the EPCA's preemption provision by prohibiting consumers from using home appliances through unnecessary and unaffordable requirements to implement a natural gas HVAC system. Although the mandated requirements are part of a federal electrification program, the program is optional and doesn't impose strict requirements on any person unless they choose to participate.

Thus, due to the precedent set by the U.S. Court of Appeals for the Ninth Circuit's ruling, HARDI believes the DNREC proposal of “Regulations For State Energy Conservation Code” violates EPCA's preemption prohibition as presented, and the DOE's ZERH Program should be an option, not required, as the DOE intended.

Conclusion

HARDI and Delaware share the goal of moving consumers to more environmentally friendly technologies; however, we strongly disagree on the method of achieving this goal. Additionally, the proposed standard would harm our members; as an industry, we operate nationally, and having a patchwork of state-level regulations would make it impossible to serve consumers effectively. For this reason, and as mentioned above, we encourage the DNREC to revise the proposed “Regulations for State Energy Conservation Codes” to align with the federal guidelines enforced by the Environmental Policy and Conservation Act and to remove the DOE ZEHR program as a requirement.

Sincerely,

Todd Titus

Director, State and Public Affairs

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