



June 9, 2023

Ann Bailey, Director
ENERGY STAR Labeling Branch
U.S. Environmental Protection Agency
1200 Pennsylvania Ave NW
Washington, DC 20460

Submission via HVAC@energystar.gov

**Re: Request for Comment Period Extension Pertaining to EPA's Proposal to Sunset
ENERGY STAR Version 4.1 Specification for Furnaces**

Dear Ms. Bailey:

The American Gas Association ("AGA"), American Public Gas Association ("APGA"), Energy Marketers of America ("EMA"), National Energy & Fuels Institute ("NEFI"), National Propane Gas Association ("NPGA"), Oilheat Manufacturers Association ("OMA"), and Plumbing-Heating-Cooling Contractors—National Association ("PHCC") (collectively, "Commenters") respectfully request that the ENERGY STAR Labeling Branch of the U.S. Environmental Protection Agency ("EPA") extend the public comment period by 60 days in the above-referenced proceeding. The agency's proposal to sunset an important consumer program for residential furnaces requires careful consideration in order to develop meaningful comments.

Commenters provide the energy needed to fuel gas-, liquid-, and biofuel-fired ("fuel-fired") residential furnaces, thus making them critical stakeholders in this work. Unfortunately, EPA has not provided sufficient time or information for Commenters to review and develop meaningful comments in response to the proposed sunset of this important specification.

On May 18, 2023, EPA circulated an email solely to interested stakeholders¹ announcing its proposal to sunset the ENERGY STAR Version 4.1 Specification for Furnaces and removing central air conditioners (“CACs”) from the ENERGY STAR V6.1 Specification for CAC and Heat Pump Equipment. The notice also announced that ENERGY STAR would consider similar sunset proposals for gas and oil appliances in a number of forthcoming revisions of ENERGY STAR specifications for boilers,² dryers, and commercial packaged boilers.

According to the ENERGY STAR® Products Program Strategic Vision and Guiding Principles,³ “[t]he ENERGY STAR product labeling program reduces greenhouse gas emissions by removing barriers in the market that deter consumers and businesses from easily identifying the financial and environmental benefits of purchasing the most energy efficient product model that otherwise meets their needs.” In the short notice provided to interested stakeholders, EPA did not explain how these proposed changes are aligned with ENERGY STAR’s strategic vision and guiding principles, or in line with the program’s authorizing statute, especially as this proposal will have significant implications for the Commenters’ industries and their customers.

To better understand the breadth of these proposed changes, additional time to comment is warranted. According to the notice, EPA plans to sunset the specifications by the end of 2024, but prohibit any new certifications by the end of 2023. Accordingly, it is important that the agency give all stakeholders ample opportunity to examine and understand the proposal, which will help ensure the development of meaningful feedback for EPA to take into consideration before finalizing any actions.

The public comment period for the notice encompasses two federal holidays, in addition to the beginning of summer, meaning that many of our members and other stakeholders may be absent due to the holidays or other time away from work. This can make it difficult to develop meaningful comments in response to this impactful proposal. This challenge is paired with the fact that our members’ organizations and other stakeholders continue to face significant supply chain and worker shortages that pose further obstacles to giving this important notice the critical review and feedback that are required.

Commenters also encourage EPA to host a public webinar to discuss the proposed changes to the ENERGY STAR specifications, similar to what the agency did when it proposed changes to its water heaters specification in 2021 and for what the agency plans to do on June 21, 2023, in coordination with its proposed sunset of the residential boiler specification. Additionally, Commenters would like the opportunity to discuss these proposed changes directly with ENERGY STAR staff before the end of the comment period in order to better understand the agency’s rationale for eliminating a specification that is critical to helping the public easily identify highly efficient fuel-fired appliances that best fit their needs and budget.

¹ For instance, elected officials who voted on legislation that relies upon the ENERGY STAR program to determine qualification for rebate and grant programs were not made aware of these significant proposed changes.

² EPA issued a notice on June 5, 2023, announcing the release of the ENERGY STAR Residential Boilers Discussion Guide and inviting feedback on proposed actions, including sunset of the ENERGY STAR Boilers specification. Commenters share many of the same concerns outlined above with the June 5 Boiler notice.

³ EPA, ENERGY STAR® Products Program Strategic Vision and Guiding Principles, https://www.energystar.gov/ia/partners/prod_development/downloads/guiding_principles_2012.pdf (Jan. 2012).

While the Administrative Procedure Act (“APA”) does not establish a minimum comment period for rulemakings, courts require that agencies provide a “meaningful” opportunity for comment.⁴ In short, “[t]he opportunity for comment must be a meaningful opportunity” and “in order to satisfy this requirement, an agency must also remain sufficiently open-minded.”⁵

Furthermore, while the U.S. code provides EPA the authority to update and change the program, the code provides for certain conditions for such changes and updates. Specifically, EPA must provide sufficient lead time prior to the applicable effective date for a new or significant revision to a product category, specification, or criterion. That lead time shall be 270 days, unless EPA specifies otherwise. Given that the EPA published this notice on May 18, 2023, with an effective date of December 31, 2023, EPA has provided only 227 days. EPA provides no information as to why it has decreased the lead time on a significant revision and no justification as to why the circumstances may justify such a deviation. As a precedential matter, the effective date of any change should be suspended to be in compliance with the relevant statutes, absent any sufficient justification.

As discussed herein, additional time is needed for all stakeholders to meaningfully analyze and respond to the proposal, as well as for EPA to properly comply with ENERGY STAR’s authorizing statute and programmatic guidelines. Given the numerous compounding factors impacting stakeholders’ ability to develop meaningful comments in the allotted time, Commenters request that EPA, in addition to hosting a public webinar, extend the comment period by at least an additional 60 days. This will allow for sufficient time for Commenters and all stakeholders to review and develop meaningful comments on proposed sunsetting to better inform any potential subsequent actions by the agency.

We thank you for the review and consideration of this request. If you have any questions regarding this submission, please do not hesitate to contact us.

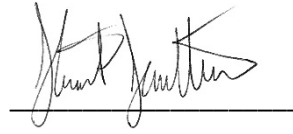
Respectfully submitted,

⁴ See, e.g., *Rural Cellular Ass’n v. Fed. Commc’ns Comm’n*, 588 F.3d 1095, 1101 (D.C. Cir. 2009), *Gerber v. Norton*, 294 F.3d 173, 179 (D.C. Cir. 2002).

⁵ *Rural Cellular Ass’n*, 588 F.3d at 1101.



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AGA, founded in 1918, represents more than 200 local energy companies that deliver clean natural gas throughout the United States. There are more than 77 million residential, commercial, and industrial natural gas customers in the U.S., of which 96 percent — more than 74 million customers — receive their gas from AGA members. AGA is an advocate for natural gas utility companies and their customers and provides a broad range of programs and services for member natural gas pipelines, marketers, gatherers, international natural gas companies, and industry associates. Today, natural gas meets nearly one-third of the United States' energy needs.⁶

APGA is the trade association for more than 730 communities across the U.S. that own and operate their retail natural gas distribution entities. They include not-for-profit gas distribution systems owned by municipalities and other local government entities, all locally accountable to the citizens they serve. Public gas systems focus on providing safe, reliable, and affordable energy to their customers and support their communities by delivering fuel to be used for cooking, clothes drying, and space and water heating, as well as for various commercial and industrial applications.⁷

EMA is a federation of 47 state energy marketing associations representing both wholesale and retail liquid fuel marketers and heating oil dealers nationwide.

Established in 1942, NEFI, formerly known as the New England Fuel Institute, is a national trade association that represents over 400 wholesale and retail distributors of safe, reliable liquid heating fuels and related service companies. Our retail members, often referred to as “fuel dealers,” deliver warmth and comfort to millions of American homes and businesses each winter. NEFI represents both fuel delivery and “full service” businesses that extend their services beyond fuel delivery to the sale, installation, and maintenance of various HVAC systems. These include oil- and biofuel-fired furnaces and boilers, gas systems, water heaters, and electric air source heat pumps. Most NEFI members are small, multigenerational family businesses, averaging around 28 full-time equivalent employees.

NPGA is the national trade association of the propane industry with a membership of about 2,400 companies, and 36 state and regional associations representing members in all 50 states. NPGA's membership includes retail marketers of propane gas who deliver the fuel to the consumer, propane producers, transporters and wholesalers, and manufacturers and distributors of equipment, containers, and appliances. Propane, or liquefied petroleum gas, is used in millions of installations nationwide for home and commercial heating and cooking as well as various other agricultural, industrial, and transportation sectors.⁸ The variety of appliances powered by propane include the pool heaters subject to the agency's proposal.

OMA is a not-for-profit association that represents liquid petroleum and biofuel powered heating equipment throughout North America. OMA's members' products provide the primary heating and domestic hot water source for almost 6-million American homes.

Established in 1883, PHCC represents approximately 3,200 plumbing and HVAC open shop and union contractor members who employ over 64,000 plumbing and HVAC professionals across the United States.

⁶ For more information, please visit www.aga.org.

⁷ For more information, please visit www.apga.org.

⁸ NATIONAL PROPANE GAS ASSOCIATION, TODAY'S PROPANE (2017), available at <https://npga.wpengine.com/wp-content/uploads/2017/08/NPGA-Todays-Propane-2017.pdf>.