



*Submitted via FOIAonline.gov and U.S. Mail*

September 11, 2023

Jeffrey M. Prieto, General Counsel  
Chief FOIA Officer  
National FOIA Office  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW (2310A)  
Washington, DC 20460

**Re: Freedom of Information Act Request Concerning the ENERGY STAR Program**

Mr. Prieto:

The American Gas Association (“AGA”) submits this request under the Freedom of Information Act (“FOIA”), 5 U.S.C. §552.<sup>1</sup> As discussed herein, AGA requests information related to the Environmental Protection Agency’s (“EPA” or “Agency”) ENERGY STAR Program.

**Type of Requestor and Purpose of Request**

AGA is a nonprofit tax-exempt 501 (c)(6) membership organization that conducts business at 400 N. Capitol St., N.W., Suite 450, Washington, DC. 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.<sup>2</sup>

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<sup>1</sup> AGA submits this FOIA request via FOIAonline.gov. However, EPA is transitioning from the FOIAonline.gov portal to FOIAXpress, effective September 29, 2023, and FOIAonline.gov data will no longer be accessible after September 30, 2023. AGA requests that EPA transfer data concerning this request to its FOIAXpress portal. AGA also sent this request via U.S. Mail.

<sup>2</sup> For more information, please visit [www.aga.org](http://www.aga.org).

On May 18, 2023, EPA circulated a notice stating that it was proposing to phase out the ENERGY STAR labeling and promotion of residential gas furnaces and that it would limit the certification to a small number of electric heating appliances (“Furnace Proposal”).<sup>3</sup> On June 5, 2023, EPA proposed to eliminate efficient natural gas boilers from the ENERGY STAR program (“Boiler Proposal”).<sup>4</sup> The Furnace Proposal and the Boiler Proposal refer to and rely on but do not provide documents that would disclose methodologies, models, or conclusions used in each proposal and which would explain what EPA considered and why it is, or is not, proposing particular actions. The absence of this important information from the public record prevents meaningful public participation and informed engagement in this process. The Energy Policy Act of 2005<sup>5</sup> amended the Energy Policy and Conservation Act by adding to the U.S. Code a specific ENERGY STAR provision.<sup>6</sup> The statute provides for the establishment of a program by the Department of Energy (“DOE”) and EPA to “identify and promote energy-efficient products and buildings in order to reduce energy consumption, improve energy security, and reduce pollution through voluntary labeling of, or other forms of communication about, products and buildings that meet the highest energy conservation standards.”<sup>7</sup> The statutory duties of the Administrator and the Secretary are to:

- (1) promote Energy Star compliant technologies as the preferred technologies in the marketplace for—
  - (A) achieving energy efficiency; and
  - (B) reducing pollution;
- (2) work to enhance public awareness of the Energy Star label, including by providing special outreach to small businesses;
- (3) preserve the integrity of the Energy Star label;
- (4) regularly update Energy Star product criteria for product categories;
- (5) solicit comments from interested parties prior to establishing or revising an Energy Star product category, specification, or criterion (or prior to effective dates for any such product category, specification, or criterion);
- (6) on adoption of a new or revised product category, specification, or criterion, provide reasonable notice to interested parties of any changes (including effective dates) in product categories, specifications, or criteria, along with—
  - (A) an explanation of the changes; and
  - (B) as appropriate, responses to comments submitted by interested parties; and

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<sup>3</sup> See <https://www.energystar.gov/sites/default/files/asset/document/HVAC%20Sunset%20Letter.pdf> (“May 18 Notice”).

<sup>4</sup> See Email from ENERGY STAR; ENERGY STAR Residential Boilers Discussion Guide and Early Stakeholder Feedback, June 5, 2023, available at [https://www.energystar.gov/sites/default/files/asset/document/ENERGY%20STAR%20Residential%20Boilers%20Discussion%20Guide\\_0.pdf?\\_gl=1\\*103ldb1\\*\\_ga\\*MTAwNjkzMjc5OS4xNjcwNDI3MzMw\\*\\_ga\\_S0KJTVVLQ6\\*MTY4NTk4ODU4Ny4yODEuMS4xNjc1OTg5MzA5LjAuMC4w](https://www.energystar.gov/sites/default/files/asset/document/ENERGY%20STAR%20Residential%20Boilers%20Discussion%20Guide_0.pdf?_gl=1*103ldb1*_ga*MTAwNjkzMjc5OS4xNjcwNDI3MzMw*_ga_S0KJTVVLQ6*MTY4NTk4ODU4Ny4yODEuMS4xNjc1OTg5MzA5LjAuMC4w).

<sup>5</sup> Energy Policy Act of 2005, Pub. L. No. 109-158, 119 Stat. 594.

<sup>6</sup> 42 U.S.C. § 6294a.

<sup>7</sup> 42 U.S.C. § 6294a(a).

(7) provide appropriate lead time (which shall be 270 days, unless the Agency or Department specifies otherwise) prior to the applicable effective date for a new or a significant revision to a product category, specification, or criterion, taking into account the timing requirements of the manufacturing, product marketing, and distribution process for the specific product addressed.<sup>8</sup>

The ENERGY STAR Furnace Proposal and the Boiler Proposal, as well as changes need to meet the requirements of the enabling statute. The Energy Policy Act of 2005 presumes EPA and DOE have conducted analysis and public disclosure to justify proposals to establish and revise elements of the ENERGY STAR program and the criteria for products it covers. EPA has not done this and simply cites the “Inflation Reduction Act” as the statutory basis for the Furnace and Boiler Proposals and the removal of natural gas appliances from the program. In both proposals, EPA also states that the “Agency recognizes an important responsibility to guide consumers to the choices that support the efficient electrification of residential space conditioning.” Notably, this is not a stated requirement in the ENERGY STAR’s enabling statute.

This FOIA request is made for non-commercial purposes and on behalf of AGA, AGA’s members, AGA member customers, and the general public welfare. Each of those parties has an interest in the dissemination of the documents listed below to further its rights under the Administrative Procedure Act, the Due Process Clause of the U.S. Constitution and to understand and comment on the Furnace Proposal and the Boiler Proposal.

### **Description of Documents Requested**

The following documents are requested and may be in the possession of EPA or its contractors. These documents all relate to EPA’s Furnace Proposal, the Boiler Proposal and the ENERGY STAR program.

**Request No. 1:** The Furnace Proposal states, “Leading up to this sunset proposal, EPA has heard from a range of stakeholders emphasizing the opportunity the Agency has to focus the ENERGY STAR label on efficient electric products like air source heat pumps in order to highlight products that reduce energy consumption, improve energy security, and reduce pollution.”

Please provide:

- Documents that reflect, record, identify, or which were communicated to EPA that it “heard from a range of stakeholders” related to the Furnace Proposal.
- Documents that indicate, reflect, describe, or provide the data, research, or supporting documentation that “air source heat pumps” “reduce energy consumption, improve energy security, and reduce pollution” as compared to other existing ENERGY STAR space heating products such as gas furnaces.

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<sup>8</sup> 42 U.S.C. § 6294a(c).

- Documents related to the EPA’s Furnace Proposal that contain the term “air source heat pumps.”

**Request No. 2:** The Furnace Proposal states, “In fact, heat pumps are as much as four times more efficient than even the most efficient condensing gas furnaces.”

Please provide:

- Documents that indicate, reflect, describe or provide the data, metrics used, research conducted, or supporting documentation that “heat pumps are as much as four times more efficient than even the most efficient condensing gas furnaces.”
- Documents related to the EPA’s Furnace Proposal that contain the term “gas furnaces,” “source energy,” “primary energy,” or “full fuel cycle.”

**Request No. 3:** The Furnace Proposal states, “while indoor NOx pollution is associated with gas appliances, electric appliances are not responsible for any direct emissions and garner significant emissions reductions even when source or upstream emissions from electricity generation are factored in.”

Please provide:

- Documents that indicate, reflect, describe or provide the data, research, or supporting documentation that “while indoor NOx pollution is associated with gas appliances, electric appliances are not responsible for any direct emissions and garner significant emissions reductions even when source or upstream emissions from electricity generation are factored in.”
- Documents related to the EPA’s Furnace Proposal that contain the term “indoor NOx pollution.”
- Documents related to the EPA’s Furnace Proposal that contain the term “upstream emissions.”
- Documents related to the EPA’s Furnace Proposal that contain the term “Fluorinated Greenhouse Gases” that result from the leakage of refrigerants used in electric heat pumps.

**Request No. 4:** The Furnace Proposal states, “Estimates indicate that if all CACs were replaced by heat pumps about 50 Mt of CO2 would be avoided over 10 years and billions of dollars in heating costs would also be saved.”

Please provide:

- Documents that indicate, reflect, describe or provide the data, research, or supporting documentation that “Estimates indicate that if all CACs were replaced by heat pumps about 50 Mt of CO2 would be avoided over 10 years and billions of dollars in heating costs would also be saved.”
- Documents related to the EPA’s Furnace Proposal that contain the terms “CO2” or “Carbon Dioxide.”
- Documents related to the EPA’s Furnace Proposal that contain the term “heating costs.”

**Request No. 5:** The Furnace Proposal states, “EPA recognizes that households in the coldest climates may not be comfortable relying solely on a heat pump and may therefore retain their existing furnace in the near term.”

Please provide:

- Documents that indicate, reflect, describe or provide the data, research, or supporting documentation that “households in the coldest climates may not be comfortable relying solely on a heat pump and may therefore retain their existing furnace in the near term.”
- Documents related to the EPA’s Furnace Proposal that contain the term “coldest climates.”

**Request No. 6:** The Furnace Proposal states, “EPA intends to serve as a trusted source for consumers by providing guidance about how to use such a dual fuel system to save energy and minimize greenhouse gas emissions while staying comfortable.”

Please provide:

- Documents that indicate, reflect, describe or provide the data, research, or supporting documentation on EPA’s “guidance about how to use such a dual fuel system to save energy and minimize greenhouse gas emissions while staying comfortable.”
- Documents related to the EPA’s Furnace Proposal that contain the term “dual fuel system.”

**Request No. 7:** The Boiler Proposal states, “In 2020, we estimated 57% of gas boilers and 77% of oil boilers sold in the US were ENERGY STAR certified.”

Please provide:

- Documents that indicate, reflect, describe or provide the data, research, or supporting documentation that “In 2020, we estimated 57% of gas boilers and 77% of oil boilers sold in the US were ENERGY STAR certified.”

**Request No. 8:** The Boiler Proposal states, “our analysis continues to show that there is no meaningful and cost-effective differentiation available among gas-powered products.”

Please provide:

- Documents that indicate, reflect, describe or provide the data, research, or supporting documentation that “show that there is no meaningful and cost-effective differentiation available among gas-powered products.”

**Request No. 9:** The Boiler Proposal states, “the proposal to sunset the ENERGY STAR Boiler specification will in no way affect consumers’ continued access to, or the availability of boilers.”

Please provide:

- Documents that indicate, reflect, describe or provide the data, research, or supporting documentation that “the proposal to sunset the ENERGY STAR Boiler specification will in no way affect consumers’ continued access to, or the availability of boilers.”

**Request No. 10:** The Boiler Proposal states “EPA has heard about gas powered heat pumps, which use a sorption-type or a thermal compression-type cycle which includes a step with direct heating of the refrigerant, done by a gas burner. On a site energy-basis, current gas-powered heat pump products and prototypes do not achieve as high efficiency as electrically powered alternatives. EPA is not aware of a clear path to cost-effectiveness for this product type.”

Please provide:

- Documents that indicate, reflect, describe or provide the data, research, supporting documentation, or communications to EPA that: 1) gas powered heat pumps do not achieve as high efficiency as electrically powered alternatives on both a site and source energy basis; and 2) EPA is not aware of a clear path to cost-effectiveness for this product.

**Request No. 11:** The Furnace Proposal and the Boiler Proposal both state, “The Agency recognizes an important responsibility to guide consumers to the choices that support the efficient electrification of residential space conditioning.”

Please provide:

- Documents that indicate, reflect, or describe support for EPA’s contention that it has the responsibility to “support efficient electrification of residential space conditioning.”
- Documents related to the EPA’s Boiler Proposal that contain the term “electrification.”
- Documents related to the EPA’s Furnace Proposal that contain the term “electrification.”

**Request No. 12:** EPA’s Furnace Proposal and the Boiler Proposal both seek to eliminate natural gas appliances from the ENERGY STAR program.

Please provide:

- Documents that reflect, record, identify, or which were communicated to EPA that requested EPA remove natural gas appliances from the ENERGY STAR program.
- Letters, plans, memoranda, or electric communications from the White House to EPA and DOE officials in the offices listed below anytime from January 20, 2021 to the date of this request that contain the term “ENERGY STAR.”
  - Specified offices:
    - EPA Office of the Administrator
    - EPA Office of Air and Radiation

- EPA Office of Atmospheric Protection
- DOE Office of the Secretary
- DOE Office of Energy Efficiency and Renewable Energy
- DOE Office of the Under Secretary for Science and Innovation

### **Request for a Fee Waiver**

Pursuant to EPA's regulations, AGA requests that EPA waive any fee it would otherwise charge for search and production of the records requested herein.<sup>9</sup> FOIA dictates that requested records be provided without charge "if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester."<sup>10</sup> Moreover, EPA's regulations state that to determine whether the request meets the fee waiver requirement, it will consider the following six factors:<sup>11</sup>

1. The subject of the request. Whether the subject of the requested records concerns "the operations or activities of the government." The subject of the requested records must concern identifiable operations or activities of the Federal government, with a connection that is direct and clear, not remote.

*AGA Response:* This FOIA request concerns EPA's ENERGY STAR program which is an operation of the government pursuant to 42 U.S.C. § 6294a(a).

2. The informative value of the information to be disclosed. Whether the disclosure is "likely to contribute" to an understanding of government operations or activities. The disclosable portions of the requested records must be meaningfully informative about government operations or activities in order to be "likely to contribute" to an increased public understanding of those operations or activities. The disclosure of information that already is in the public domain, in either a duplicative or a substantially identical form, would not be as likely to contribute to such understanding when nothing new would be added to the public's understanding.

*AGA Response:* As discussed herein, the information requested pertains to two EPA proposals regarding the ENERGY STAR program and EPA's support and rationale for the proposals. The information requested has not been released by EPA, and does not appear in the public domain. The release of the information will contribute to the public's understanding of EPA's activities and better enable stakeholders to understand the basis for EPA's proposals and the statements made therein.

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<sup>9</sup> 40 C.F.R. § 2.107.

<sup>10</sup> 5 U.S.C. § 552(a)(4)(A)(iii).

<sup>11</sup> 40 C.F.R. § 2.107; see also EPA, Requesting FOIA Fee Waivers, available at <https://www.epa.gov/foia/requesting-foia-fee-waivers>. Factors 1-4 concern the first fee waiver requirement and factors 5-6 relate to the second fee waiver requirement.



3. The contribution to an understanding of the subject by the public is likely to result from the disclosure. Whether disclosure of the requested information will contribute to “public understanding.” The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. The Agency will consider a requester’s expertise in the subject area and ability and intention to effectively convey information to the public.

*AGA Response:* The disclosure of the requested information will contribute to public understanding and the understanding of a reasonably broad audience. As noted above, EPA plans to remove natural gas appliances from the ENERGY STAR program. There are more than 77 million residential, commercial and industrial natural gas customers, which could be impacted. AGA also has expertise on energy efficiency matters and has staff that focus on such important matters. AGA routinely comments on energy efficiency proceedings at federal agencies and regularly conveys efficiency information to the public.

4. The significance of the contribution to public understanding. Whether the disclosure is likely to contribute “significantly” to public understanding of government operations or activities. The public’s understanding of the subject in question, as compared to the level of public understanding existing prior to the disclosure, must be enhanced by the disclosure to a significant extent.

*AGA Response:* The release of information related to the removal of natural gas products from the ENERGY STAR program will likely contribute significantly to public understanding of government activities. The information requested, which the Agency has relied on, has not been released by EPA. Because the public has not had access to EPA’s support for the statements and assertions it has made in these significant proposals, the public does not have a full understanding of why EPA is taking such actions.

5. The existence and magnitude of a commercial interest. Whether the requester has a commercial interest that would be furthered by the requested disclosure. The Agency will consider any commercial interest of the requester (with reference to the definition of “commercial use request” in paragraph (b)(1) of this section), or of any person on whose behalf the requester may be acting, that would be furthered by the requested disclosure. The Agency will give the requester an opportunity in the administrative process to provide explanatory information regarding this consideration.

*AGA Response:* This FOIA request is made for non-commercial purposes and on behalf of AGA, AGA’s members, AGA member customers and the general public welfare.



6. The primary interest in disclosure. Whether any identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is “primarily in the commercial interest of the requester.” A fee waiver or reduction is justified where the public interest standard is satisfied, and that public interest is greater in magnitude than that of any identified commercial interest in disclosure.

*AGA Response:* This FOIA request is made for non-commercial purposes and on behalf of AGA, AGA’s members, AGA member customers and the general public welfare. The public interest is greater in magnitude than that of any commercial interest. There are more than 77 million residential, commercial and industrial natural gas customers, which could be impacted.

If the waiver request is denied, please contact the undersigned with an estimate of the direct cost of searching for, reviewing the release and duplicating the records sought via this request and as provided by law and regulation.<sup>12</sup> AGA will provide a prompt response as to whether the expenditure is authorized.

### **Format of the Response**

AGA requests the documents in the format that they are maintained by the EPA or its contractor(s) or the form which is the most efficient and least costly method to comply with this request.

### **Request for Expedited Processing Due to Exceptional Need and Urgency**

AGA requests that EPA respond to this FOIA request as promptly as the law, review and circumstances permit, including, contacting the undersigned with any questions, comments or requests so AGA is informed of them and may respond in a timely manner. AGA has an urgent need for the documents because EPA plans to eliminate certain natural gas products from the ENERGY STAR program in 2024.


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<sup>12</sup> 40 C.F.R. § 2.107(e).

## **Conclusion**

The American Gas Association respectfully requests that the Environmental Protection Agency promptly respond to this Freedom of Information Act request. If you have any questions regarding this submission, please do not hesitate to contact the undersigned.

Respectfully,

A handwritten signature in dark ink, appearing to read 'M. J. Agen', is positioned above a horizontal line.

Matthew J. Agen  
Chief Regulatory Counsel, Energy  
American Gas Association  
400 N. Capitol Street, NW  
Washington, DC 20001  
magen@aga.org

cc: Paul Gunning, Director, Office of Atmospheric Protection  
Jennifer Clark, Associate General Counsel  
Charlotte Youngblood, Deputy Associate General Counsel