



Ballot Vote Sheet

TO: The Commission
Alberta E. Mills, Secretary

DATE: December 1, 2023

THROUGH: Austin C. Schlick, General Counsel
Jason K. Levine, Executive Director

FROM: Daniel R. Vice, Assistant General Counsel, Regulatory Affairs
David M. DiMatteo, Attorney, Regulatory Affairs

SUBJECT: Notice of Proposed Rulemaking: Safety Standard for Gas Furnaces and Boilers; Notice of Extension of Comment Period

TIME CRITICAL BALLOT VOTE DUE: Tuesday, December 5, 2023

On October 25, 2023, the Consumer Product Safety Commission (Commission) published in the *Federal Register* a notice of proposed rulemaking (NPR) to promulgate a consumer product safety standard to address an unreasonable risk of injury and death associated with residential gas furnaces and boilers. The NPR invited the public to submit written comments during a 60-day comment period beginning on the publication date and ending on December 26, 2023.

On November 3, 2023, the Air-Conditioning, Heating, and Refrigeration Institute (AHRI) submitted a request to extend the public comment period for the NPR for an additional 60 days to February 26, 2024. On November 17, 2023, the American Gas Association (AGA), American Public Gas Association (APGA), and National Propane Gas Association (NPGA) submitted a similar request to extend the public comment period by 60 days.

The Office of the General Counsel is providing for Commission consideration the attached draft *Federal Register* notice that would extend the comment period if the Commission votes to do so. To expedite publication of the draft notice, the General Counsel has designated this matter as time critical pursuant to section V of the Commission's Decision Making Procedures.

Please indicate your vote on the following options:

- I. Grant a 30-day extension and publish notice of the same in the *Federal Register*.

(Signature)

(Date)



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II. Grant the requested 60-day extension and publish notice of the same in the *Federal Register*.

(Signature)

(Date)

III. Take other action specified below:

(Signature)

(Date)

IV. Do not approve an extension of the comment period or publication of the attached document in the *Federal Register*.

(Signature)

(Date)

Attachment: Draft *Federal Register* Notice: Notice of Proposed Rulemaking: Safety Standard for Residential Gas Furnaces and Boilers; Notice of Extension of Comment Period

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Billing Code 6355-01-P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1408

[CPSC Docket No. 2019-0020]

**Safety Standard for Residential Gas Furnaces and Boilers; Notice of Extension of
Comment Period**

AGENCY: Consumer Product Safety Commission.

ACTION: Extension of comment period.

SUMMARY: On October 25, 2023, the Consumer Product Safety Commission (Commission or CPSC) published in the *Federal Register* a notice of proposed rulemaking (NPR) to promulgate a consumer product safety standard to address an unreasonable risk of injury and death associated with residential gas furnaces and boilers. The NPR invited the public to submit written comments during a 60-day comment period beginning on the publication date and ending on December 26, 2023. In response to requests for an extension of the comment period, the Commission is extending the comment period to January 25, 2024.

DATES: Submit comments by January 25, 2024.

ADDRESSES: *Written Comments:* Comments related to the Paperwork Reduction Act aspects of the proposed rule should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: CPSC Desk Officer, FAX: 202-395-6974, or e-mailed to oir_submission@omb.eop.gov.

Other written comments in response to the proposed rule, identified by Docket No. CPSC-2019-0020, may be submitted by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: www.regulations.gov. Follow the instructions for submitting comments. CPSC

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typically does not accept comments submitted by e-mail, except as described below. CPSC encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.

Mail/Hand Delivery/Courier/Written Submissions: Submit comments by mail/hand delivery/courier to: Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: (301) 504-7479. If you wish to submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public, you may submit such comments by mail, hand delivery, courier, or you may e-mail them to: cpsc-os@cpsc.gov.

Instructions: All submissions must include the agency name and docket number. CPSC may post all comments without change, including any personal identifiers, contact information, or other personal information provided to: www.regulations.gov. Do not submit through this website: confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If you wish to submit such information, please submit it according to the instructions for mail/hand delivery/courier/written submissions.

Docket for NPR: For access to the docket to read background documents or comments received, go to: www.regulations.gov, insert the docket number CPSC–2019-0020 into the “Search” box, and follow the prompts.

SUPPLEMENTARY INFORMATION:

On October 11, 2023, the Commission voted to publish an NPR in the *Federal Register*, to promulgate a consumer product safety standard for carbon monoxide hazards associated with gas furnaces and boilers. The NPR published on October 25, 2023, with a 60-day comment period that closes on December 26, 2023. 88 FR 73272.

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The Commission has received two requests to extend the comment period. On November 3, 2023, the Air-Conditioning, Heating, and Refrigeration Institute (AHRI) requested the public comment period be extended for an additional 60 days to February 26, 2024. On November 17, 2023, the American Gas Association (AGA), American Public Gas Association (APGA), and National Propane Gas Association (NPGA) submitted a similar request to extend the public comment period for the NPR by 60 days. The Commission has considered these requests to extend the comment period. To provide additional time for stakeholders to prepare comments for the rulemaking, the Commission will grant an extension of the comment period to January 25, 2024.

Alberta E. Mills
Secretary, Consumer Product Safety Commission



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November 3, 2023

Alberta E. Mills
Secretary of the Commission
U.S. Consumer Product Safety Commission
4330 East-West Highway, Bethesda, MD 20814

Re: Request for Extension of Comment Period in Response to Consumer Product Safety Commission's Notice of Proposed Rulemaking for Safety Standards for Residential Gas Furnaces and Boilers [CPSC Docket No. CPSC-2019-0020]

Dear Ms. Mills:

The Air-Conditioning, Heating, and Refrigeration Institute (AHRI) respectfully requests the Consumer Product Safety Commission (CPSC) extend the public comment period for an additional 60 days to provide stakeholders adequate time to properly respond to the notice of proposed rulemaking (NOPR) pertaining to safety standards for residential gas furnaces and boilers appearing in the *Federal Register* on October 25, 2023.

AHRI is the trade association representing over 300 manufacturers of heating, cooling, water heating, and commercial refrigeration equipment. AHRI is an advocate for the industry and develops standards for and certifies the performance of many of our member's products. In North America, the annual output of the HVACR and water heating industry is worth more than \$44 billion. In the United States alone, the HVACR and water heating industry supports 1.3 million jobs and \$256 billion in economic activity annually.

CPSC has proposed rapid and substantial changes to how gas furnaces and boilers are manufactured. AHRI and our members are deeply committed to product quality and safety, so we request additional time to fully understand the proposed new test procedures and impacts of the proposed safety standards on products before providing comments to CPSC.

Justification for the proposed rule relies on deaths from carbon monoxide poisoning purportedly associated with these products. AHRI has filed an expedited Freedom of Information Act request and has also requested CPSC furnish the In-Depth Investigation reports for the 539 deaths cited during the 20-year period, 2000 through 2019.

Taking these needs into consideration, an additional 60 days from December 26, 2023 to February 26, 2024 is necessary to provide stakeholders adequate time to properly respond to the notice.

Thank you for the consideration of AHRI's request for a 60-day extension. If you have any questions regarding this request, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Samantha M. Slater". The signature is written in black ink and is positioned below the word "Sincerely,".

Samantha M. Slater
Senior Vice President of Government Affairs



November 17, 2023

Mr. Ronald A. Jordan
 Directorate for Engineering Sciences, Mechanical Engineering
 Consumer Product Safety Commission
 National Product Testing and Evaluation Center
 5 Research Place
 Rockville, MD 20850

Submitted via regulations.gov

**Re: Request for an Extension of the Comment Period
 Safety Standard for Residential Gas Furnaces and Boilers, CPSC-2019-
 0020, 88 Fed. Reg. 73272 (October 25, 2023)**

Dear Mr. Jordan:

The American Gas Association (“AGA”), American Public Gas Association (“APGA”) and National Propane Gas Association (“NPGA”) (collectively, “Joint Requesters”) respectfully request that the Consumer Product Safety Commission (“CPSC”) extend the public comment period by 60 days in the above-referenced proceeding. The notice of proposed rulemaking (“NOPR”)¹ and associated staff briefing package require careful consideration in order to develop comments. As discussed herein, additional time to provide comments in response to the NOPR is justified.

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 more than one-third of the United States’ energy needs.²

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

¹ *Safety Standard for Residential Gas Furnaces and Boilers*, CPSC-2019-0020, 88 Fed. Reg. 73272 (October 25, 2023).

² For more information, please visit www.aga.org.

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.³

NPGA is the national trade association of the propane industry with a membership of about 2,400 companies, and 36 state and regional associations that represent members in all 50 states. Membership in NPGA includes retail marketers of propane gas who deliver the fuel to the end user, propane producers, transporters and wholesalers, and manufacturers and distributors of equipment, containers, and appliances. Propane gas fuels millions of installations nationwide for home and commercial heating and cooking, in agriculture, industrial processing, and as a clean air alternative engine fuel for both over-the-road vehicles and industrial lift trucks. Roughly 75% of NPGA's members have fewer than 100 employees, and are considered small businesses. The proposal directly addresses products which currently, and in the future, may rely on propane for fuel, and as such, the proposal has the potential to have a direct and significant impact on NPGA's members.

Joint Requesters provide the energy needed to fuel residential furnaces and boilers, thus making them critical stakeholders in this proceeding. 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 As discussed herein, additional time is needed to meaningfully analyze and respond to the NOPR.

On October 25, 2023, CPSC published in the Federal Register a proposed rule to require carbon monoxide ("CO") sensors be installed in residential fuel-fired furnaces and boilers to facilitate appliance shut-down if certain conditions are met. CPSC provided stakeholders 60-days⁶ or until December 26, 2023, to comment on the NOPR. To sufficiently analyze the NOPR and the associated detailed staff briefing package, an additional 60 days are required. CPSC determinations in this proceeding will have significant implications for manufacturers and consumers – the customers of Joint Requesters' members – who rely on the appliances at issue. The proposed appliance safety standards will have significant ramifications on suitable furnace and boiler availability for customers and the marketplace for years to come.

Of note, the public comment period for the NOPR encompasses three federal holidays⁷ when many stakeholders are away from work. The limited staff available to review the NOPR during this time will make it difficult to develop meaningful comments in response to the NOPR. This challenge

³ For more information, please visit www.apga.org.

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.

⁶ While statute caps CPSC at a 60-day notice and comment period for an advanced notice of proposed rulemaking (15 U.S.C. 2058(a)(4)), no such statutory limitation is placed on a notice of proposed rulemaking. 15 U.S.C. 2058(c).

⁷ The federal holidays encompassed by the comment period include the following: Veteran's Day, observed (November 10, 2023); Thanksgiving Day (November 23, 2023); and Christmas Day (December 26, 2023). The comment period also includes numerous other religious holidays for which observing stakeholders are likely to be away from work.

is paired with the fact that stakeholders continue to face significant supply chain and worker shortages that pose further obstacles to giving these important documents the critical review and feedback that are required. As the advanced notice of proposed rulemaking preceding this NOPR⁸ was issued for public comment over 4 years ago, an additional 60 days is not an unreasonable extension of time to ensure that Joint Requesters and all stakeholders have sufficient time to develop meaningful comments in response to this impactful rulemaking.

Furthermore, in a November 3, 2023, letter to CPSC, the Air-Conditioning, Heating, & Refrigeration Institute (“AHRI”) requested additional time to respond to the NOPR.⁹ As explained in the letter, a 60-day comment period extension is warranted, as AHRI filed an expedited request for information pertaining to underlying information central to this NOPR. Joint Requesters support the need for additional time to ensure that all relevant information from CPSC pertaining to this NOPR is available with sufficient time to allow all stakeholders the opportunity to properly respond to the proposal. Additionally, Joint Requesters urge CPSC to post any information in response to these information requests in the relevant docket for ease of access to all stakeholders.

Given the numerous compounding factors impacting stakeholders’ ability to develop meaningful comments in the allotted time, CPSC should extend the comment period by at least an additional 60 days. This will allow adequate time for all stakeholders to review and understand the NOPR, staff briefing package, and any associated materials produced as part of AHRI’s relevant information request in order to develop meaningful comments on the complex and important issues addressed by these documents. Providing a 60-day extension for comments in this proceeding will also not cause a significant delay in CPSC’s consideration of the record and requirement to act in a timely manner.¹⁰

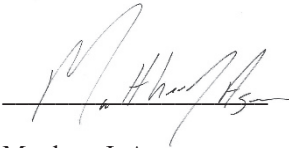
Joint Requesters thank you for the review and consideration of this letter. If you have any questions regarding this submission, please do not hesitate to contact the undersigned.

Respectfully submitted,

⁸ *Performance Requirements for Residential Gas Furnaces and Boilers; Advance Notice of Proposed Rulemaking*, CPSC-2019-0020, 84 Fed. Reg. 42847 (Aug. 19, 2019).

⁹ Letter from S. Slater, AHRI, to A. Mills, CPSC, requesting a 60-day extension of the comment period for the NOPR (Nov. 3, 2023), available at <https://www.regulations.gov/comment/CPSC-2019-0020-0025>.

¹⁰ 15 U.S.C. 2058(c) (“Any proposed consumer product safety rule shall be issued within twelve months after the date of publication of the notice, unless the Commission determines that such proposed rule is not reasonably necessary to eliminate or reduce the risk of injury associated with the product or is not in the public interest. The Commission may extend the twelve month period for good cause.”).



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Cc: Ms. Alberta E. Mills (Secretary of the Commission)