



September 12, 2016

Mr. John Cymbalsky  
U.S. Department of Energy  
Office of Energy Efficiency and Renewable Energy  
Building Technologies Office, EE-5B  
1000 Independence Avenue, SW  
Washington, DC 20585-0121

RE: Request of AGA and APGA for an Extension of the Comment Period  
Supplemental Notice of Proposed Rulemaking (SNOPR) – Energy Conservation Standards for Residential  
Furnaces – Docket No. EERE-2014-STD-0031

Dear Mr. Cymbalsky:

The American Gas Association (“AGA”)<sup>1</sup> and the American Public Gas Association (“APGA”)<sup>2</sup> (collectively, the “Associations”) respectfully request an extension of time for filing comments on the Supplemental Notice of Proposed Rulemaking (“SNOPR”) on Energy Conservation Standards for Residential Furnaces released in pre-publication form by the Department of Energy (“DOE”) on September 2, 2016.<sup>3</sup> Specifically, the Associations request an extension of the proposed thirty (30) day comment period for an additional sixty (60) days, for a total of a ninety (90) day comment period from the date of publication of the SNOPR in the *Federal Register*.

This comment period extension is necessary to provide the Associations and all other interested stakeholders with time to review the extensive (almost 500 pages) SNOPR text, as well as the massive and very complex Technical Support Document (almost 1200 pages) and accompanying spreadsheets (exceeding 6,000 pages) (collectively, “TSD”), in order to provide meaningful comments to DOE on the SNOPR. Additionally, the Associations request prompt action by the DOE on this extension request. Specifically, we request that DOE issue a decision on the comment deadline extension no later than seven (7) days after the date of this request. A prompt and publicized notification of DOE’s decision on this request will assist interested stakeholders to

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<sup>1</sup> The AGA, founded in 1918, represents more than 200 local energy companies that deliver clean natural gas throughout the United States. There are more than 72 million residential, commercial and industrial natural gas customers in the U.S., of which 95 percent – just under 69 million customers – receive their gas from AGA members. AGA is an advocate for local natural gas utility companies and provides a broad range of programs and services for member natural gas pipelines, marketers, gatherers, international gas companies and industry associates. Today, natural gas meets more than one-fourth of the United States’ energy needs. For more information, please visit [www.aga.org](http://www.aga.org).

<sup>2</sup> APGA is the national, non-profit association of publicly-owned natural gas distribution systems, with over 700 members in 37 states. Overall, there are some 950 publicly-owned systems in the United States. Publicly-owned gas systems are not-for-profit retail distribution entities that are owned by, and accountable to, the citizens they serve. They include municipal gas distribution systems, public utility districts, county districts, and other public agencies that have natural gas distribution facilities. APGA members purchase interstate natural gas transportation services, usually as captive customers of a single interstate pipeline, at rates and under terms and conditions that are regulated by the Federal Energy Regulatory Commission.

<sup>3</sup> Energy Conservation Program: Energy Conservation Standards for Residential Furnaces, available at <http://energy.gov/eere/buildings/downloads/issuance-2016-09-02-energy-conservation-program-energy-conservation>.

appropriately manage the time constraints associated with the review, analysis and drafting of meaningful comments.<sup>4</sup>

As noted in the SNO PR (at pp. 37-40, 451-53), this proceeding has a long history.<sup>5</sup> That history underscores the importance of getting it right this time, which includes affording the parties ample time to assess the SNO PR and react in a meaningful fashion. Understanding what DOE has done in the SNO PR and its reasons therefor will require in-depth analysis by experts in the field and, given the 10,000 trial cases involved, innumerable computer runs. DOE devoted huge amounts of time to developing the March 2015 NOPR, which has now been superseded some sixteen (16) months later by the SNO PR. The notion that interested parties can react to the SNO PR and accompanying TSD within thirty (30) days, or even double that time, is patently wrong. The subject request to be allowed ninety (90) days for review and comment is conservative by any measure.

The Energy Policy and Conservation Act of 1975 (42 U.S.C. § 6295(p)(2)) provides that after publication of a proposed rulemaking, the Secretary shall “afford interested persons an opportunity, during a period of not less than 60 days,” to present comments.<sup>6</sup> Clearly, the “not less than” language of the statute and Executive Order 12866 anticipate longer time periods for cases of this magnitude and complexity. DOE’s own regulations provide for time periods of at least seventy-five (75) days after an ANOPR<sup>7</sup> and seventy-five (75) days after a NOPR for comments.<sup>8</sup> Our working assumption is that DOE seeks to build a full and fair record,<sup>9</sup> which can only be accomplished in the context of this proceeding if ample time is provided for review of and response to the SNO PR, consistent with the enabling statute and DOE’s own regulations.

The requested ninety (90) day extension also fits well with the planned October 17, 2016 public meeting regarding the SNO PR (SNO PR at p. 2). The key purpose of such a meeting is for the public to understand what DOE is proposing and why, which serves as an important predicate for subsequently filed comments. The requested ninety (90) day comment period will provide parties both an opportunity to prepare for the public meeting and then, upon review of the meeting transcript, to use that knowledge in filing comments with DOE. The current comment period would frustrate both purposes.

The issuance of the NODA in September 2015 underscores the need for more time to respond to the SNO PR. DOE made clear that the NODA was based on a “provisional analysis of the potential economic impacts and energy savings that could result from promulgating amended ... standards ... that include two product classes defined by input capacity”<sup>10</sup> and that if DOE determined to proposed new standards, it would issue a supplemental NOPR along with the necessary technical support document. Approximately one year later,

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<sup>4</sup> It is very important that DOE avoid the sort of delay and resulting confusion that was associated with the Associations’ joint request for additional time and data responses related to the Notice of Data Availability (NODA). See APGA’s November 6, 2015 Supplemental Comments in this docket (EERE-2014-BT-STD-0031-0193).

<sup>5</sup> DOE’s recounting of that history omits an important aspect of the motion that was approved by court order issued April 24, 2014, vacating the DFR, namely the provision that “...if DOE determines that it requires additional time in order to conduct necessary technical analysis or to consider the comments of parties, then the completion of the final rule will be extended accordingly.”

<sup>6</sup> See also Executive Order 12866 regarding “Regulatory Planning and Review,” which states that in order to provide a meaningful opportunity to comment for rulemaking regulatory actions, such as this SNO PR, classified as “economically significant,”<sup>6</sup> in most cases, the comment period should be not less than sixty (60) days (58 Fed. Reg. at § 6(a)).

<sup>7</sup> 10 CFR Part 430, Appendix A to Subpart C, § 4(c)(2).

<sup>8</sup> *Id.* at § 4(e)(2).

<sup>9</sup> DOE notes on its web site that “Robust public participation is essential to the rulemaking process. This participation provides DOE the benefit of the expertise from those who will be most affected by DOE’s proposed actions. It also offers the public a transparent, hands-on way of having its voice heard in the administrative process.” <http://energy.gov/gc/services/open-government/public-participation-doe-proceedings>.

<sup>10</sup> 80 Fed. Reg. 55038.

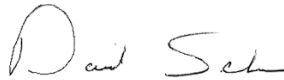
the SNOPR and TSD issued,<sup>11</sup> the massiveness of which has already been noted. DOE has spent the time it thought was necessary to promulgate the SNOPR, and it is only fair, if notice and comment rulemaking is to serve its intended purpose, for the parties to be granted sufficient time to understand the notice (i.e., the SNOPR and TSD) and to comment accordingly.

For the reasons stated herein, the Associations respectfully request that DOE promptly grant an extension of time to file comments on the SNOPR to a comment deadline of ninety (90) days after publication in the *Federal Register*. In order to provide adequate notice and prioritize resource needs, the Associations urge the DOE to issue an order on this request no later than seven (7) days from the date of this request.

Respectfully submitted,



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<sup>11</sup> *Id.* at 55039 (“If DOE were to consider adopting energy conservation standards for residential furnaces that set separate levels based on input capacity, it would do so in a future supplemental NOPR (SNOPR). DOE would also publish a technical support document (TSD) containing a detailed written account of the analyses performed in support of the SNOPR, which will include updates to the analyses made available in this NODA”).