



**COMMENTS OF HEARTH, PATIO & BARBECUE ASSOCIATION ON
EPA'S PROPOSED RULE; "STANDARDS OF PERFORMANCE FOR NEW
RESIDENTIAL WOOD HEATERS, NEW RESIDENTIAL HYDRONIC HEATERS
AND FORCED-AIR FURNACES"**

Docket ID No. EPA-HQ-OAR-2018-0195

RIN 2060-AU00

83 Fed. Reg. 61,574 (November 30, 2018)

January 14, 2018

INTRODUCTION AND EXECUTIVE SUMMARY

The Hearth, Patio & Barbecue Association (“HPBA”) appreciates the opportunity to comment on the U.S. Environmental Protection Agency’s (“EPA” or “the Agency”) proposal¹ to revise its 2015 rule, “Standards of Performance for New Residential Wood Heaters, New Residential Hydronic Heaters and Forced-Air Furnaces, and New Residential Masonry Heaters.”² EPA is proposing to revise 40 C.F.R. Part 60, Subpart QQQQ to allow residential hydronic heaters and forced-air furnaces³ that meet the 2015 (“Step 1”) particulate matter (“PM”) standards to be sold until May 15, 2022, so long as those appliances were manufactured before May 15, 2020. Although EPA has not proposed to revise 40 C.F.R. Part 60, Subpart AAA to allow residential wood stoves and pellet stoves⁴ to be sold until May 15, 2022, it has requested comment on whether to include identical “sold at retail” or “sell-through” language in Subpart AAA.

As explained in more detail below, HPBA believes that a two-year sell-through period is critical to the health of the hearth products industry for *all types of regulated appliances*—wood stoves, pellet stoves, hydronic heaters, and forced-air furnaces. Thus, HPBA urges EPA to finalize revisions to both Subparts QQQQ and AAA that add a two-year sell-through period for Step 1 appliances. Furthermore, HPBA urges EPA to do so expeditiously, as the rapidly approaching compliance deadline for the 2020 (“Step 2”) PM standards is already negatively impacting the industry.

As a threshold matter, nothing in the Clean Air Act (“CAA”) limits EPA’s authority to stagger compliance deadlines for the manufacture and sale of covered appliances. Thus, it is not surprising that EPA has done so in prior new source performance standards (“NSPS”) rules for not only residential wood heating appliances, but also other source categories. For example, when EPA initially promulgated standards of performance for wood stoves in 1988, it included a two-year sell-through period for conventional, previously unregulated stoves, which the Agency estimated emitted about 60 to 70 grams per hour (“g/hr”) of PM.⁵ By comparison, revising the current standards to provide a two-year sell-through period (from May 2020 to May 2022) for Step 1 stoves, roughly three-quarters of which are well under the 4.5 g/hr emission limit, would have a relatively miniscule environmental impact. The same is true with respect to Step 1 hydronic heaters, which by EPA’s own estimates, are 90% cleaner than the uncontrolled heaters that EPA allowed to be sold for a limited period of time after it promulgated the 2015 rule.

¹ 83 Fed. Reg. 61,574 (Nov. 30, 2018).

² The 2015 rule was published at 80 Fed. Reg. 13,672 (Mar. 16, 2015).

³ EPA sometimes refers to these appliances collectively as “central heaters.” The standards for these two categories are codified at 40 C.F.R. Part 60, Subpart QQQQ.

⁴ EPA sometimes refers to these appliances collectively as “room heaters.” The standards for these two categories of appliances are codified at 40 C.F.R. Part 60, Subpart AAA.

⁵ 52 Fed. Reg. 4,994, 4,996 (Feb. 18, 1987).

Not only would staggering the Step 2 manufacturing and sell-by deadlines by two years be consistent with prior regulations, it actually would serve to cure a defect in the 2015 Rule. When EPA promulgated the current standards in 2015, it provided limited sell-through for (i) room heaters that were certified to the 1988 standards, but could not meet the Step 1 (2015) emission limit; and (ii) previously unregulated hydronic heaters. EPA did so to try to ensure that the industry, which consists primarily of small businesses, would not be stuck with previously manufactured, but unsellable inventory when the Step 1 standards took effect.⁶ Despite EPA’s recognition that a sell-through period was necessary to avoid imposing undue harm on the industry, it did not provide for any sell-through period after the Step 2 standards become applicable on May 15, 2020. EPA offered no explanation for this disparate treatment nor did it otherwise try to articulate why sell-through would not be every bit as important in 2020 as it was in 1988 or 2015 to help avoid stranding inventory in commerce.

In addition to avoiding the economic harm to small businesses from stranding unsellable appliances in commerce, a two-year sell-through period is necessary for a different reason. As recognized in the preamble to EPA’s current proposal, the lack of a sell-through provision in the 2020 standards is currently impacting manufacturers’ ability to develop, test, and certify Step 2-compliant products because (i) a substantial number of retailers in the hearth appliance industry are reducing or even eliminating orders of Step 1 appliances, even though the Step 2 compliance deadline is still well over a year away; and (ii) the downturn in Step 1 sales revenues jeopardizes many manufacturers’ efforts to bring Step 2-compliant products to market.

In the 2015 Rule, EPA’s best system of emission reduction (“BSER”) determinations for the Step 2 standards—for both room heaters and central heaters—were based on the conclusion that five years was an appropriate amount of lead time for manufacturers of all types of covered appliances to develop a full range of Step 2-compliant models, access the capital needed to develop those models, and complete the certification process.⁷ EPA further found that, given the nature of this industry, manufacturers simply could not afford to suspend production and sales of Step 1 products during the time they were trying to design, test, evaluate, and certify Step 2 models, which is a concern that was also relevant back in 1988.⁸ Thus, EPA concluded that manufacturers needed a full five years to bring product lines into compliance with the Step 2 standards.

EPA, however, has recently come to realize that manufacturers of both central and room heaters are now having difficulty accessing the necessary capital during the final two years of the five-year lead time period because many retailers have either scaled back on or eliminated orders of Step 1 products. This has effectively reduced or cut off revenue that manufacturers need to develop, test, and certify Step 2-compliant products. A two-year sell-through period would send

⁶ *See, e.g.*, 80 Fed. Reg. at 13,685.

⁷ 79 Fed. Reg. 6,330, 6,365 (Feb. 3, 2014) (proposed rule).

⁸ *See* U.S. EPA, “Response to Comment on Proposed Rule, ‘Standards of Performance for New Residential Wood Heaters, New Residential Hydronic Heaters, and Forced-Air Furnaces, and New Residential Masonry Heaters,’” at 99 (Feb. 3, 2015) (Attachment A to these comments; *previously docketed as* EPA-HQ-OAR-2009-0734-1775).

a signal to retailers that they can continue purchasing Step 1 products for the entirety of the five-year compliance lead time (*i.e.*, until May 2020) without having to fear that they will be stranded with unsellable Step 1 inventory on May 15, 2020. Rather, they would be able to continue selling previously manufactured Step 1 appliances for another two years. The two-year sell-through would thus restore the necessary cash flow to manufacturers and therefore give them the full benefit of the crucial five-year lead time. A sell-through period of that duration is likely the right amount of time to quell retailers' fears of being stranded with unsellable Step 1 inventory as of May 2020. Indeed, record evidence from the 2015 rulemaking suggests that retailers typically are able to sell most of their inventory over the course of two full selling seasons.

STATEMENT OF INTEREST

Based in Arlington, Virginia, HPBA is the principal national industry association representing manufacturers, retailers, distributors, representatives, service firms, and allied associates for all types of hearth, barbecue, and patio appliances, fuels, and accessories, including solid fuel-fired home heating appliances such as woodstoves, pellet stoves, hydronic heaters, and warm air furnaces. The 2,500-member association provides professional member services and industry support in education, statistics, government relations, marketing, advertising, and consumer education.

HPBA has a long track record of working cooperatively with the EPA and the States on wood smoke issues of common concern. This partnering started with the regulatory negotiations in the late 1980s that produced the current NSPS. Other partnership accomplishments include numerous woodstove change-out programs including, most prominently, the program in Libby, Montana that changed out over 1,000 uncontrolled (*i.e.*, not EPA-Certified) stoves, resulting in remarkable improvements in air quality both in the ambient air and indoors. In addition, HPBA partnered with EPA in developing and implementing two innovative voluntary programs for hearth appliances: the voluntary program for Hydronic Heaters, and the later voluntary program for fireplaces. The Hydronic Heater voluntary program is particularly noteworthy, as it fostered the development of a new generation of emission-controlled models that EPA has acknowledged have reduced emissions approximately 90% from baseline, uncontrolled levels.

COMMENTS

I. EPA Has Authority Under the CAA To Revise the Existing NSPS by Adding Sell-Through Provisions In This Rulemaking Proceeding.

Contrary to what some stakeholders claimed during the public hearing on the current proposal, EPA has authority under CAA Section 111 to establish different compliance deadlines for the manufacture and sale of residential wood burning appliances. Section 111(b) of the Act establishes various deadlines—*e.g.*, for publishing a list of regulated source categories, promulgating initial standards, reviewing (and revising, if appropriate) standards.⁹ Although that

⁹ See 42 U.S.C. §§ 7411(b)(1)(A), 7411(b)(1)(B).