



September 1, 2023

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U.S. Department of Energy
1000 Independence Avenue, SW
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**Re: Notification of Data Availability and Request for Comment:
*Energy Conservation Program: Energy Conservation Standards for Consumer
Conventional Cooking Products*, EERE-2014-BT-STD-0005, RIN 1904-AD15, 88 Fed.
Reg. 50810 (August 2, 2023)**

Dr. Shapiro,

The National Propane Gas Association (NPGA), American Gas Association (AGA), American Public Gas Association (APGA), Spire Inc., Spire Alabama Inc., and Spire Missouri Inc. (Spire) (collectively, Joint Commenters) respectfully submit these comments in response to the Notification of Data Availability and Request for Comment: Energy Conservation Program: Energy Conservation Standards for Consumer Conventional Cooking Products (NODA) by the Department of Energy (DOE).¹ DOE published the NODA in response to stakeholder data and information it received in response to its Supplemental Notice of Proposed Rulemaking (SNOPR) in the same docket.² These comments supplement the comments Joint Commenters provided on the SNOPR³ and Joint Commenters' August 18, 2023 request for clarification, a public meeting, and an extension of the comment period on the NODA (the Joint Request for Clarification).⁴ NPGA, AGA, and APGA also submitted, on March 3, 2023, a letter to the Department of Justice

¹ *Energy Conservation Program: Energy Conservation Standards for Consumer Conventional Cooking Products: Notification of Data Availability and Request for Comment*, 88 Fed. Reg. 50810 (Aug. 2, 2023) (hereinafter, NODA).

² *Energy Conservation Program: Energy Conservation Standards for Consumer Conventional Cooking Products: Supplemental Notice of Proposed Rulemaking and Announcement of Public Meeting*, 88 Fed. Reg. 6818 (Feb. 1, 2023) (hereinafter, SNOPR).

³ Those comments include, but are not limited to, the April 17, 2023 comments of Spire Inc., Spire Alabama Inc. and Spire Missouri Inc., identified in the docket as Comment ID EERE-2014-BT-STD-0005-2710 (Spire Comments); Comments of the American Gas Association, identified in the docket as Comment ID EERE-2014-BT-STD-0005-2279 (AGA Comments); Comment of the National Propane Gas Association, identified in the docket as Comment ID EERE-2014-BT-STD-0005-2270; and Comments of American Public Gas Association, identified in the docket as Comment ID EERE-2014-BT-STD-0005-2283.

⁴ The Joint Request for Clarification is identified in the docket as Comment ID EERE-2014-BT-STD-0005-10093.

(DOJ) in the docket regarding the competitive effects of the SNOPR.⁵ As discussed herein, based on the information provided by DOE the proposed standards would not be economically justified and would not result in significant conservation of energy.

I. Identity and Interest

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. NPGA members supply propane to consumers who utilize propane-fueled cooktops and ovens. The NODA directly addresses products which currently, and in the future, may rely on propane for consumer conventional cooking, and as such, the SNOPR has the potential to have a direct and significant impact on NPGA's members.

AGA, founded in 1918, represents more than 200 local energy companies that deliver clean natural gas throughout the United States. There are more than 78 million residential, commercial, and industrial natural gas consumers in the U.S., of which 96 percent — more than 74 million consumers — 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.⁶ AGA's members serve residential and commercial consumers, the majority of which use natural gas cooking appliances and therefore have a direct and vital interest in both the minimum efficiency standards for these products and the procedures used by DOE to adopt these standards.

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

Spire Inc., Spire Missouri Inc., and Spire Alabama Inc. (collectively "Spire") are in the natural gas utility business. Spire Inc., through its wholly-owned subsidiary companies, owns and

⁵ The March 3, 2023 letter is appended to this submission as an Attachment. Notably, while this NODA appears to, but fails to formally announce a new EL standard for gas cooktops, it does not provide the required opportunity to comment to DOJ on the competitive effects of the presumed new standard. Joint Commenters would like to register this omission as a glaring defect in the NODA.

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

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

operates natural gas local distribution companies serving approximately 1.7 million residential, commercial, and industrial customers across Missouri and Alabama. Spire Missouri Inc. and Spire Alabama Inc. are the largest natural gas utilities serving residential, commercial, and institutional customers in Missouri and Alabama, respectively.

II. Comments

In view of the limited time allowed for submission of written comments on the NODA and the lack of clarity as to what DOE intends or why, the scope of these comments is limited. However, based on the information DOE has made available in this proceeding, it seems clear that standards based on the new efficiency levels identified in the NODA would not be economically justified, would not result in significant conservation of energy, and would deprive consumers of gas cooking tops with the features and performance that consumers value the most. Accordingly, DOE should not propose or adopt amended energy conservation standards for gas cooking tops.

A. Procedural History

This rulemaking has a long and detailed procedural history. In the SNO PR, DOE stated “On December 14, 2020, DOE published a Notification of Proposed Determination (NOPD) proposing not to amend the energy conservation standards for consumer conventional cooking products” because “amended energy conservation standards for consumer conventional cooking products would not be economically justified and would not result in a significant conservation of energy.”⁸ In the NOPD, “DOE noted that the estimates for energy savings associated with a specific technology option for gas cooking tops, optimized burner and grate design, may vary depending on test procedure, and thus DOE screened out this technology options from further analysis of gas cooking tops.”⁹

DOE further stated in the SNO PR that “The Joint Gas Associations agreed with the DOE’s tentative determination in the December NOPD that no new standards are justified” and the “December 2020 NOPD’s tentative determination that neither of the February 2020 Process Rule’s thresholds for significant energy savings are met for TSL 2 or TSL 1 for consumer conventional cooking products” was also supported by the Joint Gas Associations.¹⁰ Joint Commenters support the Joint Gas Associations prior comments on this rulemaking. Further, the SNO PR stated that “AHAM stated that no significant changes have occurred to justify new standards since the April 2009 Final Rule that determined that energy conservation standards for consumer conventional cooking products were not justified.”¹¹ Joint Commenters also support that aforementioned conclusion from AHAM’s prior comments on this rulemaking.

As discussed herein and in the Joint Commenters prior comments, DOE has not identified any technological changes in gas cooking tops since the 2009 Final Rule to justify a determination that new standards would result in significant conservation of energy as required by the Energy

⁸ SNO PR at 6826.

⁹ *Id.*

¹⁰ SNO PR at 6827.

¹¹ SNO PR at 6828.

Policy and Conservation Act (EPCA). The Joint Gas Associations and AHAM’s prior comments remain relevant and applicable, and DOE has failed in the SNOPR, NODA and in the Technical Support Document, to show otherwise.

B. Overview of the NODA

According to DOE, the NODA presents new efficiency levels, manufacturer production costs, no new standards case market shares, life-cycle costs (LCC), and payback period analysis (PBP), and national impact analysis (NIA).¹² DOE states that stakeholder input has provided a better understanding of features consumers value.¹³ In its expanded test sample, DOE claims that models with two to six high input burners can achieve the stated efficiency levels (identified as “EL1” and “EL2”).¹⁴ DOE also provides and seeks comment on new Integrated Annual Energy Consumption (IAEC) levels,¹⁵ but does not propose a new standard based on either of these new efficiency levels. DOE claims that the incremental manufacturer production cost to meet a standard based on these efficiency levels did not change from the SNOPR.¹⁶ DOE also claims that only 41% of the market screened would currently meet a standard based on the new EL 2 level.¹⁷

C. The NODA Does Not Provide Adequate Notice or Opportunity for Comment

The NODA announces the availability of additional efficiency testing data for gas cooking tops. However, it does not provide this supplemental information in support of its previously proposed standard for such products. Instead, it identifies a new efficiency baseline and two new “efficiency levels” for gas cooking tops and presents the results of analyses of potential standards based on those new efficiency levels.¹⁸ However, the NODA does not actually propose a standard based on either of those new efficiency levels; in fact, it does not even indicate whether – much less explain why – DOE believes that such a standard would be justified. As a result – as explained in the Joint Request for Clarification – the NODA does not provide sufficient notice and opportunity for comment to support the issuance of a final rule adopting a standard based on either of the newly-identified efficiency levels.

Joint Commenters filed the Joint Request for Clarification asking DOE to clarify the NODA and provide adequate notice and opportunity for comment. On August 31, 2023, DOE sent a letter to the Joint Commenters in response to the Joint Request for Clarification, and in pertinent part stated:¹⁹

¹² NODA, 88 Fed. Reg. at 50811.

¹³ *Id.* at 50812.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at 50813.

¹⁷ *Id.* at 50815, Table II.15.

¹⁸ Specifically, the NODA identifies a new efficiency baseline of IAEC of 1900 kBtu/yr, and two efficiency levels: “EL1” at an IAEC of 1633 kBtu/yr, and “EL2” at 1343 kBtu/yr. NODA, 88 Fed. Reg. at 50812.

¹⁹ DOE letter to AGA, *et al.*, dated August 31, 2023 identified in the docket as EERE-2014-BT-STD-0005-10104.

Regarding your request for clarification about whether it is proposing an energy conservation standard for gas cooking tops based on either of the new efficiency levels identified in the August NODA, DOE noted in the SNOPR and August NODA that DOE may adopt energy efficiency levels that are either higher or lower than the proposed standards, or some combination of level(s) that incorporate the proposed standards in part.

In short, in response to a request for clarity about what DOE is proposing in this proceeding, DOE's response was that it may choose an efficiency level higher or lower than what was proposed or a mix thereof. Furthermore, DOE declined to provide any level of clarity on its proposal in this proceeding by issuing a further notice. DOE's response and methodology in this proceeding is the type of hide-the-ball approach that deprives stakeholders of a meaningful opportunity to comment.²⁰ By declining to explain what DOE is now proposing and to provide any justification for a new proposal, DOE has failed to provide legally sufficient notice and opportunity for comment.

The statement that "DOE may adopt energy efficiency levels that are either higher or lower than the proposed standards, or some combination of level(s) that incorporate the proposed standards in part" is a misstatement of administrative law, particularly in the context of this rulemaking. The Administrative Procedure Act requires DOE to provide notice of its proposed rulemaking adequate to afford "interested parties a reasonable opportunity to participate in the rulemaking process."²¹ Courts have held that "[s]uch notice must not only give adequate time for comments, but also must provide sufficient factual detail and rationale for the rule to permit interested parties to comment meaningfully."²² "Disclosure of the agency's rationale is particularly important in order that a reviewing court may fulfill its statutory obligation to determine whether the agency's choice of rules was arbitrary or capricious."²³ Furthermore, for notice to be sufficient, a final rule must be a logical outgrowth of the proposed rule in the sense that the notice provided must adequately frame the subjects for discussion.²⁴ Stakeholders should not have to divine an agency's unspoken thoughts in a regulatory proceeding.²⁵ The lack of clarity and opaqueness of the NODA provide weak signals, at best, of DOE's intentions and do not provide stakeholders an opportunity to anticipate and comment on DOE's proposals, which could include an open universe of options.²⁶

²⁰ See, e.g., *Rural Cellular Ass'n v. Fed. Comm'n's Comm'n*, 588 F.3d 1095, 1101 (D.C. Cir. 2009), *Gerber v. Norton*, 294 F.3d 173, 179 (D.C. Cir. 2002).

²¹ 5 USC § 553(c).

²² *Fla. Power & Light Co. v. United States*, 846 F.2d 765, 771, (D.C. Cir. 1988); see also *Honeywell Int'l, Inc. v. EPA*, 372 F.3d 441, 445 (D.C. Cir. 2004).

²³ *Connecticut Light & Power Co. v. NRC*, 673 F.2d 525, 530-31 (D.C. Cir.), cert. denied, 459 U.S. 835 (1982).

²⁴ *Nat'l Lifeline Ass'n v. FCC*, 921 F.3d 1102, 1115 (2019), citing *Omnipoint Corp. v. FCC*, 78 F.3d 620, 631, (D.C. Cir. 1996).

²⁵ *CSX Transp., Inc. v. Surface Transp. Bd.*, 584 F.3d 1076, 1080 (2009) ("a final rule fails the logical outgrowth test and thus violates the APA's notice requirement where interested parties would have had to divine [the agency's] unspoken thoughts, because the final rule was surprisingly distant from the proposed rule." (internal quotations and citations omitted)).

²⁶ *MCI Telecommunications Corp. v. FCC*, 57 F.3d 1136, 1142 (1995) ("this court has made it clear that an agency may not turn the provision of notice into a bureaucratic game of hide and seek.").

In addition, DOE has a statutory obligation to allow a minimum of 60 days for comment on the economic justification for any standard it ultimately imposes.²⁷ DOE's earlier proposals did not provide any purported justification for standards based on either of the two efficiency levels subsequently identified for the first time in the NODA, and the NODA itself does not propose such standards, indicate whether DOE believes that such standards would be justified, or articulate the basis for any proposed determination that such standards would be justified. In declining to explain what DOE is now proposing in this proceeding DOE has not provided sufficient factual detail and rationale in order for stakeholders to comment meaningfully.

Joint Commenters, reiterate the request that DOE again supplement this rulemaking to enhance the clarity of its proposed regulation, as currently, opaqueness of the proposed standard has deprived the public of a chance to meaningfully comment.

D. Reliance on Inadequate Product Efficiency Data

DOE's previous proposal was based on the results of extremely limited (and apparently dated) product testing unsupported by any other existing body of relevant product efficiency data.²⁸ DOE's original data set consisting of 24 test results has now been supplemented by an additional 39 data points submitted by interested parties. Those additional data points caused DOE's baseline efficiency to jump from an IAEC of 1,775 kBtu/yr. to 1,900 kBtu/yr.,²⁹ and one can only speculate as to what the impact of another dozen data points might be.

None of the 63 individual efficiency test results DOE now relies on are sufficient to establish the efficiency of the tested products for purposes of compliance certification or enforcement.³⁰ It is absurd to suggest such limited testing is sufficient to inform standards rulemaking for the products at issue: a diverse range of gas cooking top products for which other relevant sources of efficiency data are entirely lacking.

E. Standards Based on DOE's New Efficiency Levels Would Not be Economically Justified

The NODA indicates that a standard based on either of its new efficiency levels would provide microscopically small LCC savings. Specifically, DOE claims that a standard based on new efficiency level EL2 would provide average LCC savings of only \$6.86 (*i.e.*, \$0.04 a month over the product's lifetime) and that a standard based on EL1 would provide LCC savings of \$14.78 (*i.e.*, \$0.08 a month).³¹ These purported economic benefits are substantially lower even than the LCC savings for DOE's previous proposed standard which – as explained in previous comments – were “*so trivial* that there is no basis to believe that they are real.”³² DOE's LCC

²⁷ 42 U.S.C. § 6295(p)(2).

²⁸ Spire Comments at 5-8.

²⁹ 88 Fed. Reg. at 50812, Table II.2 and Table II.3.

³⁰ See Spire Comments at 8.

³¹ NODA, 88 Fed. Reg. at 50815 Table II.21.

³² Spire Comments at 23-24. AGA Comments at 24.

analysis – despite the artificially precise results it generates – is simply too imprecise and uncertain to distinguish net LCC savings of this magnitude from net LCC costs.³³

DOE’s own analysis shows that the Cumulative Net Present Value of Consumer Benefits for a standard based on new EL2 would be negative at both a 3% and 7% discount rate.³⁴ For example, DOE notes that the CNPV of the NODA at 7%, accounting for thirty years of shipments is **negative** \$90 million (in 2021 dollars).³⁵ Simply put, according to DOE, the money invested in complying with the NODA will never result in value for the average consumer.

As noted, there is reason to believe that a standard based on either new efficiency level in the NODA would impose net costs on consumers. Prior comments submitted in response to the SNOPR pointed out specific errors in the economic justification that DOE provided as support for the proposed minimum efficiency level for gas cooking tops.³⁶ The NODA provides a new analysis based on new efficiency levels, but DOE has made no modifications to address those concerns. Prior comments included concerns that DOE continues to utilize energy price projections with an upward bias consistently overestimating future natural gas costs and recommended utilizing price distributions instead of a mean.³⁷

Notably, it is also important to note that DOE recently published its 2023 Representative Average Unit Costs of Five Residential Energy Sources.³⁸ DOE’s report highlights that natural gas is 3.3 times more affordable than electricity and significantly more affordable than several other residential energy sources for the same amount of energy delivered. Propane also offers a significant cost savings vis-a-vis electricity for the same amount of energy delivered.³⁹ DOE’s analysis shows that customers pay a fraction of what customers pay for other energy sources therefore seeing a significant savings as compared to other energy costs.

Prior comments also included an analysis that documented the statistically biased outcome DOE uses in its cost analysis that impacts the payback period and LLC of the gas cooking top projections and therefore the economic justification for any standard for these products.⁴⁰ In addition, prior comments presented additional observations on DOE’s economic analysis and justification and requested changes that would correct faults that produced positive economic results when they were not warranted.⁴¹ Unfortunately, DOE did not address these matters in the NODA.

Moreover, even with a standard based on the less stringent of the two new efficiency levels, the NODA shows an increase in production cost for manufacturers from approximately \$12 to

³³ *Id.*

³⁴ NODA, 88 Fed. Reg. at 50819-20, Tables II.39 and II.40.

³⁵ NODA, 88 Fed. Reg. at 50821.

³⁶ *See, e.g.*, AGA Comments at 35-44.

³⁷ *See, e.g.*, AGA Comments at 34-35.

³⁸ *Energy Conservation Program for Consumer Products: Representative Average Unit Costs of Energy*, 88 Fed. Reg. 58575 (Aug. 28, 2023).

³⁹ *Id.*

⁴⁰ *See, e.g.*, AGA Comments at 35-44.

⁴¹ *Id.*

\$17.⁴² This additional cost would be passed down onto consumers who choose to purchase such gas cooktops. The SNO PR would not only deprive consumers of the gas cooking tops they value most but would make consumers pay more for a less desirable gas cooktop that would not result in significant conservation of energy.

For the forgoing reasons and those discussed in the prior comments of the Joint Commenters, DOE's proposal in the SNO PR and the efficiency levels shown in the NODA are not economically justified, and hence it cannot be implemented under EPCA.

F. The Impact of EPCA's "Unavailability" Provision

DOE indicates that – in view of comments received in response to its SNO PR – it now “better understand[s] what features some consumers value” including – among other things – continuous cast iron grates and “the presence of multiple [high-capacity burners].”⁴³ As explained in previous comments, standards resulting in the unavailability of products with such features would therefore be precluded by the terms of 42 U.S.C. § 6295(o)(4).⁴⁴

In the SNO PR, DOE asserted that its previously proposed standard would be achievable for gas cooking tops with continuous cast-iron grates and “at least one” high-capacity burner. However, that assertion rested on a single test result that was lower than the proposed standard by a margin that is well within the margin of error for the applicable test procedure and – in any event – so close to the proposed standard that no manufacturer could reasonably certify the product as compliant with the standard.⁴⁵

DOE now asserts that the more stringent of its new efficiency levels (EL2) is “achievable with continuous cast iron grates and multiple [high-capacity] burners.” Once again, however, that is not what DOE's data shows.⁴⁶ Instead, DOE's data shows that – of 55 tested products with continuous cast iron grates and high-capacity burners – only one product with “multiple” high-capacity burners produced a test result lower than EL2.⁴⁷ That product (identified as DOE Unit 10) had only two high-capacity burners and produced a test result within 1.26% of EL2.⁴⁸ That margin is well within the test procedure's margin for error and – in any event – is so small that it would preclude any reasonable certification of compliance with a standard based on EL2.⁴⁹ Of the 54 additional products tested, only 8 others have test results lower than EL2 (three of which are only barely lower), and none of those products have more than one high-capacity burner.⁵⁰ Accordingly, there appears to be no basis to believe that products with more than one high-capacity

⁴² NODA, 88 Fed. Reg. at 50813, Tables II.7 and II.8.

⁴³ NODA, 88 Fed. Reg. at 50812.

⁴⁴ See Spire Comments at 19-23. AGA Comments at 21-24.

⁴⁵ Spire Comments at 8-11.

⁴⁶ NODA, 88 Fed. Reg. at 50812.

⁴⁷ See Table 2 of DOE's “Updated Cooking Top Test Sample,” identified in the docket as Document ID EERE-2014-BT-STD-0005-10090.

⁴⁸ The test result was an IAEC of 1339 as compared to EL2 at IAEC 1343.

⁴⁹ See Spire Comments at 8-11.

⁵⁰ See Table 2 of DOE's “Updated Cooking Top Test Sample,” Document ID EERE-2014-BT-STD-0005-10090.

burner could satisfy a standard based on EL2. Adoption of such a standard would therefore be precluded by 42 U.S.C. § 6295(o)(4).

G. DOE's New ELs Would Not Result in Significant Conservation of Energy

As noted above, the energy savings of DOE's new efficiency levels for gas cooking tops are minimal. The NODA claims Full-Fuel Cycle National Energy Savings of 0.02 quads and 0.16 quads for standards based on new EL1 and EL2, respectively.⁵¹ However, these are alleged cumulative total savings over 30 years of product shipments (2027-2056). As a result, they represent individual average annual savings that are likely too small to distinguish from zero multiplied by the total number of products sold over 30 years and then multiplied again by the average 14.5-year life of each product; indeed, because DOE's alleged gas savings include savings for the entire anticipated life of products sold within the 30 year period, it actually claims cumulative energy savings out to the year 2080. In this light, it is difficult to see how the alleged savings resulting from a standard based on EL1 – which amount to less than 0.00067 quads per year⁵² – would qualify as “significant conservation of energy.” In fact, there is substantial doubt as to whether the much-compounded small individual savings attributed to EL1 or EL2 materially exceed zero.

As already indicated, DOE's analysis is too uncertain to support the artificially precise results it generates. In this case, the credibility of DOE's analysis is particularly undermined by its test procedure. The best to be said of DOE's test procedure for gas cook tops is that it provides a *way* to test gas cooking tops. It is not a *good* way, because DOE's test procedure measures burner performance under a single set of conditions designed to mimic one specific operation performed in one specific way. In the real world, cooking tops are used to perform a wide range of tasks, the “efficiency” of which is overwhelmingly dependent on the cook and the features used while cooking (such as the infinite settings of the gas flame, size and shape of the cooking vessel, cooking process, *etc.*). Consequently, the test method generates data that does not even remotely reflect actual cooking top use. While it may be difficult to come up with a test method that reasonably simulates actual cooking top use, the fact remains that testing under conditions that *do not* reasonably reflect reality cannot be expected to produce results that *do*. Accordingly, DOE's test procedure does not provide a reasonable basis to estimate the real-world energy savings purportedly “more efficient” gas cooking tops would provide.

An additional problem is that DOE's energy conservation benefits rest on the premise that manufacturers will be able to redesign their products to achieve significant improvements in measured efficiency without compromising the features or performance of their products.⁵³ However, there is no basis in the record to suggest that this is true. Although DOE continues to claim that it has data suggesting that material efficiency improvements can be achieved through “[o]ptimized burner and grate design,”⁵⁴ there is no such data in the record and the data DOE has

⁵¹ NODA, 88 Fed. Reg. at 50820 Table II.38.

⁵² This figure is 0.02 quads divided by 30 years. As indicated above, DOE's claimed 0.02 quads in savings are actually accumulated over a 44.5 year period (2017-2080).

⁵³ AGA Comments at 24-25.

⁵⁴ NODA, 88 Fed. Reg. at 50813.

made available strongly suggests that measured efficiency under DOE's test procedure is overwhelmingly influenced by the presence or absence of continuous cast iron grates and high-capacity burners. In fact, for products with continuous cast iron grates, the presence or absence of high-capacity burners appears to be the only material determinant of whether products could or could not satisfy DOE's previously proposed standard.⁵⁵

As discussed in the previous section of these Comments, it appears that the same would be true of a standard based on new EL2. The difference between the scenarios being that DOE's previously proposed standard does not appear to be achievable for products with continuous cast iron grates and *any* high-capacity burners, whereas a standard based on new EL2 does not appear to be achievable for products with continuous cast iron grates and *more than one* high-capacity burner. Whether or not a standard based on EL1 could be achieved through changes to flame angle and distance from burner ports to cooking surfaces, these suggested "improvements" for gas cooking tops are design options that have the potential to degrade product features or performance without providing real energy savings. Because DOE has not explained how anticipated efficiency improvements are to be achieved it is impossible to determine how products would need to be redesigned to satisfy a new standard and the actual energy use impacts of the standard are speculative at best. These variables call into question any alleged energy savings from EL1 and should not be counted on as a realistic and verifiable method for documenting energy savings.

Furthermore, it is not clear what efficiency improvements are gained since there is no description of what constitutes EL2 as presented in the NODA. In summary, DOE's energy savings that are projected in the NODA are speculative at best and it is inappropriate for DOE to claim those savings without documentation. In any event, without conceding that the energy savings presented in the NODA are accurate, DOE's own estimated savings are "de minimis" in the overall scheme of energy use, and a reason why DOE should not pursue a minimum efficiency requirement for gas cooking tops.

H. DOE's Design Requirements Are Not Energy Savings Measures

As outlined above, DOE has established that the EL1 level for gas cooking tops is based on grate weight, flame angle and distance from burner ports to cooking surfaces. In designing gas cooking tops, manufacturer designers are challenged to design gas cooking tops that must meet national consensus safety standards for proper operation under many conditions, including proper combustion under a whole host of variables such as gas pressure variations, burner characteristics including burner primary air openings, burner port sizing, an infinite variety of gas burner inputs, balanced heat distribution on cooking vessels, aesthetics, *etc.* While DOE may attribute energy reductions to the items cited in EL1, in the real world, these features may not fit into the design of a gas cooking top and should not be mandated as requirements for all gas cooking tops.

Gas cooking top designers and engineers must be provided the freedom to design products that are safe, provide quality cooking and fit the needs of the consumer. It should also be noted that the operation of gas cook tops is controlled by an individual who monitors and modifies the cooking process to help ensure that the cooked product produced is satisfactory. Unlike most other

⁵⁵ Spire Comments at 11-14. AGA Comments at 26-29.

products under DOE appliance efficiency regulations that normally operate at a steady energy input such as furnaces, water heaters, *etc.*, the energy use for consumer cooking tops will generally vary considerably during the cooking process; thus, it is virtually impossible to establish the overall energy use due to the many different types of cooking (frying, boiling, *etc.*), length of the cooking process, product being cooked, *etc.*, and to imply that the EL1 energy improvements will produce any energy savings under all these varying conditions cannot be documented.

Finally, prior comments address the issue of the bias in the efficiency testing of gas cooking top High Intensity Rated (HIR) gas burners and that eliminating the number of HIR burners on a gas cooking top should not be considered as an energy savings feature because they are a desirable consumer feature that provides a function for cooking that consumers need to have available.⁵⁶

I. Technology

In the SNOPR, DOE states:

AHAM stated that the available technology options have not changed since the 2009 Final Rule. GEA stated that there have been no technology improvements impacting energy efficiency and no meaningful energy savings opportunity in consumer conventional cooking products since the last standards rule and therefore there is no justification for changing the current standards...

Although DOE has found that there are no specific new technology options that impact energy efficiency available since the April 2009 Final Rule, manufacturers are innovating on aspects of cooking performance that do not relate to efficiency.⁵⁷

By its own admission, DOE states that the technology of consumer conventional cooking tops has not changed since April 2009, but only changed in the design of products. Given that DOE confirms the comments of the Joint Gas Associations, AHAM, and GEA, DOE lacks a basis on which to regulate efficiency standards for consumer conventional cooking products because EPCA does not provide them grounds to regulate based on manufacturer design, but rather, only economic justification and technological feasibility. Importantly, DOE's own NODA shows an absence of economic justification.⁵⁸

J. Use of Outdated Data

As discussed above, concerns about DOE's analysis persist; furthermore, DOE continues to use outdated information throughout the proceeding. Notably, in the SNOPR, DOE used information from the 2015 Residential Energy Consumption Survey (RECs) in evaluating the

⁵⁶ AGA Comments at 30-34. Spire Comments at 11-23.

⁵⁷ SNOPR at 6840.

⁵⁸ NODA, 88 Fed. Reg. at 50821.

consumer sample.⁵⁹ DOE used this data despite updated, enhanced information from the 2020 RECs being available at the time of publication.⁶⁰ Use of the 2020 RECS for this proceeding is appropriate also because of the larger survey size and the ability to have more reliable state-level market shares. DOE's analysis fails to comply with Executive Orders⁶¹ requiring agencies to use the best available data to support rulemaking. At a minimum, DOE must revise its analysis to consider and evaluate the best available data.

K. Executive Orders 12866 and 13563

Pursuant to Executive Order 12866⁶² and Executive Order 13563,⁶³ DOE is required to show that the benefits of the rulemaking justify its costs, are tailored to impose the least burden on society, that the chosen approach maximized net benefits, that the agency specifies performance objectives, and that the agency assess available alternatives.⁶⁴

Joint Commenters submit that DOE has failed to comply with these executive orders. DOE fails to address either of them in the NODA,⁶⁵ and as prior comments demonstrate, the SNOPR was deficient in addressing either Executive Order.⁶⁶

L. Regulatory Flexibility Act

Similar to the Executive Orders, the NODA completely fails to address the Regulatory Flexibility Act, and the impact of the new ELs on small businesses.⁶⁷

DOE should be compelled to do a more thorough analysis under the Regulatory Flexibility Act, breaking out its analysis based on the product it is analyzing. Conducting such an analysis will show the NODA's disproportionate effect on small business gas cooktop manufacturers. Further, DOE must analyze what the impact would be on these small business gas cooktop manufacturers at various ELs, as their conversion and testing costs would be likely more manageable.

⁵⁹ NODA, 88 Fed. Reg. at 50815.

⁶⁰ Energy Information Administration, 2020 Residential Energy Consumption Survey, [U.S. Energy Information Administration - EIA - Independent Statistics and Analysis](#), June 15, 2023 (last visited Aug. 17, 2023).

⁶¹ Executive Order 13563, 76 Fed. Reg. 3821 (Jan. 21, 2011).

⁶² 76 Fed. Reg. 3821 (Jan. 21, 2011).

⁶³ *Id.*

⁶⁴ SNOPR at 6895.

⁶⁵ NODA at 50821.

⁶⁶ NPGA Comments at 11.

⁶⁷ NODA at 50821.

III. Conclusion

Joint Commenters respectfully request that the Department of Energy consider these comments in this proceeding and either rescind the proposed rule or determine that amended energy conservation standards for consumer cooking products would not be economically justified and would not result in a significant conservation of energy. If you have any questions regarding this submission, please do not hesitate to contact the undersigned.

Sincerely,



Benjamin Nussdorf
Vice President, Regulatory & Industry Affairs
National Propane Gas Association



Stuart Saulters
Vice President of Government Relations
American Public Gas Association



Matthew J. Agen
Chief Regulatory Counsel, Energy
American Gas Association



Sean P. Jamieson
Vice President, Federal Affairs, Spire Inc.

Enclosures

Cc: Mr. Pete Cochran, (U.S. DOE, Office of the General Counsel)

Attachment to
Comments of NPGA, *et al.*
Docket No. EERE-2014-BT-STD-0005
RIN 1904-AD15
Filed September 1, 2023

Attachment

National Propane Gas Association, American Public Gas Association, and American Gas Association Letter to the Department of Justice Regarding EERE-2014-BT-STD-0005

(March 3, 2023)



American Public
Gas Association



March 3, 2023

Antitrust Division
U.S. Department of Justice
U.S. Department of Energy
Energy.standards@usdoj.gov

[SUBMITTED ELECTRONICALLY VIA EMAIL TO DOCKET ID: EERE-BT-STD-0005]

Re: Supplemental Notice of Proposed Rulemaking and Announcement of Public Meeting: Energy Conservation Program: Energy Conservation Standards for Consumer Conventional Cooking Products {RIN 1904-AD15} {EERE-BT-STD-0005}

To Whom It May Concern:

The National Propane Gas Association (NPGA), American Public Gas Association (APGA), and American Gas Association (AGA) (collectively, Commenters) respectfully submit this letter in response to the Supplemental Notice of Proposed Rulemaking and Announcement of Public Meeting: Energy Conservation Program: Energy Conservation Standards for Consumer Conventional Cooking Products (SNOPR) by the Department of Energy (DOE).¹ DOE published the SNOPR to propose new and amended energy conservation standards for consumer conventional cooking products. DOE seeks to make changes to consumer cooktops and ovens, pursuant to the Energy Independence and Security Act of 2007.²

NPGA is the national trade association of the propane industry with a membership of about 2,500 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. NPGA members supply propane to consumers who utilize propane-fueled cooktops and ovens.

APGA is the trade association representing more than 730 communities across the U.S. that own and operate their retail natural gas distribution entities. These include not-for-profit gas distribution systems owned by municipalities and other local government entities, all 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, including electricity generation.³

¹ Energy Conservation Program: Energy Conservation Standards for Consumer Conventional Cooking Products: Supplemental Notice of Proposed Rulemaking and Announcement of Public Meeting, 88 Fed. Reg. 6818 (Feb. 1, 2023) (hereinafter, "SNOPR").

² SNOPR at 6819, 6824.

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

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 95 percent — more than 73 million customers — receive their gas from AGA members. Today, natural gas meets more than one-third of the United States' energy needs.

The SNOPR directly addresses products which currently and, in the future, may rely on fuel gas for consumer conventional cooking, and as such, the SNOPR has the potential to have a direct and significant impact on Commenters' memberships.

The SNOPR states that “EPCA requires the Attorney General to provide DOE a written determination of whether the proposed standard is likely to lessen competition.”⁴ The SNOPR continues by seeking information on “the likely competitive impact of the proposed standard.”⁵

Standards and Results in the SNOPR

The SNOPR proposes a standard of 1,204 kBtu/year for gas cooktops.⁶ This standard is the highest measured efficiency in DOE's testing.⁷ Further, the SNOPR notes that tested gas cooktops which can meet this market share currently hold a market share of only 4%.⁸ Finally, according to the public listening session held on January 31, 2023, and through Chapter 5 of the SNOPR's Technical Support Document (TSD), only one model tested by DOE could currently meet the standard proposed.⁹

Market and Competition Effects

DOE's proposed standard will have a significant market effect, because even if DOE's assertion that the standard is technically feasible and economically justified is correct, 96% of the gas cooktops tested by DOE were out of compliance with the proposal intended to be effective in 2027.¹⁰ It is more likely that producers will choose to leave the market, rather than expend the millions of dollars it will take to redesign their products in order to be in compliance with the proposed standards.¹¹

The market upheaval in such a short amount of time will be enormous. Various models of gas cooktops which meet the proposed standard may be available, but are not currently sold in the United States. Consequently, the SNOPR's assertion that manufacturers are able to meet the standard may be mistaken or illusory. Further, the truncated effective date of the proposed regulation will make redesign and manufacturing a herculean challenge.¹²

As stated before, only one model of gas cooktop tested meets the proposed standard. DOE's proposed rule gives that single model a significant competitive advantage vis-a-vis all potential manufacturers, given that it is the only model which would be in compliance. Consequently, DOE's proposed standard creates a potentially unreasonable elimination of competition, because this single tested model, would

⁴ SNOPR at 6818.

⁵ *Id.*

⁶ SNOPR at 6904.

⁷ SNOPR at 6846.

⁸ SNOPR at 6857.

⁹ TSD at 5-33.

¹⁰ In a variety of places in the SNOPR, DOE states that it anticipates a final rule in 2023, with an effective date in 2027. Commenters anticipate filing comments with DOE in the proceeding and nothing in this letter should be construed as the Commenters supporting the positions or finding in the SNOPR.

¹¹ See SNOPR at 6898.

¹² *Supra*, note 9.

effectively have a monopoly in terms of compliance with the standard. The competitive impact is that every other gas cooktop on the market, assuming that DOE's TSD adequately sampled the breadth of the market, would be at a competitive disadvantage to a single model, which in context, has an unreasonable, government-assisted, first-mover advantage.

It should be noted that on February 28th, 2023, DOE published a Notice of Data Availability (NODA), which claimed that approximately 40% of the gas cooktop market was screened out of testing because they have efficiencies greater than EL2 and would not be affected by the standards in the SNOPR.¹³ DOE's numbers in the NODA are derived from "model counts of the burner/grate configurations of gas cooking top models currently available on the websites of major U.S. retailers," a method which is highly suspect and gives significant doubt regarding DOE's claim that "nearly half of the total has cooking top market currently achieves EL2."¹⁴

Fuel Switching

Specifically with respect to gas cooking tops, the SNOPR encourages fuel switching by creating performance standards designed to promote electric cooking tops and eliminate gas cooking tops. "DOE estimates that 100 percent of the electric (open) coil element cooking top shipments, 80 percent of the electric cooking top shipments, 4 percent of the gas cooking top shipments... would already meet or exceed the efficiency levels required by TSL 2 in 2027."¹⁵ Further, "most of the gas cooking top products sold in the mass-market consumer conventional cooking product market would have to be redesigned to meet standards set at max-tech (TSL 2 and TSL 3)."¹⁶ The SNOPR's proposed standards not only encourage fuel switching, but given conversion costs, may compel fuel switching on consumers. This compelled fuel switching and elimination of consumer choice is anticompetitive in nature and contrary to EPCA.

Further, the SNOPR fails to account for the costs of fuel switching, or the costs to be borne by consumers for potential fuel switching. The sole consideration in the SNOPR with respect to costs relates to the costs to manufacturers for potential conversion. This glaring gap in the SNOPR fails to adequately respond to the anticompetitive effects of the rule, which will likely lead to manufacturers leaving the market and compelled fuel switching in order to purchase products in compliance with the max-tech standards proposed in the SNOPR.

Small Business Effects

The SNOPR has significant anticompetitive effects on small businesses that exclusively produce gas cooktops, and DOE's analysis in the SNOPR is highly misleading.¹⁷ DOE analyzed 15 small business manufacturers of gas cooking tops, and of those 15, six exclusively produced gas cooktops.¹⁸ While DOE claims that the average conversion and testing costs for small businesses were \$2,099,380 to comply with the proposed standards, the costs for conversion and testing for the six exclusive gas cooktop small business manufacturers were \$3,452,508, a 40% increase over the average for all small businesses analyzed.¹⁹ One small business DOE analyzed would face conversion and testing costs of \$4,021,220

¹³ Energy Conservation Program: Energy Conservation Standards for Consumer Conventional Cooking Products: Notice of Data Availability, 88 Fed. Reg. 12603, 12605 (Feb. 28, 2023) (hereinafter, "NODA").

¹⁴ *Id.*

¹⁵ SNOPR at 6880.

¹⁶ SNOPR at 6886. *See also supra*, note 7.

¹⁷ SNOPR at 6897.

¹⁸ *Id.*

¹⁹ SNOPR at 6898.

compared to annual revenue of \$5,000,000, a commitment of 80% of its annual revenue in testing and conversion costs.²⁰ Another would face conversion and testing costs of \$2,227,050 compared to annual revenue of \$2,730,000, a commitment of 83% of its annual revenue in testing and conversion costs.²¹ This data shows the disproportionate anticompetitive effect the proposed standards would have on small business manufacturers of gas cooktops, and are so extraordinary, that it would be an easy decision to leave the market altogether, further reducing competition amongst manufacturers.

Thank you for your attention to our concerns, and please contact us with any questions.

Sincerely,



Benjamin Nussdorf
Vice President, Regulatory & Industry Affairs
National Propane Gas Association



Stuart Saulters
Vice President of Government Relations
American Public Gas Association



Matthew J. Agen
Chief Regulatory Counsel, Energy
American Gas Association

²⁰ *Id.* (referring to Small Business 8).

²¹ *Id.* (referring to Small Business 7).