



April 8, 2022

Ms. Julia Hegarty  
U.S. Department of Energy  
Office of Energy Efficiency and Renewable Energy  
Building Technologies Office, EE-2J  
1000 Independence Avenue SW  
Washington, DC 20585-0121

Submission via [regulations.gov](https://www.regulations.gov)

**Re: The Office of Energy Efficiency and Renewable Energy’s Notice Notification of Proposed Determination and Request for Comment Miscellaneous Gas Products [Docket Number EERE-2021-BT-DET-0034]**

Dear Ms. Hegarty:

The American Gas Association (“AGA”) and the American Public Gas Association (“APGA”) appreciate the opportunity to provide comments in response to the Department of Energy’s (“DOE”) notice of tentative determination that miscellaneous gas products, which are comprised of decorative hearths and outdoor heaters, qualify as covered products under Part A of Title III of the Energy Policy and Conservation Act, as amended (“EPCA”).<sup>1</sup>

Although not appliance manufacturers, our members provide the energy needed to fuel many of these decorative hearths and outdoor heaters, making natural gas utilities a critical stakeholder in this work.

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. 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.<sup>2</sup>

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

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<sup>1</sup> 87 FR 6786 (2022); *see also* 87 Fed. Reg. 6786 (Feb. 7, 2022) (Notification of proposed determination and request for comment).

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

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.<sup>3</sup>

AGA and APGA believe that the efficiency standards and test procedures developed by DOE are a key element in establishing minimum efficiency ratings for appliances and equipment covered by federal law. Accordingly, the establishment of energy standards for products not currently covered by EPCA is a significant action that carries significant consequences.

First and foremost, it is important the DOE implement the recommendations from the recent National Academies of Sciences, Engineering, and Medicine (“NASEM report”)<sup>4</sup> into all its appliance rulemakings, whether for test procedures or energy conservation standards. The NASEM report comprehensively evaluated the agency’s appliance rulemaking process and identified several key areas in which DOE can improve its rulemaking process. Several of these recommendations even align with suggestions AGA and APGA have made over the years regarding economic modeling and data availability that would greatly help all stakeholders better understand the agency’s process and ensure that DOE is making its decisions on the most appropriate data and models. Some of the most pertinent recommendations include:

Recommendation 2-2: DOE should pay greater attention to the justification for the standards, as required by executive orders and the EPCA requirement that standards be economically justified. DOE should attempt to find significant failures of private markets or irrational behavior by consumers in the no-standards case and should consider such a finding as being necessary to conclude that standards are economically justified.

Recommendation 3-5: DOE should expand the Cost Analysis segment of the Engineering Analysis to include ranges of costs, patterns of consumption, diversity factors, energy peak demand, and variance regarding environmental factors.

Recommendation 4-1: DOE should put greater weight on ex post and market-based evidence of markups to project a more realistic range of likely effects of a standard on prices, including the possibility that process may fall. This would improve future analyses.

Recommendation 4-13: DOE should place greater emphasis on providing an argument for the plausibility and magnitude of any market failure related to the energy efficiency gap in its analyses. For some commercial goods in particular, there should be a presumption that the market actors behave rationally, unless DOE can provide evidence or argument to the contrary.

Recommendation 4-14: DOE should give greater attention to a broader set of potential market failures on the supply side, including not just how standards might reduce the number of competing firms, but also how they might impact price discrimination, technological diffusion, and collusion.

Furthermore, DOE’s proposed determination that miscellaneous gas products, which is comprised of decorative hearths and outdoor heaters, qualify as covered products under EPCA is neither “necessary”

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<sup>3</sup> For more information, please visit [www.apga.org](http://www.apga.org).

<sup>4</sup> *Review of Methods Used by the U.S. Department of Energy in Setting Appliance and Equipment Standards*, NASEM (2021), available at <https://www.nap.edu/read/25992/chapter/1>.

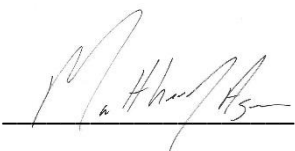
nor “appropriate” within the meaning of 42 U.S.C. § 6292(b)(1)(A). The requirement for coverage determinations, and the requirement that such determinations be justified, serve an important “gatekeeper” function to ensure that the substantial burdens imposed by EPCA are not imposed unnecessarily. In this instance, there is no reasonable potential that efficiency standards for these appliances would provide significant energy savings or be economically justified, and DOE has not provided sufficient evidence demonstrating otherwise.

The proposed determination attempts to demonstrate that the proposed miscellaneous gas products do not consume so little energy that coverage would be precluded under 42 U.S.C. § 6292(b)(1)(B), as it asserts that the wide and diverse range of products proposed for coverage collectively consume enough gas to make them *legally permissible* targets for regulation and assumes that coverage is warranted. However, such a demonstration is done impermissibly, by treating broad categories of different products as though they are a single product for purposes of that analysis.

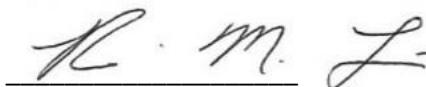
DOE has no statutory mandate to develop coverage for the action proposed; therefore, AGA and APGA recommend that DOE withdraw its proposed coverage determination and give the coverage issues more careful consideration, as Congress intended.

Thank you for the review and consideration of these comments. If you have any questions regarding this submission, please do not hesitate to contact us.

Respectfully submitted,



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