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

[SUBMITTED ELECTRONICALLY VIA EMAIL TO DOCKET ID: EERE-2019-BT-STD-0036]

**Re: Energy Conservation Program: Energy Conservation Standards for Consumer Boilers
{RIN 1904-AE82} {EERE-2019-BT-STD-0036}**

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 Energy Conservation Program: Energy Conservation Standards for Consumer Boilers Notice of Proposed Rulemaking and Announcement of Public Meeting (NOPR) by the Department of Energy (DOE).¹ DOE published the NOPR to amend energy conservation standards for consumer boilers, pursuant to the Energy Policy and Conservation Act.²

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.

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

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

¹ Energy Conservation Program: Energy Conservation Standards for Consumer Boilers; Notice of Proposed Rulemaking and Announcement of Public Meeting, 88 Fed. Reg. 55128 (Aug. 14, 2023) (hereinafter, "NOPR").

² NOPR at 55128.

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

gas from AGA members. Today, natural gas meets more than one-third of the United States' energy needs.

The NOPR directly addresses products which currently and, in the future, may rely on propane or natural gas as fuel for boilers, and as such, the NOPR has the potential to have a direct and significant impact on Commenters' memberships.

The NOPR 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 NOPR continues by seeking information on "the likely competitive impact of the proposed standard."⁵

Standards and Results in the NOPR

DOE is proposing gas-fired hot water boilers reach an AFUE of 95 in 2030.⁶

Market and Competition Effects

On a fundamental level, DOE fails to understand the market for boilers and what differentiates consumer decisions. This is apparent from its discussion of product classes.⁷ An important distinction among boilers on the market is that some are condensing and some are not condensing. Condensing appliances require distinctive venting and more space. Non-condensing appliances usually vent with a water heater. This difference significantly impacts cost, insulation, and operations.

Yet DOE continues to strain to show that the consumer gains no utility from such features. Certain consumers may only be able to use atmospheric venting in their residences, and may not be able to change to a separate venting system. DOE's errant philosophy is that the consumer's decision-making is limited to increasing the thermostat upstairs with no consideration of the actual operation of the appliance downstairs. Yet design and installation issues certainly are accessible to the consumer when choosing what appliance to purchase. Manufacturers have expressed this concern to DOE, with no substantive response.⁸ DOE's failure to separate product classes based on relevant features preferred by consumers shows a fundamental market misunderstanding, questioning their capacity to regulate the market.⁹

DOE also fails to understand consumers of water heaters in another way. DOE's analysis effectively assumes that consumers never consider the economics of potential efficiency investments regardless of the economic stakes involved.¹⁰ While DOE may believe that consumers may have conflicting rationales for their choices, it concedes that many boiler decisions are made in emergencies, where price and immediate availability are the strongest factors in decision-making.¹¹ DOE uses this analysis to reject the idea that consumers would switch products ACROSS various product classes,¹² deciding at the outset to simply not evaluate market shifts by relying on its erroneous assumptions. Further, DOE has not accounted for the installation costs of this potential product class switch in its proposed rule.¹³

⁴ NOPR at 55128.

⁵ *Id.*

⁶ NOPR at 55130.

⁷ NOPR at 55142-43.

⁸ Appliance Standards Consumer Boilers Public Webinar, Sept. 12, 2023 at 10:19 AM, 11:55 AM, and 12:05 PM.

⁹ NOPR at 55142-43.

¹⁰ NOPR at 55167-68.

¹¹ *Id.*

¹² NOPR at 49118-119.

¹³ Appliance Standards Consumer Boilers Public Webinar, Sept. 12, 2023 at 12:04 PM and 1:35 PM.

DOE's proposed standard will have a significant market effect, as evidenced within the proposed rule itself. Manufacturers noted the significant technological changes associated with this rulemaking, especially in requiring condensing technology and challenges in production.¹⁴ Manufacturers also noted the need for very high investment levels in a short period of time in order to comply with this rulemaking.¹⁵ Manufacturers note that 90 percent of non-condensing boilers are manufactured in the United States, while only 60% of condensing boilers are manufactured in the United States.¹⁶ Therefore, manufacturers believe that the proposed standard would lead to millions in stranded assets, as well as the exporting of jobs and manufacturing abroad.¹⁷ DOE acknowledges this fact in the rulemaking, and also expressed concern that foundries that supply necessary components for boilers may also be at risk due to the proposed standard, leaving not only millions in direct stranded assets, but also stranding of foundries up the supply chain.¹⁸

DOE's efforts will promote additional demand for electricity for boilers at a time when the electric grid is suffering from a reliability crisis. The North American Electric Reliability Corporation's most recent long-term reliability assessment shows more than 50% of the United States is in high risk or elevated risk of shortfalls in electricity supply.¹⁹ This assessment is based on existing demand and shows that the grid needs significant improvements to meet rising demand, and extreme conditions. Specifically, the Assessment calls on industry and policymakers to "consider the impact that electrification of transportation, space heating, and other sectors may have on future electricity demand and infrastructure."²⁰ DOE has failed to present its consideration of the impact of its proposal on grid reliability, and consequently, failed to answer any questions about such necessary analysis.²¹ Prior to adding additional demand, DOE should heed the guidance of the Government Accountability Office and analyze options for grid resilience, so as to avoid enhanced strain without a demand management or supply plan.²² Further, the DOE would benefit particularly by reviewing analysis of grid strain during extreme weather events, which have called for enhanced storage, transmission, and generation enhancement of 35-70 gigawatts of power.²³ DOE's market-making and market-manipulating efforts could lead to grid failure, by exacerbating grid strain, risking consumer blackouts and brownouts.

Fuel Switching

DOE did not account for fuel switching in the market.²⁴ Commenters noted that DOE failed to address consumer choice and failed to account for the impact of economic considerations on consumers choices.²⁵ DOE's claim in this regard is arbitrary, capricious, and without foundation. In defense of its assumption that consumers never consider the economics of potential efficiency investments at all, DOE points to a

¹⁴ NOPR at 55142, 55151, 55162, 55177 (noting manufacturer complaints with DOE proposals); *See also* Appliance Standards Consumer Boilers Public Webinar, Sept. 12, 2023 at 10:15 AM, 10:41 AM, 10:46 AM, 12:05 PM, and 1:35 PM.

¹⁵ NOPR at 55146.

¹⁶ *Id.* at 55177.

¹⁷ *Id.*

¹⁸ NOPR at 55177; *See also* Appliance Standards Consumer Boilers Public Webinar, Sept. 12, 2023 at 10:15 AM, 10:22 AM, 10:46 AM, 12:05 PM, 2:31 PM.

¹⁹ 2022 Long-Term Reliability Assessment, North American Electric Reliability Corporation, [2022 LTRA \(nerc.com\)](https://www.nerc.com) at 5-7, 23. (last accessed June 21, 2023).

²⁰ *Id.*

²¹ NOPR at 55183.

²² [GAO-21-346, Accessible Version, ELECTRICITY GRID RESILIENCE: Climate Change Is Expected to Have Far-reaching Effects and DOE and FERC Should Take Actions](#) (last accessed June 21, 2023).

²³ Hopkins, Asa, Takahashi, Kenji and Nadel, Steven; *Keep Warm and Carry On: Electrification and Efficiency Meet the Polar Vortex*, American Council for an Energy-Efficient Economy at 11-12 (2020).

²⁴ NOPR at 55171; *See also* Appliance Standards Consumer Boilers Public Webinar, Sept. 12, 2023 at 12:05 PM.

²⁵ NOPR at 55171.

cherry-picked library of behavioral economics papers that is not even remotely sufficient to support that assumption.²⁶ DOE's effort at distraction from its dearth of evidence shows its failure to support its proposal regarding consumer choice and fuel switching.

DOE later concedes that it would be cost-prohibitive to switch product classes,²⁷ but fails to address the installation costs of switching in the proposed rule.²⁸ Instead, DOE makes an assumption about product-switching, then reinforced its assumption without analysis. DOE completely ignores the possibility that consumers may want to switch classes based on the proposed rule, but product classes may not be available for such switching. Further, based on its baseless assumption, DOE conveniently omits any installation costs in its Lifecycle Costs and Payback Period analysis.²⁹ DOE's failure to include analysis of product and fuel-switching or associated costs and product availability shows its market analysis is inherently flawed, and must be re-evaluated.

Small Business Effects

The proposed rule also fails to comply with Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking."³⁰ DOE identified 3 original equipment manufacturers (OEMs), of which, it found 2 OEMs satisfying the small business criteria had no models which could meet the amended standard.³¹ Therefore, small businesses would be disproportionately affected, because while DOE claims that 40% of the consumer boiler market can meet the proposed standards,³² zero percent of the identified small business manufacturing capacity can meet the proposed standard. DOE's proposed rule not only exports American manufacturing capacity and jobs abroad, but also serves to crush small businesses manufacturing in the consumer boiler market. The failures in this rule with respect to Executive Order 13272 must be addressed and the proposed rule should be supplemented as a consequence.

Conclusion

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

²⁶ NOPR at 55167-68.

²⁷ NOPR at 55171.

²⁸ *Supra*, Note 13.

²⁹ NOPR at 55162.

³⁰ 67 Fed. Reg. 53461 (Aug. 16, 2002).

³¹ NOPR at 55211.

³² NOPR at 55192.



Stuart Saulters
Vice President of Government Relations
American Public Gas Association



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