



COMMENT ON THE DEPARTMENT OF ENERGY'S ENERGY
CONSERVATION STANDARDS FOR CONSUMER
CONVENTIONAL COOKING PRODUCTS

88 FED. REG. 6818

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INTRODUCTION

The Energy Policy and Conservation Act (EPCA) is a consumer protection statute. The law mandates energy efficiency standards but also protects consumers from overreach by the Department of Energy (DOE). In the case of the proposed conservation standards for conventional cooking products, DOE is overreaching in multiple ways and violating EPCA. DOE should withdraw the proposed rule.

DOE's proposed standards violate the "features" provision in EPCA. Congress has forbidden DOE from promulgating regulations which are likely to make unavailable product types or useful features in regulated products. In the case of gas cooking tops, DOE assembled a test sample with 21 gas cooking tops which include important features. DOE set the proposed standard so strictly that only a single gas cooking top out of 21 meets the standard. DOE has not tested (or has not disclosed to the public) any other gas cooking tops with the required features that meet the proposed standard. This is an obvious violation of EPCA.

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But it gets worse. Our research suggests that the one gas cooking top that complies with DOE's standard is no longer on the market. In other words, DOE is proposing a standard where zero products with important features meet DOE's standard and are available for purchase. This is a facial violation of EPCA.

DOE's proposed standard also violates the EPCA requirement that DOE's energy conservation standards achieve a "significant savings of energy." The average annual consumer savings under this rule would be \$1.08 over the average life of the cooktops. This minuscule monetary savings is a direct result of minuscule energy savings and not a "significant savings of energy" as required by EPCA.

DOE needs to withdraw this rule.

A. THE PROPOSED RULE VIOLATES EPCA'S "FEATURES" PROVISION FOR GAS COOKING TOPS

1. According to DOE's test data and statements, only 4 percent of the gas cooking tops with important features would meet the proposed standard, making gas cooking tops unavailable contrary to the provisions in EPCA

EPCA is designed to protect consumers economically, but it also protects consumers from DOE removing useful products from the market. The Secretary of Energy is forbidden from promulgating regulations which result in the unavailability of products. As EPCA states at 42 U.S.C. 6294(o)(4):

The Secretary may not prescribe an amended or new standard under this section if the Secretary finds (and publishes such finding) that interested persons have established by a preponderance of the evidence that the standard is likely to result in the unavailability in the United States in any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States at the time of the Secretary's finding.

In the case of gas cooktops, the data DOE provides establishes by a preponderance of the evidence that the standard will likely result in the unavailability of a product.

In the Technical Support Document for this proposed rule, there were 21 gas cooking tops in DOE's test sample¹ that met DOE's screening criteria of including important features such as a continuous cast-iron grate and at least one high input rate (HIR) burner.

Of the products in the test sample, only a single cooking top met DOE's proposed standard. In other words, only 4 percent of the units included in the test sample met DOE's proposed standard.

As DOE stated elsewhere in the Technical Support Document, "DOE estimated the current efficiency distribution for each product class from the sample of cooking tops used to develop the engineering analysis."² In other words, DOE appears to be stating that the test sample is representative of the market.

Furthermore, DOE stated in the proposed rule, that "DOE estimates that . . . 4 percent of the gas cooking top shipments . . . would already meet or exceed the efficiency levels required..."³

Promulgating a rule where only 4 percent of the market, according to DOE, would meet the standard violates the features provision at 42 U.S.C. 6294(o)(4).

2. The only gas cooking top in the test sample to meet the proposed standard apparently is not available for purchase.

DOE does not disclose the models in its test sample and instead only gives the test units an anonymous number. The failure to provide the model number deprives the public of critical information necessary for the public to have proper notice of the impact of regulation. It also deprives the public of important information concerning the efficiency characteristics of appliances.

¹ See Department of Energy, *Technical Support Document: Energy Efficiency Program for Consumer Products and Commercial and Industrial Equipment: Consumer Conventional Cooking Products*, (Dec. 2022, at 5-25). [Hereinafter *TSD*]

² See Department of Energy, *TSD* at p. 8-37.

³ Department of Energy, *Energy Conservation Program: Energy Conservation Standards for Consumer Conventional Cooking Products*, 88 Fed. Reg. 6818, at 6893 (Feb. 1, 2023). [Hereinafter *Proposed Rule*]

In the case of this proposed rule, the lack of model numbers is especially troublesome because, if our research is correct, it appears that the only model in DOE's test sample for conventional gas cooking tops that meets DOE's proposed standard is no longer on the market.

From our research, we have found two slightly different model numbers that meet the description⁴ in the Technical Support Document of Test Unit #2—Dacor HPCT365GSNG⁵ and Dacor RGC365SNG. The problem is that these related models have all been discontinued.⁶

In sum, it appears that the only gas cooking top in DOE's gas cooking top test sample that meets the standard is not on the market. In other words, not a single cooking top in DOE's test sample meets DOE's proposed standard and is available for purchase.

It is possible that Test Unit #2 was not one of the Dacor models listed above (or a similar unit), however, because DOE refuses to disclose that information, the best information available suggests our research is correct.

3. DOE has not tested, or has not disclosed to the public, a single gas cooking top that has the required features, is available for purchase, and meets the proposed standard.

The entire purpose of the features provision in EPCA is to protect consumers from DOE making a class of products "unavailable." But DOE cannot find a single product that includes what DOE acknowledges are necessary features and is available for purchase.

In the TSD, DOE acknowledges that continuous grates and high input rate burners are features under EPCA. As DOE states in the TSD:

HIR burners provide unique consumer utility and allow consumers to perform high heat cooking activities such as searing and stir-frying. DOE is also aware that some consumers derive utility from continuous cast-iron grates, such as the ability to use heavy pans, or

⁴ Which is to say the burner configuration along with continuous grates and a high input rate burner.

⁵ See e.g. Appliances Connection, <https://www.appliancesconnection.com/dacor-hpct365gsng.html> (visited Apr. 15, 2023).

⁶ See e.g. AJ Madison, <https://www.ajmadison.com/cgi-bin/ajmadison/RGC365SNG.html> (visited Apr. 15, 2023).

to shift cookware between burners without needing to lift them. As discussed in chapter 4 of this SNO PR TSD, DOE has screened out any efficiency levels that would result in the lack of continuous cast-iron grates or no HIR burners and has defined the efficiency levels for gas cooking tops such that all efficiency levels are achievable with continuous cast-iron grates and at least one HIR burner.⁷

In other words, DOE's test sample only contained gas cooking tops that had the important useful features.

On February 28, 2023, DOE released a Notice of Data Availability (NODA)⁸ with additional information. In the NODA, DOE provides information on three additional gas cooking tops that were screened out of the original 21 included in the TSD. These meet the proposed efficiency standard, but as DOE noted, do not include the useful features⁹ of having HIR burners and continuous cast-iron grates. DOE has not provided any information on the actual testing of any additional gas cooking tops.

From the data DOE has provided in the TSD, the proposed rule, or the NODA, DOE has not tested a single gas cooking top that meets the standard, has the required features, and is available for purchase. Even if one gas cooking top was available for purchase, one of 21 cooking tops demonstrates DOE is proposing to eliminate the vast majority of gas cooking tops that have important features for consumers.

4. DOE provides no support for the statement in the NODA that “nearly half of the total gas cooking tops market currently achieve EL 2”

In the NODA, DOE claims, without providing the public with any information that 40 percent of the market can meet the proposed standard for gas cooking tops. DOE opines:

Based on its testing results and model counts of the burner/grate configurations of gas cooking top models currently available on the websites of major U.S. retailers, DOE estimates that the products that

⁷ TSD at 5-9.

⁸ Department of Energy, *Energy Conservation Program: Energy Conservation Standards for Consumer Conventional Cooking Products*, 88 Fed. Reg. 12603, 12605 (Feb. 28, 2023) [Hereinafter *NODA*]

⁹ *Id.*

were screened out of the engineering analysis represent over 40 percent of the market. Together with the models included in the engineering analysis, DOE estimates that nearly half of the total gas cooking top market currently achieves EL 2 and therefore would not be impacted by the proposed standard, if finalized.¹⁰

DOE has not provided any information to support this claim that “nearly half of the market would already meet the standards at EL 2.” Instead, the NODA disclosed testing data from three additional gas cooking tops, but these three cooking tops apparently do not include HIR burners or continuous cast-iron grates.¹¹ Without disclosing additional data to the public, there is no support for DOE’s claim.

B. SAVING \$1.51 A YEAR OR \$0.79 A YEAR IN ENERGY IS NOT A “SIGNIFICANT SAVINGS OF ENERGY” AS REQUIRED BY EPCA

As part of Congress’s statutory scheme to protect consumers from DOE, EPCA requires that a “new or amended standard must result in a significant conservation of energy.”¹² Even though this regulation is overly aggressive and may make all gas cooking tops with continuous cast-iron grates and HIR burners illegal, it still does not provide a significant savings of energy.

For gas cooking tops, DOE’s TSD states that consumers will only save \$21.89¹³ over the 14.5 year average life of the product¹⁴ or \$1.51 a year. Saving \$1.51 in energy a year is not a significant savings of energy.

But it actually gets worse when we look at the consumers’ savings for electric cooking tops. Consumers will only save \$13.29¹⁵ over the 16.8 year¹⁶ average life of the electric cooking top or a mere \$0.79 per year.

Saving either \$1.51 a year or \$0.79 in energy costs is not a significant savings of energy.

¹⁰ NODA at 12605.

¹¹ *Id.*

¹² 42 U.S.C. 6295(o)(3)(B).

¹³ TSD at 8-41

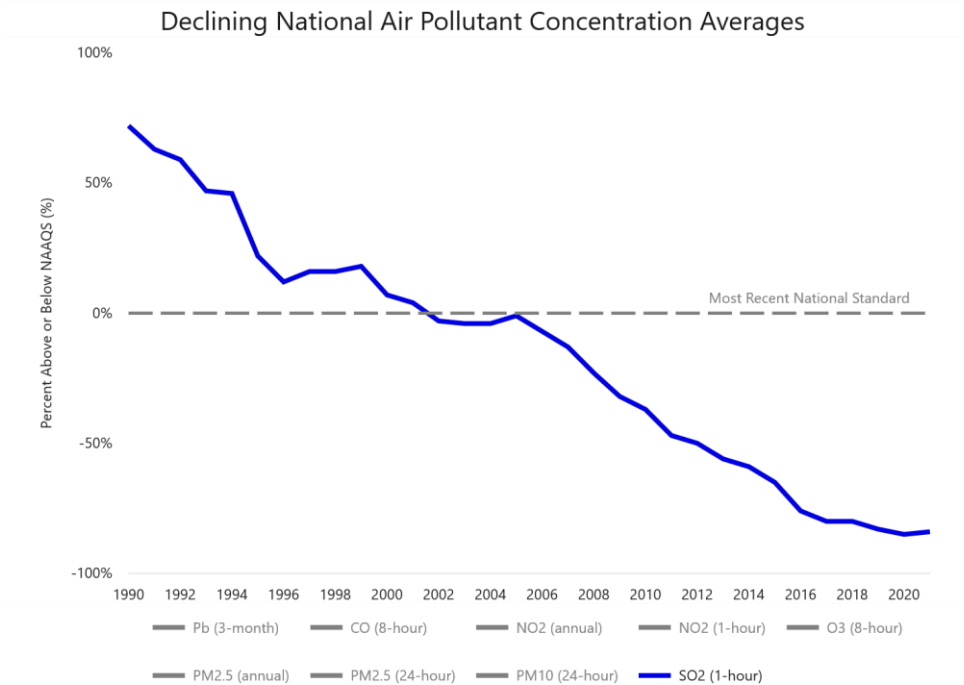
¹⁴ TSD at 8C-2

¹⁵ TSD at 8.40.

¹⁶ TSD at 8C-2.

C. DOE'S NARRATIVE ON POLLUTION CONTROL IS NOT SUPPORTED BY THE DATA

DOE states in the proposed rule that “beginning in 2016, SO₂ emissions began to fall as a result of the Mercury and Air Toxics Standards (“MATS”) for power plants.”¹⁷ Below is the data from EPA’s Our Nation’s Air report:¹⁸



SO₂ emissions did not begin to fall in 2016 as the result of the MATS rule. SO₂ concentrations have been improving for decades before 2016 and have flattened out since 2016. It is misleading to argue against consumer choice by stipulating something which is not true.

CONCLUSION

EPCA is a consumer protection statute and DOE’s proposed conservation standards for cooking products disregard provisions designed by Congress to protect consumers. The proposed rule sets a standard so strict that DOE has

¹⁷ Proposed rule at 6864.

¹⁸ Environmental Protection Agency, *Our Nation’s Air: Status and Trends Through 2021*, https://gispub.epa.gov/air/trendsreport/2022/#air_trends

not provided any data that any gas cooking tops meet the standard, have important features such as continuous grates and HIR burners, and are available to purchase. Furthermore, even though the standard is overly strict, the regulation only saves a minuscule amount of energy. Expressed as monetary savings, consumers would only save \$1.51 a year with a gas cooking top or \$0.79 with an electric cooking top. This is an obvious violation of EPCA's requirement to achieve a "significant conservation of energy." Lastly, DOE's discussion of environmental benefits is suspect if DOE cannot correctly describe the actual trends in criteria air pollutants. DOE should withdraw this proposed rule.