



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

88 FED. REG. 50810

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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). EPCA requires DOE to take certain actions when promulgating regulations to give the public sufficient notice of the impacts of DOE's proposed regulations. In February, DOE issued a Supplemental Notice of Proposed Rulemaking (SNOPR), and then in August, DOE issued this notice of proposed rulemaking (NODA). Especially for gas cooking tops, this NODA contains substantial new information and DOE is therefore required by EPCA to hold a 60-day comment period, a public hearing, and revise its economic justification as well for the efficiency levels proposed in the SNOPR. Furthermore, moving to a final rule at this stage would *not* be a logical outgrowth of the proposed rule as required by the Administrative Procedure Act.

Another problem with moving from this NODA to a final rule is that DOE

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does not have actual test data to support its claim that 40 percent of the market meets the proposed standard for gas cooking tops. DOE needs to do more than scan manufacturers' websites to gather data for the vast majority of gas cooking tops on the market.

Lastly, if DOE continues to use EL 2 as the proposed standard for gas cooking tops, (it is not clear if that has changed with this NODA) that would violate EPCA's requirement for energy conservation standards to achieve a "significant savings of energy." Saving \$3 a year is not a significant savings of energy.

DOE should withdraw this rule for the reasons we argued in comments on the SNO PR. This NODA only further demonstrates that moving forward with these standards at the levels discussed in the SNO PR would violate EPCA.

***A. TO COMPLY WITH EPCA DOE NEEDS TO ISSUE ANOTHER PROPOSED
RULE BEFORE ISSUING A FINAL RULE***

1. What is the point of this notice of data availability?

The Institute for Energy Research appreciates that the Department of Energy is providing additional information on consumer conventional cooking products, but the regulatory posture of this document is unclear. On its face, this document is merely a Notice of Data Availability (NODA) and is not an amendment to the proposed rulemaking DOE issued on February 1, 2023.¹

If DOE's purpose with this document is to amend the SNO PR released on February 1, 2023, then EPCA requires DOE to provide a "period of not less than 60 days, to present oral and written comments (including an opportunity to question those who make such presentations, as provided in such section) on matters relating to such proposed rule..."² and DOE must explain "whether the standard to be prescribed is economically justified"³ and "whether the standard will achieve the maximum improvement in energy

¹ Department of Energy, Energy Conservation Program: Energy Conservation Standards for Consumer Conventional Cooking Products, 88 Fed. Reg. 50810, Aug. 2, 2023.

² 42 U.S.C. § 6295(p)(2).

³ *Id.*

efficiency which is technologically feasible.”⁴

Because DOE has not provided a 60-day comment period and a public meeting and because DOE has not explained what is economically justified with the new data presented in this document, the public and regulated parties can only assume that DOE will produce a new proposed rulemaking at some date in the future to meet these legal requirements. The facts speak for themselves.

2. *This NODA is not a logical outgrowth of the SNOPR issues on February 1, 2023*

On August 31, 2023, DOE posted a response to various natural gas associations and Spire who had previously petitioned for a longer comment period. In that letter, DOE stated:

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. 88 FR 6824; 88 FR 50821. DOE further stated in the August NODA that it is continuing to consider all of the stakeholder comments received in response to the SNOPR and the February NODA in further development of the rulemaking. 88 FR 50811.

With respect to your request that DOE publish an additional SNOPR before issuing any new standard for gas cooking tops in this proceeding, **DOE reiterates, as stated 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. 88 FR 6824; 88 FR 50821.⁵ [emphasis added]

DOE’s statement in the bolded portion is only true to the extent that DOE would adopt energy efficiency levels that are a logical outgrowth of the standards proposed on February 1, 2023. The NODA does not present data that would be merely a logical outgrowth.

⁴ *Id.*

⁵ DOE letter to joint requesters, August 31, 2023.

For example, according to the data presented in the NODA, consumer savings on utility costs would decrease from about 13 cents per month over the life of gas cooking products to just 9 cents per month. That is a reduction in savings of 1/3 and DOE does not explain why a reduction in savings by 1/3 is nevertheless economically justified.

Another reason the information contained in this rule is not a logical outgrowth of the proposed rule is that there are significant differences in net costs and average savings from EF 1 and EF 2 in the “Life-Cycle Cost Analysis (LCC) Consumer Conventional Cooking Products (SNOPR) Spreadsheet” and the “2023-08-01 Cooking Products Life-Cycle Cost (LCC) Analysis Spreadsheet (NODA).” As the screenshots below show, the average savings for EF 1 from the February SNOPR were \$3.88 but increased to \$14.78 in the LCC analysis that accompanied this NODA. Also, the average savings decreased from \$21.89 for EF 2 in the SNOPR to \$6.86 in the NOPR. Maybe most concerning was that the percentage of consumers that experience net costs under EF 2 *doubled* from 18 percent to 35 percent.

PC 3 Gas Cooking Tops						Gas Cooking Tops		
EF Level	Average Life-Cycle Cost (2021\$)				Simple Payback Period	Efficiency Level	% of Consumers that Experience	Average Savings
	Installed Price	First Year's Operating Cost	Lifetime Operating Costs	Life-Cycle Cost	Years		Net Cost	2021\$
0	\$376	\$15.5	\$337	\$713	--	0	0%	\$0.00
1	\$395	\$13.3	\$310	\$705	8.4	1	27%	\$3.88
2	\$395	\$11.8	\$292	\$686	5.0	2	18%	\$21.89

Figure 1: LCC from February SNOPR

PC 3 Gas Cooktops						Gas Cooktops		
EF Level	Average Life-Cycle Cost (2021\$)				Simple Payback Period	Efficiency Level	% of Consumers that Experience	Average Savings
	Installed Price	First Year's Operating Cost	Lifetime Operating Costs	Life-Cycle Cost	Years		Net Cost	2020\$
0	\$376	\$16.02	\$342	\$719	--	0	0%	---
1	\$384	\$14.29	\$322	\$705	4.3	1	4%	\$14.78
2	\$402	\$12.41	\$299	\$701	7.2	2	35%	\$6.86

Figure 2: LCC from August NODA

These are not merely a logical outgrowth from the SNO PR to this NODA. These are significant differences and the DOE needs to explain why these new numbers are economically justified.

B. DOE CONTINUES TO ASSERT WITHOUT EVIDENCE THAT “NEARLY HALF OF THE TOTAL GAS COOKING TOP MARKET CURRENTLY ACHIEVES THE PROPOSED EL 2”

In this NODA and in the SNO PR, DOE claims that “nearly half of the total gas cooking top market currently achieves the proposed EL 2.” The problem is that DOE does not have testing data showing this. According to the updated test sample of gas cooking tops, only 4 out of 21 have an “integrated annual energy consumption” (IAEC) below EL 2 (1,343 IAEC) in DOE’s testing data, 3 out of 30 are below EL 2 in AHAM’s testing data and 1 out of 6 are below EL 2. Because DOE does not have actual test data to show that nearly half of gas cooking tops would meet EL2, DOE produced that estimate from looking at “websites of major U.S. retailers.”⁶

Surfing the web without test data does not provide sufficient information for DOE to claim that a large percentage of stoves “would not be impacted by the proposed standard.”⁷ This is especially true because, as we explained in our comments on the SNO PR, the *only* gas cooking top in DOE’s test sample that met the standard and contained the necessary features, *was no longer on the market*. In other words, not a single cooking top in DOE’s test sample met DOE’s proposed standard, had the necessary features, and was available for purchase. Which means the only unit DOE finds fitting under the proposal is the one which failed in the free market.

As we explained at the time:

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.

⁶ NODA at 50814.

⁷ *Id.*

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 description⁸ in the Technical Support Document of Test Unit #2—Dacor HPCT365GSNG⁹ and Dacor RGC365SNG. The problem is that these related models have all been discontinued.¹⁰

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.

Before moving forward, DOE needs more real information on the impact of the regulation upon people proposed in the SNOPR.

C. SAVING \$1 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."¹¹ The Life Cycle Cost spreadsheet that accompanies this NODA shows that the difference between the lifetime operating costs at

⁸ Which is to say the burner configuration along with continuous grates and a high input rate burner.

⁹ See Appliances Connection, <https://www.appliancesconnection.com/dacor-hpct365gsng.html> (visited Apr. 15, 2023).

¹⁰ See e.g. AJ Madison, <https://www.ajmadison.com/cgi-bin/ajmadison/RGC365SNG.html> (visited Apr. 15, 2023).

¹¹ 42 U.S.C. 6295(o)(3)(B).

EL2 is \$299 versus the base case lifetime operating costs at \$342—a lifetime savings of \$43 or \$3 a year for the operating life of a gas cooking top. Saving a mere \$3 a year—less than 1 penny per day—is not a significant conservation of energy.

CONCLUSION

To meet the requirements of EPCA and the APA, DOE needs to issue a new proposed rule, provide at least a 60-day comment period, and hold a public meeting. Furthermore, DOE needs more real data on the energy use from gas cooking tops and not merely looking at websites to estimate how many products will be banned at EL 2 for example. Lastly, contrary to EPCA, for gas cooking tops, even EL 2 from the SNOPR does not provide a significant savings of energy. DOE should withdraw this rule.