



**Submitted via Regulations.gov**

April 11, 2025

Appliance and Equipment Standards Program  
U.S. Department of Energy  
Building Technologies Office  
Mailstop EE-5B  
1000 Independence Avenue SW  
Washington, DC 20585-0121

RE: Docket Number EERE-2025-BT-DET-0002  
Notice of Proposed Rule; Proposed Withdrawal of Determination  
90 FR 11908

**Comments of Americans for Prosperity**

Americans for Prosperity (“AFP”) submits these comments to the Department of Energy’s (DOE’s) Notice of Proposed Withdrawal of its Determination that Miscellaneous Gas Products (MGPs) are Covered Products under the Energy Policy and Conservation Act, as amended, for which DOE is authorized to establish test procedures and energy conservation standards.

DOE’s March 13, 2025 Federal Register Notice indicates that the Department is reviewing existing agency actions to ensure that all regulatory requirements related to energy are grounded in clearly applicable law and that Americans’ freedom to choose from a variety of goods and appliances is not restricted.<sup>1</sup> The Notice further states that as a result of its review, DOE is proposing to withdraw its prior determination that miscellaneous gas products (“MGPs”), 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,<sup>2</sup> for which DOE is authorized to establish test procedures and energy conservation standards.<sup>3</sup>

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<sup>1</sup> “Energy Conservation Program: Proposed Withdrawal of Determination of Miscellaneous Gas Products as a Covered Consumer Product”, Notice of proposed rule; proposed withdrawal of determination, Office of Energy Efficiency and Renewable Energy, Department of Energy, Federal Register, March 13, 2025, 90 FR 11908.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

In discussing how a coverage determination is made, DOE notes that the identification of the *scope* of coverage – i.e., determining which type or types of articles comprise a covered product – is critical.<sup>4</sup> It explains that under the applicable statutory provision at 42 U.S. C. 6295(o)(5), DOE may set more than one energy conservation standard for covered products that serve more than one major function by setting one energy conservation standard for each major function.<sup>5</sup> As a result, the energy conservation standards are “inextricably tied” to the major function(s) of a covered product.<sup>6</sup> With that as a basis, a *coverage* determination “must be premised on the finding that classifying a type of consumer product as a *covered* product is necessary or appropriate to carry out the purposes of EPCA”.<sup>7</sup> Conversely, “. . . grouping products that do not share *any* major functions as a single type of *covered* product would run contrary to the purposes of EPCA.”<sup>8</sup>

DOE then states that the September 2022 Determination with respect to MGPs was a departure from this precedent as described above.<sup>9</sup>

DOE notes that even *after* the Agency had received comments, in response to a February 2022 Notice of Proposed Determination,<sup>10</sup> that had suggested that DOE’s scope of MGPs was too broad and that decorative hearths and outdoor heaters should be regulated separately,<sup>11</sup> it nonetheless concluded that outdoor heaters and decorative hearth products were “‘similar enough in function and operation’”<sup>12</sup> that it is appropriate to group them together.<sup>13</sup>

The current Federal Register Notice,<sup>14</sup> contains DOE’s explanation that miscellaneous gas products, as defined, encompass products that are used primarily for *both* aesthetic or decorative purposes, *and* products used primarily for heating.<sup>15</sup> The Notice further states that it is clear from the definitions of “outdoor heater” and “decorative hearth” that these products do not share *any* major functions.<sup>16</sup> As a result, DOE has tentatively determined that MGPs, as defined in the September 2022 Determination, are *not* a “type of consumer product” for which DOE can

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<sup>4</sup> *Id.* at p. 11909, Emphasis Added.

<sup>5</sup> *Id.* at p. 11910.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*, Emphasis Added.

<sup>8</sup> *Id.*, Emphasis Added.

<sup>9</sup> *Id.*

<sup>10</sup> “Energy Conservation Program: Proposed Determination of Miscellaneous Gas Products as a Covered Consumer Product”, Office of Energy Efficiency and Renewable Energy, Department of Energy, Notification of proposed determination and request for comment, Federal Register, February 7, 2022, 87 FR 6786

<sup>11</sup> *Supra*, Footnote 1 at p. 11910, Emphasis Added.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*, Emphasis Added.

<sup>16</sup> *Id.*, “Outdoor heaters are specifically designed to provide heat, while decorative hearth products are not designed to provide space heating (indoor) or heating proximate to the unit (outdoor).” Emphasis Added.

establish coverage under 42 U.S.C. 6295(b)(1); and that as a result the *coverage* determination is not necessary or appropriate to carry out the purposes of [sic] statute.<sup>17</sup> (Emphasis Added).

AFP believes that DOE’s recent tentative determination that MGPs, as defined in the September 6, 2022 Determination, are not similar enough in function to be grouped together for purposes of establishing a new type of covered product is correct; and that as a result of this recent tentative determination, a “coverage determination”<sup>18</sup> by DOE is not necessary or appropriate to carry out the purposes of EPCA.

AFP supports DOE’s proposal to withdraw its September 6, 2022 final determination<sup>19</sup> that MGPs are covered products under EPCA for which DOE is authorized to establish test procedures and energy conservation standards.

AFP appreciates the opportunity to provide comment on this matter.

Respectfully Submitted,

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<sup>17</sup> *Id.*, at p. 11910, Emphasis Added.

<sup>18</sup> *Id.*, Emphasis Added

<sup>19</sup> “Energy Conservation Program: Final Determination of Miscellaneous Gas Products as a Covered Consumer Product”, Office of Energy Efficiency and Renewable Energy, Department of Energy; Final rule; final determination, September 6, 2022 Federal Register, 87 FR 54330. This rule had an effective date of October 6, 2022.