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## The Gathering Storm Over Gas Stoves

Not a day seems to go by without multiple articles and media hits on controversies over gas stoves. Across the U.S., opponents of gas stoves have implemented a coordinated effort by government regulators, certain members of Congress, local municipalities, and the plaintiffs' bar to impose sweeping limits on the use of gas-fired appliances as part of a broader effort to eliminate the use of all "combustible appliances" (and fossil fuels) in virtually all residential homes, multi-family apartments, and commercial buildings.<sup>1</sup>

At the center of the battle are gas stoves, a trusted and reliable piece of American kitchens – both at home and in our favorite restaurants – for nearly a century.<sup>2</sup> Today, approximately 38% of American households have gas stoves,<sup>3</sup> with many Americans preferring gas stoves because they heat up more quickly and are more durable and less expensive than conventional electric ranges. A few recent studies and reports raised concerns related to the alleged health and environmental effects of stoves.<sup>4</sup> Many of these studies are controversial, with questions about their funding and designs.<sup>5</sup> But whatever the quality of the studies, the gas appliance opposition movement is now fully underway, challenging the future of gas stoves in American homes and opening up a new front of litigation against a wide swath of American manufacturers, natural gas providers, property owners, and businesses. What is clear is that the legal and regulatory landscape concerning these appliances is changing rapidly, and stakeholders should plan for further controversy.

**The Department of Energy.** On February 1, 2023, the Department of Energy issued a proposed rule that would impose stringent new energy efficiency standards on gas stoves.<sup>6</sup> The proposed rule would not on its face ban gas stoves, but it would likely operate as a *de facto* ban on most models. Indeed, the Association of Home Appliance Manufacturers has stated that most gas stoves currently on the market would not meet the proposed new efficiency standard—an annual limit of 1,204 kBtu.<sup>7</sup> The proposed standard would seemingly require manufacturers to redesign and substantially reconfigure many of their existing models.



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Under its authorizing statutes, the Department can impose new efficiency standards only when they are technologically feasible and economically justified and would result in a significant conservation of energy.<sup>8</sup> There are serious questions whether the proposed new standards meet these requirements. For example, to meet the new proposed standards, manufacturers would likely have to reduce the size of burners and make other changes that could substantially alter performance, including increasing cooking times.<sup>9</sup> These modifications may prove cost prohibitive and deprive consumers of the cooking options they prefer. Moreover, the Department's own estimates suggest that the reduction in energy use and cost savings to consumers are not likely to be substantial. And there are concerns that the agency's estimates are inflated and not based on the best available evidence.<sup>10</sup>

Interested stakeholders have **until April 3** to submit written comments on the proposed rule. Issues that seem ripe for comment include the applicable statutory limits to the Department's regulatory authority in this area, the soundness of the agency's assumptions and data that underlie the proposed rule, and the practical implications for manufacturers, homebuilders, consumers, and others that would be adversely affected by these changes.

**The Consumer Product Safety Commission.** The Consumer Product Safety Commission has announced that it plans to increase its oversight of gas stoves. On January 9, 2023, Commissioner Richard Trumka Jr. told Bloomberg that the agency considers gas stoves to be "a hidden hazard."<sup>11</sup> The Commission has statutory authority to regulate consumer products that pose an unreasonable risk of injury.<sup>12</sup> In response to public outcry following Commissioner Trumka's comments, however, Chairman Alexander Hoehn-Saric recently released a statement indicating that the Commission is not planning to ban gas stoves.<sup>13</sup>

Despite the Chairman's disavowal, there is no reason to conclude that the Commission has put aside its plans to impose new, potentially onerous regulations. To the contrary, Chairman Hoehn-Saric noted that the Commission is researching gas emissions from stoves and is engaged in strengthening voluntary safety standards for gas stoves.<sup>14</sup> He further stated that by March 1, the Commission's staff will prepare and submit to the Commission a Request for Information designed to seek public input on hazards associated with gas stoves and proposed solutions to those hazards.<sup>15</sup> The proposed rulemaking may include proposals to require additional warning labels, range hoods, mandatory performance standards, and automatic shut-off valves, as well as launching a public education campaign on the purported health risks associated with cooking with a gas stove.<sup>16</sup> As part of its rulemaking process, the Commission is likely to pursue additional information gathering from the gas stove



industry. In responding to these inquiries, it will be important for affected stakeholders to maintain consistency with positions advanced to the Commission and legislators and in any in briefs filed in courts.

Based on similar issues, gas companies, appliance manufacturers, consumers, and other interested stakeholders should start engaging with the Commission and providing input. At this early point in the process, it is critical for the Commission to receive a balanced and accurate understanding of the issues, including accurate science addressing the risks of gas stoves. From a technical and legal perspective, the Commission should not be permitted to adopt new regulatory requirements that overstep the science or exceed the Commission's lawful authority.

**Congress.** Lawmakers have begun weighing in on whether new gas stove regulations are necessary. On December 21, 2022, twenty Democratic members of the Congress, led by Senator Cory Booker (D-NJ), Representative Don Beyer (D-VA), and joined by Senator Dianne Feinstein (D-CA), Senator Elizabeth Warren (D-MA) and others, wrote a letter to Commission Chairman Hoehn-Saric expressing concerns about the alleged risks to consumers from indoor air pollution generated by gas stoves.<sup>17</sup> Their letter asserted that emissions from gas stoves “can create a cumulative burden” on Black, Latino, and low-income households which are more likely to face a high exposure to air pollution.<sup>18</sup> The lawmakers urged the Commission to evaluate how gas stoves affect the health of consumers and to use the public's Request for Information responses “to swiftly initiate impactful rulemaking.” Other members of Congress have pushed back concerning the Commission's statements and plans to evaluate additional regulations. On February 2, 2023, Senators James Lankford (R-OK) and Joe Manchin (D-WV) signed a joint letter urging the Commission to rescind any rulemaking or information gathering, and called into question the purported safety, health, and environmental concerns advanced by those calling for more regulation.<sup>19</sup> The same day, Senator Ted Cruz (R-TX) introduced a bipartisan bill, joined by Senator Manchin again, entitled the Gas Stove Protection and Freedom Act, which would block the Commission from banning gas stoves and prevent it from using federal funds to impose regulations that would substantially increase the cost of gas stoves.<sup>20</sup> Following these bipartisan Senate developments, Majority Leader Chuck Schumer (D-NY) aligned the Democratic Senate majority with the U.S. Department of Energy in a series of tweets, stating “@ENERGY's debunked the desperate MAGA idea that Dems are coming for your gas stove.”<sup>21</sup>

**State and Local Policymakers.** In addition to Congress, state and local policy makers have targeted the broad use of natural gas in buildings for the stated reason that they want to reduce emissions that exacerbate climate change.<sup>22</sup> Berkeley, San Francisco, Los Angeles, Oakland, and Sunnyvale have all moved to ban natural gas hookups in new buildings.<sup>23</sup> The New York City Council voted to ban natural gas hookups in new buildings with fewer than seven stories by the end of 2023.<sup>24</sup> The New York Governor Kathy Hochul is actively backing a ban on gas stoves in newly constructed buildings.<sup>25</sup> In California, the California Air Resources Board voted to ban the sale of natural gas-fired furnaces and water heaters by 2030.<sup>26</sup>

Given these coordinated efforts to ban gas stoves, the gas stove industry should ensure that it is well-represented in connection with legislative and regulatory initiatives questioning the availability of gas stoves. If state policy makers continue to push to ban gas stoves, certain state Attorney Generals and municipalities are likely to launch their own investigations and lawsuits against the gas stove industry. Local policymakers may even seek to require homeowners and landlords to replace or upgrade gas stoves in their properties.

**The Plaintiffs' Bar.** If the past is any measure, Plaintiff's attorneys are expected to bring lawsuits against gas stove companies and others in this space.<sup>27</sup> In the first such case to be filed, a California resident has filed a putative class action against the manufacturer of several gas-stove brands alleging that the plaintiff (and other consumers) would not have bought gas stoves (or would have paid less for them) if they had been adequately warned about their alleged risks. From a similar perspective, companies may also face personal injury lawsuits brought by the parents of children with



asthma who also grew up in households with gas stoves. These lawsuits are likely to be filed in federal and state courts around the country, with potential hot spots in the state courts of California, Missouri, and Pennsylvania.

Stakeholder engagement with the Commission and the Energy Department will be critical to influencing the course of these lawsuits. If well-designed scientific studies are presented to the agency that accurately identify and assess the risks of using gas stoves, that could help defend against claims in litigation based on unsupported claims. If either the Commission or the Energy Department promulgates new gas stove regulations, it may create an opportunity to assert certain preemption and primary jurisdiction arguments that could influence the course of potential lawsuits.

**Environmental Groups.** Many environmental groups also oppose gas appliances. For example, on August 23, 2022, 26 environmental public health groups, including Sierra Club, Earthjustice, Physicians for Social Responsibility and others, petitioned EPA to initiate rulemaking to list “heating appliances” as a source category and develop new standards of performance for new sources under the Clean Air Act Section 111(b).<sup>28</sup> Gas stoves are one of the sources of “heating appliances” covered by the petition.<sup>29</sup>

In its petition, the Environmental groups seek to force EPA to develop zero-emission standards for new appliances by 2030.<sup>30</sup> For the petitioners, establishing a nationally applicable date certain for the full phase-out of these fossil fuel-fired heating appliances will provide regulatory and market certainty for manufacturers, retailers, contractors, property developers, installers, and consumers.

As for the timeframe for EPA to address the petition, the Agency is not required by any set schedule to act on a petition for rulemaking under Clean Air Act §111. Under the Administrative Procedures Act, however, EPA has a general obligation to act without “unreasonable delay” in responding to the petition. If EPA grants the petition and adds a new source category is added to the section 111 list for gas stoves, EPA would then be required to set a schedule for regulatory development.

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With efforts to expand regulations concerning gas stoves accelerating, the time for engagement with regulators and Congress, and planning for a surge in litigation concerning these devices is now. King & Spalding is uniquely positioned to help clients understand and mitigate the regulatory, legislative, investigative, and litigation impact of the growing risk profile faced by industry stakeholders, and would welcome engagement to get ahead of these developments.

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<sup>1</sup> See, e.g., <https://www.bloomberg.com/news/articles/2023-02-01/gas-stoves-back-under-scrutiny-with-new-us-limits-proposed>; <https://www.wsj.com/articles/the-campaign-to-ban-gas-stoves-biden-climate-change-appliances-cooking-culture-war-11674774370>; <https://www.economist.com/the-economist-explains/2023/01/17/how-gas-stoves-became-part-of-americas-culture-wars>; <https://www.bloomberg.com/news/articles/2023-01-09/us-safety-agency-to-consider-ban-on-gas-stoves-amid-health-fears?leadSource=uverify%20wall#xj4y7vzkg>.

<sup>2</sup> [https://en.wikipedia.org/wiki/Gas\\_stove#cite\\_note-16](https://en.wikipedia.org/wiki/Gas_stove#cite_note-16).

<sup>3</sup> <https://www.economist.com/the-economist-explains/2023/01/17/how-gas-stoves-became-part-of-americas-culture-wars>.

<sup>4</sup> <https://www.bloomberg.com/news/articles/2023-01-09/us-safety-agency-to-consider-ban-on-gas-stoves-amid-health-fears?leadSource=uverify%20wall#xj4y7vzkg>.

<sup>5</sup> See <https://www.wsj.com/articles/the-campaign-to-ban-gas-stoves-biden-climate-change-appliances-cooking-culture-war-11674774370>.

<sup>6</sup> 88 Fed. Reg. 6818.

<sup>7</sup> <https://www.bloomberg.com/news/articles/2023-02-01/gas-stoves-back-under-scrutiny-with-new-us-limits-proposed>.

<sup>8</sup> 42 U.S.C. § 6295(o).

<sup>9</sup> <https://www.wsj.com/articles/energy-department-regulations-gas-stoves-ban-jennifer-granholm-biden-administration-11675457600>.

<sup>10</sup> *Id.*

<sup>11</sup> <https://www.bloomberg.com/news/articles/2023-01-09/us-safety-agency-to-consider-ban-on-gas-stoves-amid-health-fears?leadSource=uverify%20wall#xj4y7vzkg>.

<sup>12</sup> Consumer Product Safety Act, 15 U.S.C. §§ 2051–2089.

<sup>13</sup> <https://www.cpsc.gov/About-CPSC/Chairman/Alexander-Hoehn-Saric/Statement/Statement-of-Chair-Alexander-Hoehn-Saric-Regarding-Gas-Stoves#:~:text=Research%20indicates%20that%20emissions%20from,no%20proceeding%20to%20do%20so>.

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

<sup>15</sup> [https://www.cpsc.gov/s3fs-public/Commission-Meeting-Minutes-FY-2023-Operating-Plan\\_0.pdf?VersionId=wjJw89I902pxZ\\_6C.Zz08whJ6I6.9fo5](https://www.cpsc.gov/s3fs-public/Commission-Meeting-Minutes-FY-2023-Operating-Plan_0.pdf?VersionId=wjJw89I902pxZ_6C.Zz08whJ6I6.9fo5).

<sup>16</sup> *Id.*

<sup>17</sup> [https://www.booker.senate.gov/imo/media/doc/booker\\_beyer\\_lead\\_colleagues\\_in\\_urging\\_cpsc\\_to\\_address\\_dangerous\\_indoor\\_air\\_pollutions\\_emitted\\_by\\_gas\\_stoves.pdf](https://www.booker.senate.gov/imo/media/doc/booker_beyer_lead_colleagues_in_urging_cpsc_to_address_dangerous_indoor_air_pollutions_emitted_by_gas_stoves.pdf).

<sup>18</sup> *Id.*

<sup>19</sup> On February 2, 2023, Senators Manchin (D-WV) and Lankford (R-OK) urged the Commission to rescind any rulemaking or information gathering, and called into question the purported safety, health, and environmental concerns advanced by those calling for more regulation. [https://www.manchin.senate.gov/imo/media/doc/gas\\_stove\\_letter.pdf?cb](https://www.manchin.senate.gov/imo/media/doc/gas_stove_letter.pdf?cb).

<sup>20</sup> S. 240, 118th Cong. (2023); <https://www.congress.gov/bill/118th-congress/senate-bill/240/text?s=1&r=1&q=%7B%22search%22%3A%5B%22gas+stove+protection+and+freedom+act%22%5D%7D>.

<sup>21</sup> <https://twitter.com/SenSchumer/status/1621598665167994885?lang=en>; see also <https://twitter.com/SenSchumer/status/1621625298549612545?s=20&t=L7-DqY8tGbXRE63aplDRFA> (“MAGA Republicans are trying to distract from real issues Americans want solved—like the debt ceiling—by cooking up a silly, shameless, and desperate narrative that Democrats are coming for your gas stove.”); see also <https://twitter.com/EnergyPress/status/1621601946556571653> (“FACT CHECK PART ONE: As required by Congress, @ENERGY is proposing \*\*EFFICIENCY STANDARDS\*\* for gas and electric cooktops — the Department is not proposing bans on either.”); <https://twitter.com/ENERGY/status/1621568489667305474?s=20&t=bFTYVW-eel9IIELO0dtMg>.

<sup>22</sup> <https://www.bloomberg.com/news/articles/2023-01-09/us-safety-agency-to-consider-ban-on-gas-stoves-amid-health-fears?leadSource=uverify%20wall#xj4y7vzkg>.

<sup>23</sup> <https://www.naturalgasintel.com/another-california-county-bans-natural-gas-hookups-beyond-state-code/>; <https://www.politico.com/news/2023/01/13/hochul-backs-ban-gas-furnaces-stoves-00077751>.

<sup>24</sup> <https://www.politico.com/news/2023/01/13/hochul-backs-ban-gas-furnaces-stoves-00077751>.

<sup>25</sup> *Id.*

<sup>26</sup> <https://www.bloomberg.com/news/articles/2023-01-09/us-safety-agency-to-consider-ban-on-gas-stoves-amid-health-fears?leadSource=uverify%20wall#xj4y7vzkg>.

<sup>27</sup> <https://krcomplexlit.com/the-newsroom/gas-stove-investigation>.

<sup>28</sup> <https://www.sierraclub.org/sites/default/files/Sierra%20Club%20Heating%20Appliance%20Rulemaking%20Petition.pdf>.

<sup>29</sup> See *id.*

<sup>30</sup> *Id.*