

UNITED STATES OF AMERICA

DEPARTMENT OF ENERGY

PUBLIC MEETING

ON

**DIRECT HEATING EQUIPMENT ENERGY CONSERVATION
STANDARD
NOTICE OF PROPOSED RULEMAKING**

U.S. Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585
Room 8th Floor

Thursday
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AGENDA

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1 P R O C E E D I N G S

2 MR. BROOKMAN: Good morning everybody and
3 welcome. This is the U.S. Department of Energy's
4 Direct Heating Equipment Energy Conservation
5 Standards Notice of Proposed Rulemaking meeting.
6 Today is September 1, 2011. My name is Doug
7 Brookman from Public Solutions. I welcome you, glad
8 you're here this morning. We're going to start off
9 this morning with welcoming remarks by John
10 Cymbalsky.

11 **Welcoming Remarks**

12 MR. CYMBALSKY: Thanks, Doug. My name is
13 John Cymbalsky. I am the supervisor of the
14 Appliance Standards Program here at DOE. I've been
15 on the job about a year and a half now, so I'd like
16 to welcome everybody here to this public meeting to
17 discuss the July 2011 Notice of Proposed Rulemaking
18 for Vented Hearth Heaters.

19 As many of you know, the Department of
20 Energy is currently in litigation regarding the
21 April 2010 rule establishing the efficiency
22 standards for direct heating equipment. Today's
23 public meeting is for the purpose of hearing public
24 comment on our July 2011 Notice of Proposed

1 Rulemaking for vented hearth heaters, and we're not
2 here to talk about the April 2010 rule or the
3 litigation surrounding it. So with that, I'll turn
4 it back to Doug.

5 **Agenda Review**

6 MR. BROOKMAN: Okay. If all of you have
7 received a packet when you walked in the door, if
8 you'll take a peek at that and turn to Page 2,
9 please, you can see there the public meeting agenda.
10 This is how we intend to do the meeting today.

11 After this agenda review, everyone has a
12 chance to introduce him or herself. Please say your
13 name and your organizational affiliation.
14 Immediately following the introductions, there's an
15 opportunity to make brief opening remarks or summary
16 statements. It's our tradition here to try and get
17 folks to make brief remarks. I understand some of
18 you might wish to make extended remarks this
19 morning. To the extent you can summarize, that's
20 great. To the extent you can't, I understand.
21 However, let me say your complete statements,
22 written, can be inserted in their full lengths as
23 you've written them, in the record of the meeting
24 today, so there's an option for you if you can find
25 a way to summarize your remarks.

1 Following those opening remarks, we're
2 going to have a summary of the regulatory history,
3 and following that, proposed amended definition of
4 vented hearth heater as you see in the agenda here.
5 Following that, analysis of national energy savings,
6 and then small business impacts, with yet another
7 opportunity for any sort of comment, closing remarks
8 that anybody wishes to say at the end of the day.

9 We'll take a break mid-morning, about
10 10:30-ish. We'll pause for lunch, when the
11 appropriate time falls on us, and we'll just try to
12 be as efficient as we can as the day goes on.

13 So questions and comments about the plan
14 for the day?

15 So I'd ask your consideration over the
16 span of many years, these have emerged as norms.
17 Please speak one at a time. These microphones that
18 you see before you, you need to push the button and
19 get the little green LED button working in order for
20 you to be captured in the record.

21 There will be a complete transcript of
22 this public meeting today, and that will be
23 available and we'll describe where you can find it.

24 Please say your name for the record each
25 time you speak. You can say your organizational

1 affiliation if you wish, but say your name, please,
2 each time. Please keep the focus here. Turn your
3 cell phones on silent mode. Limit sidebar
4 conversations. If you need to have a lengthy talk
5 with the person next to you, it's okay to take it
6 out of the room and then come on back.

7 I'm going to be cueing individuals as best
8 I can to speak one by one. I also wish to encourage
9 follow-on remarks. Sometimes the back and forth
10 between individuals can be very helpful to the
11 Department as they try to detangle these issues.
12 And if you could, please be concise, share the air
13 time. There's a lot to be said here today, I'm
14 sure, that's what we'll be trying to do as the day
15 goes on.

16 So, that is what I have to say here at the
17 outset. Do you have any summary comments at this
18 point, John?

19 MR. CYMBALSKY: No, I think we should do
20 introductions at this point.

21 MR. BROOKMAN: Okay. Let's do
22 introductions around the room. Name, and
23 organizational affiliation.

24 **Introductions**

25 MR. GOLDMAN: Sure. Jack Goldman, Hearth,

1 Patio and Barbecue Association.

2 MR. BROOKMAN: Thank you.

3 MR. DAY: Barton Day, Counsel for Hearth,
4 Patio and Barbecue Association.

5 MR. ELLIOTT: Robert Elliott, National
6 Propane Gas Association.

7 MS. BAUER: Jane Bauer, Empire Comfort
8 Systems.

9 MR. BORTZ: Leslie Bortz, The Robert H.
10 Peterson company.

11 MR. RASMUSSEN: Rett Rasmussen, Rasmussen
12 Gas Logs and Grills.

13 MR. RANFONE: Jim Ranfone, with the
14 American Gas Association.

15 MS. MAUER: Joanna Mauer, Appliance
16 Standards Awareness Project.

17 MR. STANONIK: Frank Stanonik, Air
18 Conditioning, Heating and Refrigeration Institute.

19 MR. BALLO: Tim Ballo, Earth Justice.

20 MS. PINTO: Francine Pinto, General
21 Counsel's office, DOE.

22 MR. STAS: Eric Stas, DOE General
23 Counsel's office.

24 MR. KHAN: Mohammed Khan, Department of
25 Energy, Building Technologies.

1 MR. COHEN: Dan Cohen, DOE General
2 Counsel's office.

3 MR. BROOKMAN: Please stand up.

4 MR. DARLINGTON: Adam Darlington, Navigant
5 Consulting.

6 MR. CARMICHAEL: Rob Carmichael, Navigant.

7 MR. BROOKMAN: Yes, you.

8 MR. CAGNOLI: Adam Cagnoli, HPBA.

9 MR. STROUD: Tom Stroud, HPBA.

10 MR. CARROLL: Ryan Carroll, HPBA.

11 MR. SCOTT: Jerry Scott, Robert H.
12 Peterson Company.

13 MR. REOTT: Ray Reott, Robert H. Peterson.

14 MR. BELDING: Ken Belding, Empire Comfort
15 Systems.

16 MR. LONGSTRETH: Ben Longstreth, National
17 Resources Defense Council.

18 MR. CALAMITA: Chris Calamita, DOE.

19 MR. KIDO: Michael Kido (off mic)

20 MR. BROOKMAN: Okay. So thanks to all of
21 you, and we have a few individuals that are just
22 joining us now and as soon as they get seated and
23 comfortable, they can introduce themselves.

24 MR. CYMBALSKY: Okay. Doug went over the
25 agenda for today, so, as I said, I'm John Cymbalsky,

1 supervisor of the Appliance Standards Program. I'm
2 going to take you through the presentation, and as
3 we go along, there'll be some issue boxes where
4 we'll allow time for comment.

5 **Purpose of Public Meeting**

6 MR. CYMBALSKY: So the purpose of this
7 public meeting. We're here today to present the
8 analysis and justification for amending the
9 definition of vented hearth heaters. We're here
10 also to inform interested parties and facilitate the
11 rulemaking process. Thirdly, provide a forum for
12 public comment on rulemaking issues, specifically,
13 for vented hearth heaters. And finally, we
14 encourage interested parties to submit data,
15 information, and written comments. And for us,
16 particularly, we're going to talk a lot here today,
17 and we will hear your comments, but we also would
18 really like your comments to be in written form.

19 First issue box. At this time, DOE
20 welcomes comment on its Notice of Proposed
21 Rulemaking for direct heating equipment. Throughout
22 this presentation, specific issues will be raised
23 for comment on slides with issue boxes such as this,
24 with identifying numbers, corresponding to those in
25 the Notice of Proposed Rulemaking from July 22nd.

1 Nonetheless, comments concerning any part of that
2 document or this presentation are welcome.

3 At this time we welcome opening statements
4 from anyone in the group who wishes to make them.
5 You can come up to this microphone, sit at the
6 table, or take the two mikes in the back.

7 MR. BROOKMAN: Okay. Let me just get a
8 brief show of hands. How many of you wish to make
9 opening statements? One, two, three, four, five,
10 six or so. Okay. So then, why don't I just go
11 right down the line here, and I'll start with Jack.

12 **Opening Remarks**

13 MR. GOLDMAN: Thank you. I'm Jack
14 Goldman, President and CEO of the Hearth, Patio, and
15 Barbecue Association.

16 This rulemaking is fatally defective and
17 the Hearth, Patio, and Barbecue Association requests
18 that it be terminated immediately. HPBA will be
19 submitting this request in writing to Secretary Chu.

20 Agencies have a clear and legal obligation
21 to provide a cogent explanation of the legal and
22 factual basis for their proposed actions, and in
23 particular, Executive Order 13563 specifically
24 directs that a proposed rule should be issued only
25 upon a reasoned determination that its benefits

1 justify its costs.

2 It is obvious that the Department of
3 Energy issued this proposed rule without even the
4 basic information necessary to understand the
5 consequences of the results it seeks to impose. In
6 particular, the proposed rule is based upon a
7 materially inaccurate understanding of the nature,
8 characteristics, and use of the products at issue,
9 and upon key assumptions and factual assertions that
10 are unsubstantiated and in some cases, clearly
11 false.

12 Consequently, the assessment of the
13 purported benefits and costs of the proposed rule
14 are entirely without basis. Moreover, the Notice
15 itself fails to provide any adequate explanation of
16 DOE's analysis. DOE has filed exactly two pages,
17 two fingers here, two pages in the rulemaking
18 records to support this rule, and those pages deal
19 with whether the proposal must be subject to the
20 provisions of the National Environmental Policy Act.
21 The proposal was published 41 days ago. As of
22 today, the day of the hearing, a deadline for the
23 regulated community in the process, and with only 19
24 more days until comments are due, the Department's
25 placing absolutely no backup materials, including

1 but not limited to, supporting data, technical
2 support documents, and the economic impact analysis
3 into the rulemaking record, is legally inadequate to
4 satisfy the requirements for notice and comment
5 rulemaking.

6 Indeed, how can we adequately comment on
7 DOE's analysis of regulatory impacts, when no
8 analysis is provided?

9 HPBA will continue its testimony at this
10 hearing, bearing in mind that it is responding
11 solely to the information in the Federal Register
12 notice published on July 22nd. HPBA reserves its
13 right to submit comments to the rulemaking record
14 when or if DOE's analyses are even made available.

15 Given DOE's unexplained departure from its
16 normal rulemaking procedures as outlined in Appendix
17 A to Subpart C of 10CFR430, there is no reasonable
18 way for DOE to overcome lack of information and
19 analysis reflected in the proposed rule. The
20 asserted factual basis of the proposed rule is so
21 riddled with error that any final rule would have to
22 rest on evidence and conclusions entirely different
23 from those presented in the proposed rule. There is
24 simply no justification for this expedited
25 rulemaking. The proposed rule will not provide an

1 adequate remedy to the problems created by the April
2 16, 2010 final rule. The proposed rule will not
3 eliminate the need to resolve HPBA's pending
4 petition for review of that rule.

5 DOE is simply rushing to adopt a rule that
6 would be based on a status quo entity, the April 16,
7 2010 final rule that is unlikely to survive judicial
8 review. By rushing through this rulemaking, DOE is
9 denying the regulated community and the public their
10 access to the Department's data and analyses
11 undergirding the proposal.

12 DOE created enormous problems for this
13 industry by making a precipitous and uninformed
14 decision to regulate decorative gas fireplaces as
15 though they were direct heating equipment. DOE
16 should not compound its error with a precipitous and
17 uninformed decision to regulate gas log sets as
18 direct heating equipment.

19 DOE should terminate this regulation and
20 rulemaking immediately.

21 At this point, HPBA will provide comments
22 on the four questions posed by DOE in the proposal
23 under protest, because of the lack of background
24 information available. Based on our limited
25 understanding of DOE's thinking and reasoning, HPBA

1 reserves the right to amend its testimony and
2 comments when or if DOE files the background
3 information that it is obligated to file as part of
4 this rulemaking.

5 First issue, direct heating equipment.
6 Decorative vented gas fireplaces and gas log sets
7 are plainly not direct heating equipment. The
8 statute specifically identifies the categories of
9 products that are DHE, and provides specific energy
10 efficiency standards for each of these categories.
11 Both decorative gas fireplaces and gas log sets
12 existed at the time of the amendment to the statute
13 and were not identified or regulated as DHE by the
14 statute.

15 The statute provides standards and
16 procedures through which DOE can regulate consumer
17 products not covered by the statute. DOE is
18 circumventing the statutory process to regulate
19 products that are not covered by the statute. The
20 proposal grossly mischaracterizes the nature of the
21 products. DOE's statement that, quote, "hearth
22 products are intended to be used to either as only a
23 heat source or as a heat source with aesthetic
24 appeal," unquote, is patently false. No hearth
25 product at issue here is intended solely for

1 heating. All of the products are intended for their
2 aesthetics. Heater rated products are intended for
3 providing heat and aesthetic appeal. I ask the
4 Department to produce a vented gas hearth product
5 intended for heating but not aesthetic purposes.
6 There is no such product.

7 DOE also states that DHE is not dependent
8 on a manufacturer's principal intention in
9 designing, manufacturing, or marketing the product.
10 This interpretation is irrational in the context of
11 efficiency regulation, because by definition, the
12 efficiency of a product can be determined only by
13 reference to how efficiently it serves its intended
14 function.

15 Similarly, DOE asserts that products can
16 be classified by DHE simply because they provide,
17 quote, "some amount of heat to the living space,"
18 unquote. But many products, such as kitchen stoves,
19 refrigerators, incandescent light bulbs, circulating
20 air fans, and desk top computers, to name just a
21 few, provide some amount of heat to the living space
22 but cannot reasonably considered to be direct
23 heating equipment.

24 With respect to the compliance date.
25 Number two. The proposed compliance dates are

1 illegal and non-achievable. The proposal
2 effectively makes the regulations applicable to gas
3 log sets as of April 16, 2013. The April 16, 2010
4 final rule did not apply to gas log sets, so the
5 April 2013 deadline does not apply. The pilot light
6 restriction would be a new energy conservation
7 standard that could only take five years from the
8 date of any final rule imposing it.

9 With respect to both decorative gas
10 fireplaces and gas log sets, there's absolutely no
11 basis provided by DOE for the July 1, 2014 effective
12 date for its proposed pilot light restrictions. It
13 is a completely arbitrary date.

14 Further, Executive Order 13563 emphasizes
15 the need for agencies to consider the cumulative
16 impact of regulations. DOE has already imposed
17 burdensome regulations on the hearth industry for
18 heater rated products, and is now adding regulations
19 for gas log sets as well. The proposed effective
20 date would be an issue for the industry due to an
21 anticipated backlog at the few independent testing
22 labs that certify hearth products. More products
23 would have to be certified, and the current capacity
24 of the labs is insufficient to absorb a significant
25 increase in the number of products that would have

1 to be certified. Although the labs can currently
2 keep up with the demand created by the U.S.
3 Environmental Protection Agency, and the new source
4 perform standards for wood-burning products and the
5 fraction of gas appliances currently listed, the
6 labs will simply not be able to handle the surge in
7 requests that will occur when the NSPs goes into
8 effect, and if more gas products have to be
9 certified or recertified with new DOE regulations,
10 as a result, some products will be significantly
11 delayed in getting to market, which by itself could
12 be a fatal blow to the future of a product since,
13 under the proposal, it could not be sold after July
14 2014 without certification, and to companies that
15 make them.

16 DOE has not taken into account this
17 critical choke point, which by itself, will be a
18 huge impediment.

19 Item three. Proposed exclusion. DOE has
20 no lawful basis to impose heating efficiency
21 standards for decorative gas fireplaces and gas log
22 sets. Accordingly, it has no basis to impose
23 conditions for any exclusion from such requirements.
24 Since decorative gas fireplaces and gas log sets are
25 not DHE, the products cannot reasonably be subjected

1 to energy efficiency standards. Further, DOE cannot
2 impose an energy efficiency standard for a product
3 unless there is an applicable efficiency test method
4 for the product. And there are no such test methods
5 for decorative fireplaces and gas log sets. The
6 AFUE methodology is inapplicable to decorative gas
7 fireplaces and gas log sets and cannot even be
8 conducted on a gas log set.

9 DOE may not impose heating efficiency
10 standards without determining that such standards
11 are technologically feasible and economically
12 justified. And DOE has never made such a
13 determination for decorative gas fireplaces or gas
14 log sets. In fact, the heating efficiency standards
15 are not achievable for gas log sets and many
16 decorative gas fireplaces.

17 The terms of the proposed exclusion are
18 also unreasonable and unjustified. There is a
19 serious misstatement of the consequences of the
20 requirement to list decorative gas fireplaces to
21 Z21.50 and gas log sets to Z21.60. DOE states that,
22 quote, "DOE is not aware of any vented hearth
23 products on the market that are not already
24 certified to" unquote, one of these two standards.
25 HPBA has submitted information to DOE that there are

1 decorative gas fireplaces that are not certified to
2 Z21.50, the standard covering decorative gas
3 fireplaces.

4 Further, a substantial proportion of gas
5 log sets are not, and cannot be certified to Z21.60.
6 The market and products manufactured is more complex
7 than for decorative gas fireplaces, and there are
8 products that are regulated to Z21.60, Z21.84, for
9 RADCO standard, and many are not certified at all.
10 If the proposal is finalized requiring Z21.60 for
11 all gas logs, would result in match light systems
12 which do not use a standing pilot light, and cannot
13 be certified to Z21.60 being outlawed.

14 There is no credible basis for the
15 purported energy conservation benefits cited in the
16 proposal. There is no basis provided regarding
17 pilot light use. DOE makes the premise that 75% of
18 pilot lights on decorative gas fireplaces are on all
19 of the time, and that none are off most or all of
20 the time. DOE's assertion is baseless,
21 unreasonable, and arbitrary. Information and
22 experience in the industry indicate that DOE's
23 assumption is absurdly high. DOE failed to fulfill
24 its obligation to consider other less costly
25 conservation alternatives to the prohibition of

1 standing pilot lights. The Department does not even
2 appear to have considered the possibility that equal
3 or even greater energy conservation benefits might
4 be achieved by providing information to the public,
5 to make appropriate energy conservation decisions.

6 Item 4. Impacts on small business
7 manufacturers. The proposed rule cites 14 small
8 business manufacturers that will be adversely
9 affected by the new regulation. The estimate is not
10 credible and appears to be low by at least a factor
11 of three. In addition, there are thousands of small
12 business specialty retailers, as well as
13 distributors who would be adversely affected by the
14 proposed regulation.

15 There is no recent assessment of costs or
16 other impacts in the proposal or the record. DOE
17 assumes that there will be no regulatory burdens
18 associated with certification to Z21.50 or Z21.60
19 because it claims that all existing decorative
20 products are already certified to those standards.
21 This is a false assumption. There are significant
22 numbers of decorative vented hardware products that
23 are not certified to either standard, including a
24 substantial number of gas log sets that cannot be
25 certified to Z21.60 and hence would be banned

1 outright. For those companies that can certify
2 their products to one of the standards, even if they
3 have to recertify their products, the assumptions in
4 the proposal are incorrectly low.

5 DOE states that compliance cost for gas
6 log sets, quote, "can be reasonably assumed to be
7 largely the same as the compliance costs of small
8 business manufacturers" of decorative gas
9 fireplaces. There is no basis for this assumption.
10 In fact, gas log sets are significantly different
11 from decorative gas fireplaces. The market is more
12 complex in terms of geography, types of products,
13 and certifications obtained. There are a variety of
14 ignition systems and the gas log sets are designed
15 to be installed into pre-existing wood-burning
16 fireplaces, which create a host of installation and
17 design issues not faced by decorative fireplaces.

18 DOE appears to have no understanding of
19 these issues. The Department states that it, quote,
20 "attempted to contact," unquote, four manufacturers.
21 DOE did not attempt to consult HPBA and did not
22 communicate with any gas log set manufacturers.
23 HPBA is hereby requesting to know the identity of
24 those four manufacturers that DOE attempted to
25 contact, how DOE attempted to contact them, and when

1 those contacts were attempted. And again, I can't
2 find it in the record, because there is no record.

3 DOE also erroneously understates the
4 economic impact on the hearth industry by stating
5 that 80 percent of gas log sets already have
6 electronic or other intermittent ignition systems.
7 In fact, fewer than five percent of gas log sets
8 have electronic ignition systems, and the balance is
9 approximately evenly distributed between match light
10 systems and standing pilot lights. DOE has not even
11 identified match light systems as a major ignition
12 system used in the industry. The reality is that
13 the overwhelming majority, 95 percent of the gas log
14 set market will have to be reengineered and
15 certified, and match light systems cannot be listed
16 to the Z21.60 standard. As a result, there will be
17 a substantial cost to the industry to come into
18 compliance with the proposal.

19 DOE further states that, quote, "the
20 elimination of standing pilot lights would only
21 result in product conversion costs associated with
22 testing and recertification to ANSI safety
23 standards." Unquote. This assumption is
24 unreasonable and incorrect. First, design changes
25 will be needed, especially for gas log sets.

1 Electronic ignition is required for gas log sets,
2 whether or not it is feasible, and it is not. Over
3 90 percent of the products in the market would need
4 to be redesigned. The cost of redesign and all at
5 once to meet an arbitrary compliance date are not
6 insignificant, especially for an industry that has
7 yet to recover from the recession.

8 Second, there will be backlogs in getting
9 product recertified with the potential for many
10 products not being able to reach markets in time.

11 Third, as discussed earlier, the costs of
12 recertification are not insignificant.

13 Fourth, elimination of standing pilot
14 lights would, in some cases, have a significant
15 effect on product pricing, causing reduction in
16 sales, margins, or both.

17 The assumption by DOE in the proposal is
18 again a clear example of the Department having not
19 done the proper due diligence before it regulates an
20 industry. Finally, DOE has not looked at the
21 cumulative regulatory impacts and costs on small
22 businesses as the Executive Order directs it to do.

23 In considering the economic justification
24 of any requirements, DOE must consider the economic
25 condition of the hearth industry. The industry is

1 highly and directly dependent on the health of the
2 housing market. Total product shipments for vented
3 hearth gas hearth products fell by a third from 2005
4 to 2007, and by an additional half, or a total of
5 two-thirds, between 2005 and 2009. The industry
6 sales have not recovered from the weak 2009 levels.
7 This industry is struggling to survive, and the
8 potential of a large market -- excuse me -- and the
9 potential elimination of a large market will result
10 in even more job losses in this industry and the
11 general economy.

12 In conclusion, when one testifies at a
13 hearing, it is common practice for the person
14 testifying to thank the agency for the opportunity
15 to testify. I cannot thank DOE for that opportunity
16 today. I cannot do so because DOE has not provided
17 the regulated community and the public with the
18 information they need and that DOE is required by
19 law to provide, to facilitate effective comment on
20 the proposal. We have been put in the position of
21 responding to black boxes and items behind the
22 curtain. This is not what the Administrator
23 Procedure Act or DOE's own regulations governing
24 rulemakings require. We again request that DOE
25 terminate this rulemaking. Thank you.

1 MR. BROOKMAN: Thank you. I think many or
2 most of you have a copy of these written remarks and
3 I just wanted, for those of you who don't have a
4 copy yet, I think we have some additional copies. I
5 have four written copies here in front of me and
6 going down the line, Robert, do you wish to go next?

7 MR. ELLIOTT: Robert Elliott, National
8 Propane Gas Association. The National Propane Gas
9 Association is a national trade association of
10 propane industry, having a membership of
11 approximately 3200 companies with 39 state and
12 regional associations represented in all 50 states.
13 While NPGA's membership covers a broad section of
14 categories, over 90 percent of our members are
15 retail marketers of propane gas, who deliver the
16 fuel to the end user. However, our membership also
17 includes suppliers, manufacturers, and distributors
18 of appliances, including decorative vented and non-
19 vented fireplaces and gas log sets.

20 Propane represents a small, but important
21 part of the US energy sector, and our industry is
22 both directly and significantly affected by the
23 Department of Energy's proposed energy conservation
24 standards for direct heating equipment.

25 NPGA is concerned with the development of

1 the recent Notice of Proposed Rulemaking published
2 July 22, 2011 in the Federal Register. As you know,
3 the Notice of Proposed Rulemaking of December 11,
4 2009 proposed two new definitions defining direct
5 heating equipment as both vented and unvented home
6 heating equipment. The Notice of Proposed
7 Rulemaking also proposed to expand the product class
8 of covered products as follows: vented hearth
9 heaters to include vented fireplace heaters or gas
10 fireplace inserts or gas stoves which simulate a
11 solid fuel fireplace and is designed to furnish warm
12 air without ducts to the space in which it is
13 installed.

14 However, the April 2010 final rule
15 expanded the proposed definition to include, and I
16 quote, "Those heaters with a maximum input capacity
17 less than or equal to 9000 BTU per hour as measured
18 using DOE's test procedure for vented home heating
19 equipment are considered purely decorative and are
20 excluded from DOE's regulations."

21 NPGA supports DOE's efforts to develop and
22 promote energy conservation standards for the
23 consumer products covered under the Energy Policy
24 and Conservation Act, however, we are opposed to the
25 proposed inclusion of decorative vented hearth

1 products and gas log sets as defined by DOE in the
2 covered product class of direct heating equipment.
3 Decorative hearth products are not designed to
4 furnish warm air to the surrounding living space.
5 NPGA contends that heat generated by these
6 decorative products is produced incidentally, as the
7 primary design and function is for aesthetics and
8 ambiance.

9 NPGA believes several administrative and
10 procedural errors have occurred in the development
11 of the definition. NPGA finds reason for rulemaking
12 based on uncorroborated assumptions, and a mix of
13 misinformation. It is the opinion of NPGA that the
14 requirements for the Administrative Procedures Act
15 have not been met. The April 2010 final rule,
16 promulgated a definition that was not included in
17 the December 2009 Notice of Proposed Rulemaking.
18 Therefore, the affected public was not provided the
19 opportunity to comment on the rule.

20 Further, it goes to reason that if the
21 underlying final rule was procedurally in error,
22 then the subsequent July 2011 Notice of Proposed
23 Rulemaking seeking to amend the April 2010 final
24 rule is also in error.

25 NPGA is also concerned that the current

1 rulemaking process does not meet the relevant
2 standards of Executive Orders 12988, Civil Justice
3 Reform, or Executive Order 13563 that requires
4 agencies to use the best available techniques to
5 quantify and anticipate present and future benefits
6 and costs as accurately as possible.

7 With regards to Executive Order 12988 that
8 requires federal agencies to write regulations to
9 minimize litigation. Clearly this is not the case
10 as the HPBA has brought suit and other stakeholders,
11 such as NPGA, believe they have standing. EO 12988
12 also requires that key terms be adequately defined.
13 We argue that the proposed definitions being
14 promulgated and amended by the Department of Energy
15 for direct heating equipment are not adequately
16 defined.

17 Regarding Executive Order 13563, NPGA
18 believes that the average annual energy savings for
19 both vented hearth products and vented gas log sets
20 are erroneously skewed and anecdotal at best. The
21 July 2011 rulemaking states, and I quote, "DOE
22 assumes that pilot lights operate year-round, 365
23 days a year, 24/7 for 75 percent of installations,
24 and the remaining 25 percent of consumers operate
25 their pilot lights one-fourth of the year." Based

1 upon service call information supplied to NPGA by
2 our membership, we believe that only about 25
3 percent of all installations for vented hearth
4 products and vented gas log sets remain on year-
5 round. The remaining 75 percent of consumers keep
6 their pilot lights on for three or four months of
7 the year. This is completely opposite to your
8 assumptions.

9 Therefore, NPGA believes that DOE has not
10 sufficiently met the criteria found in Executive
11 Order 13563 and it is questionable whether the
12 standard is economically justified.

13 NPGA also believes that DOE has not met
14 several requirements of the Energy Policy and
15 Conservation Act. 42 US Code 6295 states that the
16 Secretary of Energy is required to determine that
17 the benefits of the standard must exceed the burdens
18 and that the standard is technologically and
19 economically justified. As stated earlier, we
20 believe the economic justification based upon DOE
21 assumptions is questionable at best.

22 Under Section 42 of the US Code 629503(a)
23 requires DOE to establish the test procedure for any
24 prescribed or amended standards. DOE test procedure
25 for vented home heating equipment states, and I

1 quote, "Install thermocouples for measuring
2 condition to warm air temperature." And the test
3 also requires one to, quote, "Establish the
4 temperature of inlet air by means of a thermocouple
5 suitably shielded from direct radiation and located
6 in the center of the plane of heat and lit opening."

7 Then if you look at Title 10 CFR 430.2 for
8 definitions, it states that vented home heating be
9 designed to furnish warm air to the living space of
10 a residence. We question whether this test method
11 determines to any degree the intent to be designed
12 to furnish warm air. NPGA does not believe these
13 products are designed to furnish warm air, and
14 therefore this test procedure is not valid for
15 prescribing or amending direct heating equipment
16 standards.

17 In conclusion, NPGA does not believe that
18 Congress intended for decorative hearth products to
19 be included as a covered product of direct heating
20 equipment. We believe the heat generated from the
21 flame is produced incidentally, and not by specific
22 design. It is also the opinion of NPGA that several
23 procedural and administrative errors have occurred
24 in the promulgation of the standard and its most
25 recent Notice of Proposed Rulemaking. We therefore

1 respectfully request that decorative hearth products
2 and gas log sets be excluded from the definition of
3 direct heating equipment.

4 NPGA thanks you for this opportunity to
5 express our comments and we will be providing more
6 detail in our written comments.

7 MR. BROOKMAN: Thank you. I think Leslie,
8 you indicated that you wish to speak as well. I'm
9 looking at your statement. I notice there's 14
10 pages here. Do you wish to read all of this into
11 the record?

12 MR. BORTZ: I do.

13 MR. BROOKMAN: Okay. Please proceed.

14 MR. BORTZ: My name is Leslie Bortz. I am
15 the President of the R.H. Peterson Company, which is
16 among the larger manufacturers of vented gas logs in
17 the United States. We've been in business since
18 1949, and I have been an owner of the business for
19 34 years. While our volume constitutes a
20 significant portion of our industry, we are still a
21 relatively small business, with approximately 220
22 employees. Almost all of our employees are based in
23 California, where we have our manufacturing facility
24 just outside L.A.

25 I have traveled here today to respond to

1 the many incorrect statements and conclusions based
2 on so-called DOE research placed into its Notice of
3 Proposed Rulemaking published in the Federal
4 Register on July 22nd.

5 The Department of Energy was correct in
6 April 2010 as noted in the FAQ published
7 contemporaneously with the original DOE rulemaking.
8 Gas log sets have specific characteristics that
9 differentiate them from gas fireplaces, gas
10 fireplace inserts, and gas stoves. In 2010, DOE
11 continued, they do not provide the same heating
12 function as those appliances which are constructed
13 as closed systems, and stated DOE believes that gas
14 log set products are intended to be installed for
15 decorative purposes. As a result, DOE interpreted
16 its definition of a vented hearth heater as not
17 covering vented log sets.

18 Nothing has changed since April 2010 to
19 make gas log sets any more of a heating appliance.
20 Now, however, the DOE asserts that because gas log
21 sets employ a flame, that they necessarily heat the
22 room in which they're located. In terms of gas log
23 sets, DOE recognized in 2010, there is no
24 significant heating function for the room. Gas log
25 sets are not even able to be tested using the

1 standard AFUE test applied to direct heating
2 equipment to measure the output of heated air.

3 Gas log sets will generate radiant heat
4 like other appliances, such as computers or light
5 bulbs, which warm the objects that are nearby, but
6 not the room air. For the first time, DOE purports
7 to regulate appliances producing radiant heat as
8 direct heating equipment, but there is no approved
9 test for the efficiency of radiant heat.

10 The statute says that where there is no
11 approved efficiency test method, DOE is not allowed
12 to adopt a standard. Here, however, DOE is
13 recommending a standard which would impose
14 catastrophic costs upon the industry and would harm
15 consumers.

16 As I explained below, the standard DOE
17 proposes to adopt for vented gas logs would not
18 result in any significant energy savings, which is
19 the threshold that DOE must meet to justify imposing
20 any standard. DOE is not going to meet the stated
21 goals of this program, and in fact, will undermine
22 those same very goals by limiting consumer
23 alternatives and depriving consumers of a more
24 efficient option, gas logs, which generate less
25 pollution from the existing wood burning fireplaces.

1 DOE had the opportunity to ask the gas log
2 industry for the factual information which would
3 have enabled it to identify these issues before
4 issuing the NOPR. Despite having access to the
5 membership list for our trade association, which
6 identifies all of the significant gas log
7 manufacturers, DOE did not contact any of these
8 significant gas log manufacturers. And it appears
9 quite obvious to our industry that DOE made no
10 serious effort to do so. Even a simple Google
11 search for gas logs could not have missed us. There
12 is simply no basis for failing to gather necessary
13 information about gas log sets. It would have been
14 readily available through discussions with any
15 manufacturers like us.

16 DOE made mistaken statements and
17 conclusions. The mistakes in the NOPR are based on
18 massive research errors, leading to totally
19 unsupported conclusion. The errors are so large
20 that random guessing would have been twice as close
21 on average. Random guessing would have been twice
22 as close on average.

23 DOE also assumed incorrectly that gas logs
24 have similar characteristics to decorative
25 fireplaces. Gas log sets can only be used in wood

1 burning fireplaces. While DOE states that they are
2 difficult to distinguish, anyone who is making a
3 purchase, could easily distinguish them from
4 decorative gas fireplaces. Anyone investigating
5 them thoroughly would know that there are many
6 issues, like pilot lights and certifications, where
7 the two appliances have markedly different
8 characteristics.

9 I'm now going to address several major
10 topics. Number one, gas log sets are in fact an
11 efficient substitute for consumers with wood burning
12 fireplaces, which is the only place where gas log
13 sets can be used. Gas logs are efficient and better
14 for the environment. On Page 43945 of the proposed
15 rule, DOE states that gas log sets are relatively
16 inefficient products. How did DOE determine this?
17 Relative to what?

18 First, gas log sets are not designed,
19 intended, marketed, or purchased to provide heat.
20 They are decorative to provide a realistic
21 simulation of a wood burning fire in a wood burning
22 fireplace. There is no DOE approved test to measure
23 the heating efficiency of a vented log set, making
24 DOE's interpretation that they are a type of direct
25 heating equipment unreasonable on its face.

1 As DOE has recognized, however, houses
2 with gas log sets are more whole-home efficient than
3 houses with the products with which they compete.
4 Gas log sets compete with wood, wax logs, and coal.
5 When a consumer has a wood-burning fire, they
6 consume more BTUs per hour of use, about three times
7 the amount, and take more heated home air out of the
8 house to achieve the same aesthetic appeal. Many
9 wood-burning fireplaces also use log lighters that
10 burn large amounts of natural gas to light the wood.
11 In addition, consumers will leave the flue fully
12 open overnight following a wood-burning fire,
13 allowing the home to vent heated indoor air to the
14 outside all night.

15 In contrast, gas logs and decorative
16 fireplaces are instant on, instant off. The flue
17 does not stay fully open beyond the period of usage.
18 Based on our consumer feedback, consumers with gas
19 log sets like them because they replicate a wood
20 fire. They are not bought to heat a room. If they
21 want to heat, they buy a different product.

22 Consumers buy our vented log sets for
23 several reasons.

24 • Number one, safety. There are no dangerous

- 1 sparks coming from a gas log set, no chimney
2 fires, no hot ashes spilling into the room.
- 3 • Number two, cleanliness. There's improved air
4 quality. There are no bugs. There's no dirt.
 - 5 • Health. There are no toxins in the wood, no
6 allergens, no particulates, no asthma.
 - 7 • Convenience. Instant on/off, low maintenance,
8 low service needs.
 - 9 • Inexpensive. Gas logs are the least expensive
10 product to buy to convert your fireplace, and
11 they are the least expensive to use. Fire wood
12 is three to four times per hour more expensive
13 than gas. They buy gas log sets because it
14 saves trees. They buy gas log sets because it
15 uses a fuel abundant in the United States.

16 The proposed rule will interfere with all
17 of these advantages by making the units
18 prohibitively expensive. Gas log sets are far
19 cleaner from an environmental perspective than the
20 product they are replacing. As US EPA has
21 recognized in its Burn Wise Program, consumers would
22 be well advised to shift from wood-burning fires to
23 gas log sets in terms of an overall reduction in
24 critical air pollutants.

1 In its analysis, DOE is assuming that
2 there is some environmental benefit from limiting
3 gas log sets. To the contrary, anything which
4 discourages people from making the transition from
5 gas log sets -- excuse me -- to gas log sets from
6 wood-burning, wax log-burning, or coal-burning, will
7 have an immediate and major negative effect on the
8 environment.

9 Many state environmental agencies and
10 other environmental and health groups, like the NRDC
11 and the American Lung Association, have adopted the
12 same environmental position endorsed by US EPA,
13 favoring the transition to gas log sets. As an
14 example, the leading air quality agency in the
15 country in charge of improving air quality, in the
16 difficult Los Angeles region, has what it calls
17 "Healthy Hearths Program." As part of that program
18 to improve public health, the South Coast Air
19 Quality Management District actually pays consumers
20 to change out their wood-burning fireplaces and to
21 use gas log sets. The agency adopted this position
22 after an extensive rulemaking examining health and
23 environmental benefits of this transition to gas log
24 sets, and they partially used the analysis done by
25 the very experts cited by you, the DOE, Jim Hauck.

1 DOE has simply assumed a non-existent
2 environmental benefit in its analysis, and ignored
3 the considerable environmental detriment that will
4 come about by making gas log sets three times as
5 expensive as they are now. When properly accounted
6 for, the net environmental impact of the rule is
7 negative and would trigger requirements that DOE
8 evaluate the rule under the National Environmental
9 Policy Act.

10 My second topic is standing pilots. DOE
11 simply does not understand how standing pilots work
12 in gas log sets. The type of pilot is restricted by
13 the pre-existing wood-burning fireplace, and the
14 heat in the fireplace when the fireplace is being
15 used.

16 First, based upon purported consultation
17 of the various websites with wholly ambiguous
18 information, DOE has decided to use 1250 BTUs per
19 hour as the pilot light gas consumption rate use for
20 vented gas log sets. DOE chose the wrong rate,
21 based upon the use of five websites listed in the
22 proposed rule, none of which provide BTU usage
23 numbers for vented gas logs. I have the information
24 here, I will talk to you later about all five of the
25 places which you looked in the internet were not

1 correct, could not give you the information that you
2 said they gave you.

3 For gas log sets, typical low BTU pilots
4 allow for low BTU consumption per hour. Peterson
5 recently tested its most common low BTU pilot on an
6 ANSI Z21.60 set, found the pilot light consumes 562
7 BTUs per hour at 4.5 inches of water column
8 pressure, and just slightly higher, 599 BTUs per
9 hour at the highest natural gas pressure we see in
10 the market. This rate is less than half of the
11 amount that DOE assumed. This one change cuts the
12 theoretical gas savings from the proposed DOE rule
13 by about 55 percent.

14 To put that number in perspective, at the
15 current consumer price of natural gas, which is 65
16 to 68 cents, it costs approximately \$32 per year to
17 burn vented log sets low BTU pilot for the entire
18 year, assuming that you're one of the minority of
19 customers to do so.

20 DOE also assumed that gas log sets would
21 last approximately 15 years. Our typical warranty
22 for gas log burners is five to seven years. Our
23 experience, a consumer who uses his or her gas log
24 sets will replace them or stop using them in less
25 than ten years. Fifteen years is really a long time

1 for doing that. This also cuts the potential gas
2 savings of the proposed rule by an additional third.

3 In terms of energy usage from standing
4 pilots, DOE assumes 75 percent of the standing pilot
5 users leave their standing pilot ignited 365 days
6 each year, and 25 percent leave the standing pilot
7 ignited only seasonally during the months when
8 they're more likely to have a reason to use the gas
9 log set. Based upon our experience in the industry,
10 we believe that DOE has these percentages wrong. We
11 estimate that a minority of the consumers on natural
12 gas leave their gas log sets' standing pilots on
13 year round. Most operate the standing pilots
14 seasonally and extinguish the standing pilot and
15 close the gas valve at the end of the season. Our
16 systems are designed to make this easy to do, and we
17 provide clear instructions for how to reignite the
18 pilot after the consumer has extinguished the pilot.

19 Consumers are moving in that direction.
20 For example, our VP of sales, who is here, recently
21 returned from Alabama where the local gas company is
22 teaching consumers to turn off their pilots in the
23 off-season, and offering a free light-up service in
24 the fall. We will be happy to recommend consumers
25 operate their units in this manner, which would be

1 far more cost effective solution than charging a
2 seasonal user \$600 extra to save them \$8 worth of
3 gas a year.

4 DOE did not address specifically the issue
5 of standing pilots for liquid propane or LP units.
6 Approximately 15 percent of our market involves the
7 sale of gas log sets that will be fueled by propane.
8 Very few LP customers use their standing pilots year
9 round. Almost everyone turns off the pilot when
10 done using the LP unit.

11 These erroneous assumptions by DOE
12 drastically overstate the energy savings for the
13 proposed rule. While DOE did not provide all of its
14 assumptions, if you use the same number of units in
15 service with pilot lights, but adjust for the
16 reduced number of years, adjust for the reduced low
17 BTU pilot usage, and adjust for the more common
18 seasonal consumer usage of the products, we estimate
19 that the total energy savings from this NOPR for
20 vented gas log sets would be less than 20 percent of
21 DOE's estimate. DOE's estimate is more than five
22 times too high.

23 In addition, natural gas is plentiful in
24 the United States. Unlike oil, natural gas reserves
25 are higher now than they've been at any time in our

1 history. Natural gas prices are dropping each year
2 as we find more sources for natural gas, at a rate
3 that exceeds consumption. In addition, natural gas
4 is a local fuel with virtually all of the United
5 States natural gas consumption coming from sources
6 within North America.

7 DOE's proposal would add about \$600 per
8 unit to the cost of a gas log set. There's no
9 payback for the consumer if you force them to accept
10 electronic ignition system that markets have already
11 shown the consumer doesn't want.

12 DOE also assumed, based on a 1997, 14 year
13 old study, that intermittent ignition systems
14 already are common. This may be true for
15 fireplaces, not true for gas log sets. We probably
16 sell more intermittent ignition sets than anyone in
17 the vented gas log industry, but we sell six to
18 seven percent of our units that way. No one else
19 that I know sells over five percent that way.

20 Several reasons for the unpopularity of
21 intermittent ignition systems with consumers. First
22 is obviously that the cost would triple the cost of
23 the most common gas log set sizes, and there's no
24 significant savings. Critically, however, is the
25 difficulty of installation. Gas log sets must fit

1 into an existing wood-burning fireplace. Over 95
2 percent of our sales are to retrofit it to an
3 existing wood-burning fireplace. Unlike a
4 decorative fireplace, which has spaces within its
5 design to house and protect an intermittent pilot
6 unit, gas log sets have no such area.

7 In most installations of gas logs the
8 intermittent ignition system needs to be in the same
9 wood-burning firebox where it is difficult to
10 protect it from the surrounding flames. In many
11 installations, adding the intermittent pilot system
12 often causes the gas logs to go off center within
13 the fireplace. That, along with the battery pack
14 and box that houses the pilot, reduces the aesthetic
15 appeal for the unit. Consumers want our product to
16 look like a wood-burning fire and wood-burning fires
17 do not have large battery packs in them.

18 Finally, in many shallow wood-burning
19 fireplaces, there's simply no room to add an
20 intermittent pilot system. To compete in the
21 market, gas log sets must be able to be installed in
22 a wide variety of circumstances. DOE's proposed
23 rule would greatly restrict the number of wood-
24 burning fireplaces that could accept gas log sets.

25 As DOE recognized in its Q&A to the

1 original 2010 rule, unlike decorative fireplaces,
2 gas log sets are not constructed as a part of an
3 entire enclosure. A gas log manufacturer cannot
4 control the size and shape of the wood-burning
5 fireplace in which the gas logs will be installed.
6 To accommodate this market, we sell 20 different
7 types of burners, ten to 12 different sizes, 600
8 different log sets and another several thousand add-
9 on options, including many different pilots to meet
10 the needs of consumers. In the face of this broad-
11 range of installation requirements, DOE is
12 attempting to impose a one-size-fits-all solution
13 which will restrict consumer choice.

14 Certification requirements. Once again,
15 based on its familiarity with decorative fireplaces,
16 DOE wrongly assumed that the certification practices
17 of the gas log industry were the same. While it may
18 be true that most of the decorative gas fireplaces
19 are certified to an ANSI standard, this is not true
20 for gas logs. There is no universal certification
21 for gas log sets. Gas log sets are regulated
22 differently by different cities and states.

23 The ANSI Z21.60 standard is really only a
24 regional standard. For example, in the United
25 States, our company sells 21 percent of its gas log

1 sets certified to Z21.60. DOE assumes that all gas
2 log sets were already certified to Z21.60, and the
3 new rule would therefore impose few certification
4 costs on manufacturers. This is clearly incorrect.
5 Over 75 percent of Peterson's United States sales of
6 vented gas logs as listed to what is known as the
7 RADCO standard, or are sold uncertified.

8 For gas log sets the certification issue
9 is very different than for gas fireplaces.
10 Fireplaces must contain the fire being built within
11 them. Accordingly, the code-setting agencies have
12 generally regulated those fireplaces strictly. In
13 contrast, gas log sets are designed to go into a
14 wood-burning fireplace that itself is constructed to
15 meet the various codes. Consequently, building
16 standard agencies around the country treat gas log
17 sets very differently and quite inconsistently. The
18 standard that applies in one state or city is not
19 used by other states or cities. DOE's attempt to
20 have a one-size-fits-all approach to the
21 certification issue will necessarily conflict with
22 the certification practices already in place in many
23 states and cities.

24 Directly contrary to DOE's unsupported
25 conclusion, the ANSI Z21.60 standard represents a

1 change in design for over 75 percent of Peterson's
2 gas log sets, and for over 80 percent of our
3 industry. For example, ANSI Z21.60 only covers gas
4 log burners up to 30 inches. We sell 36, 42, 48, 60
5 and higher sizes to consumers with large wood-
6 burning fireplaces.

7 The ANSI Z21.60 design is also more
8 expensive to build. Peterson sells some sets
9 certified to Z21.60, largely in a few northeastern
10 states, the Virginia and Maryland suburbs of
11 Washington, D.C., and Maryland. Those units cost an
12 extra 40 to 50 percent by itself, without
13 intermittent ignition.

14 There are also other standards. There's
15 the ANSI Z21.84 standard, is available,
16 theoretically, for natural gas, but it isn't that
17 often used. Peterson sells no Z21.84 units. Z21.84
18 allows for what are called match-lit sets, where the
19 consumer lights a match and lights the unit each
20 time the unit is turned on, without the use of a
21 pilot light. These types of units do not comply in
22 many local building codes that require a pilot,
23 however, and cannot be used with LP for safety
24 reasons.

25 The proposed rule would bar match-lit

1 vented gas logs, however, because they are not
2 allowed under ANSI Z21.60. This is about half of
3 our industry. The vast majority of vented gas log
4 sets are sold listed to the RADCO 272 -- RGA272
5 standard. These are sold in areas that do not
6 require ANSI certification. RADCO allows match lit
7 sets without a standing pilot. In addition, rather
8 than to pay for certifying to ANSI Z21.84, it's
9 easier to simply sell a listed or uncertified set,
10 depending on local requirements at a lower cost.

11 In addition, there's no energy savings
12 basis to insist that gas log sets are certified to
13 any particular standard. For gas fireplaces, there
14 are two different standards, there's Z21.50 and
15 Z21.88, which represent a difference in function.
16 Gas fireplaces certified to Z21.50 are decorative,
17 certified to Z21.88 are heaters. There's no
18 comparable distinction for gas log sets. There is
19 no heater standard for gas log sets because gas log
20 sets are not sold as heaters.

21 This calls into question the whole reason
22 to regulate gas log sets in the first place. The
23 absence of any standard describing any gas log sets
24 as heater should tell DOE, by itself, that gas logs
25 simply are not designed to be heating appliances and

1 should not be regulated at all as part of this
2 rulemaking.

3 Fourth is cost analysis. The proposed
4 requirements for gas log sets would sharply increase
5 the cost of gas log sets. Based on a 1997, 14 year
6 old report that estimated 20 percent of vented gas
7 log sets had standing pilots, DOE assumed that the
8 remaining 80 percent already used alternatives, in
9 quotes, "such as intermittent pilot or electronic
10 ignition," close quotes. Back in 1997 there were
11 just about zero electronic ignition systems in the
12 market in the gas log business. Zero. Even today,
13 under seven percent of our units, and less than five
14 percent of the industry units are sold with
15 intermittent ignition -- intermittent electronic
16 ignition systems. The cost of a 24-inch log set is
17 less than \$400. The cost of adding an electronic
18 ignition is an additional \$596 dollars, our list
19 price. Thus DOE's proposed regulation would nearly
20 triple the cost merely by adding the intermittent
21 pilot requirement.

22 The financial impact on the second most
23 common size -- these two sizes make up probably 75
24 percent of our business, is even more because the
25 set is a little bit cheaper, and the ignition system

1 is the same.

2 In addition, DOE is purporting to impose a
3 new certification requirement. Having a gas log
4 certified to ANSI Z21.60 adds even more cost.

5 In summary, DOE is taking a product that
6 costs less than \$400 and increasing its cost to a
7 consumer to more than \$1000. This is being done in
8 order to save between eight and \$32 of natural gas
9 each year. There is no economic basis for the rule
10 that has been proposed. The rule will restrict
11 consumer choice, greatly discourage more effective
12 use of wood-burning fireplaces, and impose
13 significant unwanted costs on those consumers who
14 still will be able to purchase gas log sets.

15 Virtually all of the gas log set
16 manufacturers who do not produce fireplaces are
17 small businesses like Peterson. If you look at the
18 market shares of the companies involved in the
19 industry, the majority of the overall vented gas log
20 market is controlled by companies that are small
21 businesses. While DOE stated that it identified
22 four small business manufacturers of vented gas log
23 sets, there are 20 to 30 such entities, all of whom
24 will face catastrophic market change from the forced
25 tripling of the price of their main product.

1 Tripling the price of our primary product will have
2 a significant economic impact on a substantial
3 number of small business entities.

4 In its analysis of the cost of compliance,
5 DOE correctly stated -- excuse me -- DOE incorrectly
6 stated that all vented gas log sets are already
7 certified to ANSI Z21.60. As I explained above,
8 this is incorrect. Eighty percent are not such
9 certified. DOE also wrongly stated that the
10 elimination of the standing pilot requirement would
11 only result in product conversion cost associated
12 with testing and recertification. The cost of the
13 equipment itself triples the price. The alternative
14 ignition device must have its own power source,
15 which requires another significant change in the
16 type of equipment sold with the basic log set.
17 DOE's proposed rule would drive many small
18 manufacturers of vented gas log sets out of
19 business.

20 Five is the time line. Over 95 percent of
21 our gas logs do not meet one or both of the proposed
22 certification and pilot light restrictions. DOE has
23 proposed to make the ANSI certification requirement
24 applicable April of 2013 and to make the no standing
25 pilot light portion of the proposed rule applicable

1 July 2014. Gas log manufacturers were not part of
2 this rulemaking as recently as seven weeks ago.
3 Until July 22, 2011, DOE's official position was
4 that gas logs were not vented hearth heaters subject
5 to these requirements.

6 First, the statute requires DOE to give
7 gas log sets at least three years from any final
8 rule on gas log sets to comply with any new DOE
9 requirements. There's also practical means of
10 recertifying a large percentage of the gas log set
11 market by April 2013, given the work to be done by
12 the testing agencies because of other issues in the
13 2010 rule, we have no reason to think that the
14 testing agencies could comply with the certification
15 requirement by then, particularly given that its
16 exact parameters have not even been identified yet.

17 With regard to pilot light restriction,
18 compliance by July 2014 is impossible. This would
19 require redesign of the units that represent over 95
20 percent of our sales, and their recertification
21 testing.

22 In summary, I'd like to make sure that you
23 understand, consumers do not buy vented gas log sets
24 for heat. Again, consumers do not buy vented gas
25 log sets for heat. Vented gas log sets only go into

1 wood-burning fireplaces. Again, vented gas log sets
2 only go into wood-burning fireplaces. There are
3 many other products in the market which will provide
4 heat. They are marketed based on their AFUE numbers
5 because there are tests that can determine whether
6 they supply a given percentage of their BTUs in
7 heated air to the room.

8 The authorizing statute instructs DOE that
9 it may not set energy conservation standards unless
10 the appliance has a clearly identified test which
11 can measure its compliance. Here there is no
12 efficiency test that can be applied to gas log sets
13 and DOE has not even suggested that there is any
14 such test. Thus it is incorrect to say, as DOE has
15 stated in its proposed rule, that gas log set
16 manufacturers can comply by meeting the efficiency
17 test for vented hearth heaters. It is not possible
18 to test gas log sets to meet that standard.

19 In addition, consumers do not want the
20 heat that would be generated. When a consumer wants
21 a hearth product that provides heat, there are
22 readily available options in the market that will do
23 so. Gas log sets represent by far the lowest cost
24 alternative for consumers tired of the inefficiency
25 and pollution of their wood-burning fireplaces.

1 DOE's proposal would rob consumers of that low-cost
2 choice while providing no offsetting financial
3 benefit, because the gas savings, if any from the
4 proposed rule, is so small.

5 As it applies to gas log sets, DOE's
6 proposal does not achieve greater energy savings
7 because homes with gas log sets in terms of whole
8 home heating efficiency are more efficient than that
9 alternative. The alternative is burning wood,
10 burning wax logs, burning coal. Because the savings
11 from the pilot restriction is trivial, it would only
12 -- it would be offset by the significant cost that
13 would eliminate or discourage consumers from
14 switching from wood-burning fireplaces to gas logs.

15 The proposed rule would also undermine
16 consumer alternatives because it would limit
17 severely the number of available products at the
18 market, particularly for consumers looking for low
19 cost alternatives in wood-burning fireplaces.

20 Finally, the proposal does not ease
21 manufacturer burdens in any respect. Under the
22 prior rules, gas log sets were not subject to
23 restrictions. The proposed rule only adds
24 restrictions and manufacturing burdens which would
25 have a traumatic and negative impact on the gas log

1 industry.

2 I thank you for giving me the time to make
3 my statement.

4 MR. BROOKMAN: Okay. Thank you. Jane,
5 when I first looked down -- did you wish to make a
6 statement as well?

7 MS. BAUER: Yes. Okay. I guess you're
8 next in the queue.

9 MS. BAUER: Okay.

10 MR. BROOKMAN: Let me make a note that
11 we've been doing this now for about an hour, these
12 written statements, anybody that wishes to do so can
13 have it fully inserted into the record without
14 reading it, but if -- no one wants to deny you that
15 option. So proceed, Jane.

16 MS. BAUER: I did time myself, so it's
17 only about five minutes.

18 MR. BROOKMAN: Very good.

19 MS. BAUER: Good morning. My name is Jane
20 Bauer. I am part of the fourth generation of Bauers
21 who have manufactured in southern Illinois,
22 Belleville, Illinois, for the last 79 years. My
23 great-grandfather who at age 17 immigrated from
24 Germany to try his luck at the American dream,
25 started Empire Comfort Systems in 1932. We've been

1 manufacturing heating products for 79 years and
2 time for people to make, you know, like and
3 decorative hearth products for 15.

4 Like many of our consumers, we are a small
5 family-run -- customers -- we're a small family-run
6 business. The following is our response to your
7 request for comments.

8 The interpretation that decorative vented
9 fireplaces and log sets are direct heating equipment
10 is unreasonable. By description, intended use, and
11 ANSI certification, decorative hearth products are
12 decorative products, not heaters, intended to be
13 used for ambiance, not heating, and certified to a
14 standard specifically designed for ambiance and not
15 direct heating use. They are designed and used for
16 decorative purposes. It is not reasonable to assume
17 that because a product uses energy or has heat as a
18 byproduct that it can be regulated as another
19 product which is designed, certified, and currently
20 regulated as a direct heating product.

21 The gas porch light, gas fire pit, Olympic
22 torch, and President Kennedy's eternal flame all
23 consume energy and produce heat, but the design,
24 intended use, and certification has nothing to do
25 with direct heating equipment. Just as a decorative

1 hearth product is not a direct heating product.

2 Our company, because we manufacture wall
3 furnaces and heaters, has been involved in the
4 direct heating equipment regulations since the
5 beginning. When the direct heating equipment
6 statute was defined, decorative hearth products
7 existed, but were not included. We manufacture
8 heater-rated products and, in fact, have the most
9 efficient vented hearth products in the industry.
10 The design of this product is obviously to be energy
11 efficient. At the same time, we cannot ignore the
12 decorative nature of the hearth industry. Even with
13 the most efficient product, we cannot ignore the
14 ambiance. The total utilitarian product is a
15 contradiction in terms, which is why there are two
16 categories of hearth products.

17 The proposed date of compliance is an
18 over-burdensome date for manufacturers. A minimum
19 of three years from a final rule publication is more
20 reasonable. It has been identified that 70 percent
21 of the industry shipments are in the decorative
22 hearth category. This is a low estimate, especially
23 considering that the estimate did not include gas
24 log sets.

25 Not only do the manufacturers, most of

1 which are small business, need time for research and
2 development, but the volume of certifications will
3 increase at this level. The finite amount of
4 certification facilities available to manufacturers,
5 at date of 2014 is too aggressive for an industry
6 made up of small businesses with limited resources.
7 This industry, of all the categories targeted for
8 inclusion and being regulated, is the smallest
9 energy user. An aggressive timeline is not
10 warranted.

11 Mandating the same timeline for a
12 completely new-regulated category that a long-
13 regulated product would have is over-burdensome and
14 too aggressive for relatively little savings in
15 return.

16 The proposed exclusion is only necessary
17 if the decorative vented hearth product and vented
18 gas log set categories are kept in the direct
19 heating equipment category. The inclusion, and then
20 the exclusion, is a contradiction in defined terms
21 by the DOE. The DOE refers to the ambiance and
22 decorative nature of these products, which is an
23 admitted contradiction by definition. There is one
24 primary use for decorative products, ambiance. The
25 heat is the result of unintended, but necessary,

1 consequence for safety and practical application of
2 the product.

3 The incorporation of the proposal
4 amendment for vented hearth heater will result in
5 stopping current research and development on new
6 heater hearth and space heating equipment. So
7 manufacturers, like us, are spending these resources
8 on higher AFUE equipment research and development.
9 The end result will be delays in product
10 introductions of a greater value in energy savings.
11 It will also cause expenditures in research and
12 development, engineering, marketing, and inventory
13 that would be against all good business practices.

14 The coordination of resources and expense
15 will put undue burden on industry that is small-
16 business dominated, a stressed industry directly
17 affected by the housing market downturn.

18 The DOE has not considered the economic
19 condition of our industry. The hearth industry is
20 struggling, scratching, and crawling to stay afloat
21 one small business by one small business. Since
22 2008, two major hearth manufacturers have gone
23 bankrupt, arguably, number two and number three
24 producers in the United States. This unreasonable
25 regulation is likely to promote more job loss for an

1 energy load of truly little or no consequence.

2 Thank you for your time and consideration,
3 and we respectfully request you cancel the entire
4 proposal of regulating decorative hearth products.

5 MR. BROOKMAN: Okay. Thank you. I
6 believe, Rett, you -- you're next and then Jim.

7 MR. RANFONE: I'll be very brief.

8 MR. BROOKMAN: Okay.

9 MR. RASMUSSEN: You mentioned you wanted
10 to break around ten.

11 MR. BROOKMAN: Yeah. You provided a
12 written statement.

13 MR. RASMUSSEN: I would like to read it
14 also.

15 MR. BROOKMAN: You'd like to, okay. It's
16 seven pages worth -- yeah, that's what I was
17 thinking. I think we should proceed with all of
18 these read statements.

19 MR. RASMUSSEN: Excellent. Good morning.
20 I am Rett Rasmussen, vice-president of Rasmussen
21 Ironworks, Inc., also known as Rasmussen Gas Logs
22 and Grills. We are a five-generation family
23 business founded in 1907 by my great-grandfather, a
24 Danish immigrant, who opened his blacksmith shop in
25 Whittier, California where we continue to conduct

1 business today. Among other items, my great-
2 grandfather and grandfather made fireplace tool sets
3 and fireplace screens. In the early 1950s, we
4 opened a fireplace retail store in front of our
5 manufacturing shop, and among the products we sold
6 were gas log sets made by other people.

7 In 1958, my father, T.R. Rasmussen, who is
8 our current president, created the Sand pan Gas Log
9 Burner. Prior to this development, a gas log burner
10 was merely a pipe with holes drilled in it that
11 provided a very harsh, noisy jet of flame. However,
12 the pan burner, which is filled with a graded sand,
13 more evenly distributes the gas, quiets down the gas
14 flow noise, and creates a wood-like, yellow dancing
15 flame. Over the years, this original design has
16 been copied and modified by Rasmussen and
17 competitors alike, and is overwhelmingly the burner
18 design sold in gas log sets to this day.

19 I grew up in the business. From the age
20 of six until I graduated from high school, I pushed
21 a broom, worked in the metal fabrication shop, sold
22 gas logs, barbecue and fireplace equipment in our
23 retail store, made pickups and deliveries, and
24 attended trade shows. I'm a graduate of the U.S.
25 Naval Academy with a degree in engineering, served

1 for five and half years on active duty as a surface
2 warfare officer, then left the service to rejoin my
3 family business in 1987.

4 For almost 24 years I have designed and
5 manufactured gas log burners and sets, have been
6 involved in industry and technical committees that
7 have developed and maintained product standards and
8 am a certified gas engineer by the American Society
9 of Gas Engineers. I know gas logs.

10 Unfortunately, I was not consulted during
11 the DOE's research into this rulemaking. I wish to
12 take this opportunity to address some of the items
13 with which I take issue, based on my extensive
14 experience in the subject matter.

15 Vented gas log sets are a very convenient
16 replacement for all the hassles of burning wood,
17 such as procuring, chopping, stacking, and hauling
18 of the wood; spiders, bugs and vermin in the wood
19 pile; sparks, ashes, creosote, chimney fires,
20 cleaning, and waiting for the embers to die down
21 before going to bed, to name a few. Gas log sets
22 provide instant on and off, no sparks, a ready fuel
23 supply, and look good for the greater proportion of
24 time when a fire is not burning. They are installed
25 in a fireplace in which it is safe to burn wood,

1 which means that they're made of non-combustible
2 material and have a working chimney flue system that
3 will exhaust all of the products of combustion up
4 the chimney, rather than into the room.

5 The fireplaces that my products are
6 installed in are not of my making or design. Vented
7 gas log sets are retrofits in somebody else's
8 enclosures.

9 As a replacement for wood burning, the
10 flames must replicate that of a wood fire to be
11 commercially viable. If not, they will not sell.
12 If gas log sets are not sold, more wood will be
13 burned, which is counter to the aims of the agencies
14 responsible for air quality issues. Since 2008,
15 Rasmussen and the Robert H. Peterson Company have
16 administered the gas log purchase incentive program
17 for the South Coast Air Quality Management District
18 in southern California.

19 The provisions of both the April 2010
20 final rule and the proposed rule would limit choice
21 by significantly increasing the consumer's cost of
22 the gas log sets and would work counter to the
23 AQMD's desire to have gas log sets replace wood
24 burning. The end result will be either greater
25 burning of wood, or more restrictions on the use of

1 fireplaces. In any of these cases, consumer choice
2 is affected.

3 The majority of gas log sets are in the 18
4 inch to 30 inch set size range, which is where most
5 gas log manufacturers focus their efforts. However,
6 there is a market of larger wood-burning fireplaces
7 and unusually shaped wood-burning fireplaces, such
8 as multiple sides, varying heights, and non-linear
9 openings. We offer standard set sizes from 12 inch
10 to 96 inches, and go beyond the traditional logs
11 with our fireballs, fire shapes, fire stones, and
12 fire glitter. We offer a variety of burner designs,
13 the selection of which is dependent on the fireplace
14 size, fireplace shape, and desired final effect.

15 My point is that a one-size-fits-all
16 approach is not practical to meet the market's
17 needs.

18 I'll now address the various issues. Nine
19 thousand BTUs per hour. I take issue with the April
20 2010 final rule to which the proposed rule refers,
21 which arbitrarily established 9000 BTUs per hour as
22 the ceiling for gas fireplace to be decorative.
23 This is nothing but a category killer, as no gas log
24 set exists at such a low gas input. Assuming that a
25 pilot light consumes 1250 BTUs per hour, as the DOE

1 states in the proposed rule with which I will take
2 issue later, then your typical gas log set will be
3 an array of seven one-and-one-half inch long flames.

4 One of Rasmussen's areas of expertise is
5 in the making of custom sets for large and unusual
6 fireplaces. I can't imagine trying to convince a
7 consumer that a seven foot long gas lot set with
8 seven one-and-a-half inch flames is aesthetically
9 pleasing, except to the ultimate of minimalists.

10 Another issue. DOE's desire to treat gas
11 log sets like gas fireplace appliances. That's my
12 term which encompasses both heater-rated and
13 decorative gas fireplaces. On April 16, 2010, DOE's
14 Mohammed Khan published "Frequently Asked Questions:
15 vented hearth heater definition." And in answer to
16 question number two he says, you know, does the
17 definition of vented hearth heater cover vented gas
18 log sets. Answer: No, DOE believes that gas log
19 sets have specific characteristics that
20 differentiate them from gas fireplaces, gas
21 fireplace inserts, and gas stoves. The primary
22 differentiating feature of gas log sets is that they
23 are not constructed as part of an entire enclosure,
24 that is, there is no surrounding box or viewing
25 pane, or a sealed system.

1 DOE recognizes that by the nature of gas
2 log set construction, they do not provide the same
3 heating function as gas fireplaces, gas fireplace
4 inserts and gas stoves, which are constructed as
5 enclosed systems and thus, DOE believes that gas log
6 sets products are intended to be installed for
7 decorative purposes. DOE's definition that a vented
8 hearth heater may be, quote, "Free-standing,
9 recessed, zero clearance, or a gas fireplace insert
10 or stove," end quote. DOE does not believe that any
11 of these terms include gas log sets, which DOE
12 considers as different products from free-standing,
13 recessed and zero clearance gas fireplaces, gas
14 fireplace inserts, and gas stoves. As a result, DOE
15 interprets its definition of a vented hearth heater
16 as not covering vented gas log sets. Mr. Khan
17 correctly points out many of relevant differences
18 between gas logs and gas fireplace appliances.

19 A recent e-mail received from a consumer
20 points out another set of reasons. Quoting, "I hate
21 the ceramic logs that came with my gas fireplace
22 appliance that my builder installed four years ago
23 when I moved into my home. My style is one of
24 blended traditional slash contemporary, but I never
25 turn the fireplace on because of two reasons.

1 Number one, the flame is miniscule for the monstrous
2 logs that are there, and number two, the logs are
3 campy and stupid looking and installed behind a pane
4 of glass, a black marble surround, and a beautiful
5 white painted, full carved mantle."

6 She desired to replace her logs with our
7 contemporary shapes that better suited the way her
8 fireplace was finished and her décor. I had to
9 break it to her that she could make no alteration to
10 the fireplace without compromising safety, and
11 voiding any warranty and certification, that gas
12 fireplaces are designed as a complete appliance
13 where all components interrelate. Any change in the
14 logs could negative effect the combustion
15 performance. In short, she was stuck forever with
16 the burner and logs that come with the gas fireplace
17 appliance.

18 With a vented gas log set in a wood
19 burning fireplace, however, she could have changed
20 it out for anything else that she desired. She
21 could achieve the look that she desired today and in
22 the future she could remodel her home in a different
23 theme.

24 With regard to the proposed exclusions,
25 there are several more differences. The product

1 must be certified to a certain ANSI standard. All
2 gas fireplace appliances, the decorative and heater
3 rated fireplace appliances, sold on the market are
4 certified to either ANSI Z21.88 or ANSI Z21.50.
5 Requiring decorative gas fireplace appliances to be
6 certified to Z21.50 is no hardship, all of them
7 already are. There's no such thing as an
8 uncertified gas fireplace appliance as they
9 incorporate not just the logs and burner but also
10 the firebox and venting system.

11 DOE assumes that all gas log sets on the
12 market are certified to ANSI Z21.60. This is far
13 from the truth. Over the past full three years,
14 only 2.3 percent of all vented gas log sets sold by
15 Rasmussen were certified to Z21.60. Z21.60 sets are
16 required by some, but not all jurisdictions on the
17 eastern seaboard, from Virginia through New England.
18 Our lack of 21.60 sales points out our market
19 weaknesses in the particular areas that require
20 Z21.60. My sense is that Z21.60 accounts for not
21 more than 20 percent of total gas log industry
22 sales.

23 As you move westward, jurisdictions may
24 require test agency listings, but not necessarily to
25 a particular standard, or they make no standard

1 requirement at all. The predominant standards to
2 which gas logs are certified are the city of Los
3 Angeles Rule of General Application 272 -- RGA 272,
4 and ANSI Z21.84. Both cover match lighted gas log
5 sets used with natural gas up to 90,000 BTUs per
6 hour. That covers up to about a 30-inch gas log set
7 size. Which standard is followed is more of a
8 listing agency preference.

9 Additionally, some jurisdictions require
10 the installation of a safety control, but do not
11 specify that it be an ANSI-certified set.

12 A great proportion of gas log sets carry
13 no certifications, either because their size or
14 design is not covered by an existing standard, or
15 the number of sets sold does not justify the
16 considerable costs of testing, certification, and
17 ongoing listing costs. A gas log set without
18 certification does not mean that it is unsafe. It
19 just means that it does not have a listing.

20 In the case of Rasmussen's uncertified
21 sets, they are all made from the same designs, same
22 materials, same construction techniques, same
23 equipment, same quality control, and same trained
24 personnel as certified sets. They have the same
25 installation requirements as certified sets.

1 Rasmussen has not remained in business for over 104
2 years by selling unsafe products.

3 Our rule of thumb regarding the fireplace
4 enclosures to which a gas log set may be installed
5 is that if it's safe to burn wood, it's safe to burn
6 a gas log. UL127 standard for factory-built wood
7 burning fireplaces, subjects fireplaces to
8 temperatures several times more than produced by a
9 gas log set. Masonry fireplaces also have the heat-
10 resistance required for burning wood. If the
11 fireplace exhausts the products of combustion when
12 burning wood, it will do so with a gas log set.
13 Safety for a gas log set resides more with the
14 enclosure in which it is used, rather than the gas
15 log set itself. Gas log sets, by their very nature,
16 even the crudest of designs, are more controllable
17 than a wood fire.

18 The requirement for certification of gas
19 log sets only to Z21.60 demonstrates a lack of
20 market knowledge by DOE, and would be overly
21 burdensome and restrictive to the gas log makers.
22 It would represent a C change to the industry and
23 market. I recommend that this provision be either,
24 one, struck from the exclusion as insuring safety
25 and proper operation, while a noble desire, seems

1 out of the scope for an energy conservation measure;
2 or, two, broaden the scope of this provision to
3 include the other standards and uncertified sets
4 whose labeling and instructions require that they be
5 installed in a fireplace in which it is safe to burn
6 wood.

7 Next issue, banning of thermostats on
8 decorative gas fireplaces and gas logs. I find this
9 issue to be very confusing. DOE admits that
10 decorative products in part, warm air into a room,
11 yet wishes to take away an automatic shutoff device
12 that would keep the consumer from over-using their
13 decorative appliance. I think DOE has focused too
14 much on the low end startup function of thermostats
15 than on the high end shut down of the flame.

16 How much warmth a gas log set imparts to
17 the user is dependent on factors beyond the control
18 of the gas log set or manufacturer, such as the
19 efficiency of the wood-burning fireplace, the
20 ambient temperature, both inside and outside of the
21 house, and the level at which the consumer burns his
22 gas log set, the height of the flame.

23 With a thermostat, the consumer sets a
24 comfortable temperature setting at which the gas log
25 set cuts off the flame. Without a thermostat, most

1 consumers will burn the unit on high for a short
2 period of time, then decrease the gas flow to a
3 lower flame height for the duration of the use, for
4 the evening. Before retiring for the night, they
5 shut off the unit. Consumers use gas log sets in
6 vented wood-burning fireplaces as intended
7 appliances for ambiance, with a secondary function
8 of warmth, either from the primal effect of viewing
9 the flame, the radiance of the luminous flame, the
10 radiant energy emitted from the logs, or the
11 convected heat of the air warmed by the flame.

12 Gas log sets are also an excellent source
13 of emergency warmth in the case of a power outage.
14 In areas where electric heat pumps are the primary
15 source of heat, consumers would be cold and dark
16 during ice storms that knock out power lines, except
17 for their gas log sets, unless they too require
18 electricity, such as with electronic ignition
19 systems, which I'll discuss later.

20 While not a big part of the gas log set
21 market, thermostats, this provision limits consumer
22 choice, especially the elderly who may not be as
23 mobile to adjust their gas log set when they wish to
24 stop it from warming their air. I recommend that
25 this provision be stricken from the final rule for

1 gas log sets.

2 My next issue, language expressly and
3 conspicuously identifying gas logs as, quote,
4 "decorative product, not for use as a heating
5 appliance." End quote. Similar to the thermostat
6 issue, the DOE classifies vented gas log sets as
7 vented hearth heaters, yet requires that we identify
8 them as not a heating appliance, which might be
9 confusing to the consumer. I know I'm confused.
10 The impact of adding this language to our materials
11 is mitigated by the overwhelming number of warnings
12 and cautions a consumer confronts on everyday
13 products, including gas log sets. This would just
14 be one more warning that the consumer would most
15 likely tune out or read and not heed.

16 Next issue, DOE's market research
17 indicates that banning pilot lights would not impact
18 more than three-quarters of the gas log market. DOE
19 has made an incorrect assumption here. DOE
20 estimates that 25 percent of gas log sets are
21 certified to ANSI Z21.60, which requires a safety
22 control, most of which on the market, is
23 accomplished by the use of a standing pilot safety
24 control system. DOE then makes the assumption that
25 the remaining 75 percent of gas log sets, quote,

1 "already utilize alternatives to a standing pilot,
2 such as an intermittent pilot or electronic
3 ignition," end quote. During the past three years,
4 Rasmussen sales of electronic ignition systems, EIS,
5 accounted for about 3.6 percent of our total vented
6 gas log sales. My sense is that this is a higher
7 percentage than most of our competitors' sales of
8 EIS. None of the gas log sets sold by Rasmussen
9 with EIS were certified to Z21.60.

10 What DOE has failed to identify in their
11 research is the existence of match lighted gas log
12 sets. Match lighted sets are just that. When the
13 user wishes to use his gas log set, he lights a
14 match or an aiming flame type of lighter, turns on
15 the gas, and lights the burner. When he's done
16 using the gas log set, he stops the flow of gas by
17 closing the valve. This type of set is in keeping
18 with the spirit and intent of the energy
19 conservation goals of the proposed rules, as there
20 is no constant burning pilot at all, yet match
21 lighted sets are not covered in this proposed rule.

22 During the past three years, almost 72
23 percent, that's 72 percent of Rasmussen's sales were
24 of match-lighted sets. My sense is that the
25 industry average would be more about 55 or 50

1 percent match-lighted.

2 Relating this to the certification issue,
3 Z21.60 requires that the gas log set be equipped
4 with a safety system that will shut down the flow of
5 gas to the burner in the event of an interruption of
6 the gas supply or a flame out. Match lighted sets
7 are not covered under the standard. If prohibited
8 from using standing pilots, then all of our sets
9 must be equipped with EIS. This represents another
10 C changes, a potential category-killer to the gas
11 log industry, and to the consumer for the following
12 reasons.

- 13 1. EIS components can cost five to six times more
14 than components used in standing pilot controls
- 15 2. EIS will add more than \$650 to the retail
16 price of an otherwise match-lighted set
- 17 3. Adding an EIS will more than quadruple the
18 retail price of our least expensive set that we
19 sell. Accordingly, adding an EIS to a gas log
20 set will price most consumers out of the
21 market. I expect gas log sales to plummet,
22 should EIS be required across the board.
- 23 4. Propane sets require the use of a safety shut-
24 down because of the nature of propane. While
25 natural gas is lighter than air and will vent

1 up the chimney in its raw state, propane is
2 heavier than air and will pool, creating an
3 explosion hazard. Propane is usually used in
4 more rural areas. Rural areas tend to be of
5 lower economic stature. Such an increase in
6 price due to the mandating of EIS, will
7 disproportionately affect the rural poor.

8 Adding an EIS to a gas log set presents a
9 very challenging proposition. As stated by Mr.
10 Khan, gas log sets, quote, "are not constructed as
11 part of an entire enclosure," end quote. Gas log
12 manufacturers do not have the voids in the sides and
13 under the floor of the fireplace in which to hide
14 the EIS components. Accordingly, unless the
15 installation is part of a new construction, or
16 extensive remodel, both of which are small
17 proportions of gas log sales, and the components can
18 therefore be installed outside of and adjacent to
19 the firebox, the EIS components must be installed in
20 the firebox, along with the gas log set.
21 Unfortunately, EIS components are greater in number
22 - valve, control module, wiring, battery pack or
23 transformer, and greater in size, more than double
24 the size, than those for a standing pilot. EIS
25 components are also more heat-sensitive than those

1 of a standing pilot system, further complicating the
2 location of components issue. If not located
3 properly, the components could become damaged from
4 the heat, potentially creating a safety hazard that
5 certification testing may not identify or prevent.

6 A further issue with EIS is that they
7 require outside power to operate. Since it is
8 highly unusual for a wood burning fireplace to have
9 a 110-volt receptacle installed inside of it,
10 batteries must be used to power the functions of the
11 EIS. Unfortunately, batteries are also very heat-
12 sensitive. While we are able to successfully locate
13 batteries in the fireplace to power remote controls
14 for standing pilot systems, the space limitations
15 caused by the EIS components and batteries usually
16 results in the gas log set having to be downsized in
17 order to provide more room. This detracts from the
18 aesthetic and decorative effect of the gas log set
19 and will most likely result in decreased sales.

20 Next issue, pilot light consumption. I
21 take exception with the DOE's assertion that, on
22 average, continuous pilot energy use is 1250 BTUs
23 per hour for vented gas log sets. The average gas
24 consumption for pilot-equipped gas log sets sold by
25 Rasmussen is 662 BTUs per hour for simple

1 thermocouple system, which is the majority of
2 piloted systems. At 830 BTUs per hour, for
3 thermopile mill volt systems, a little more
4 complicated system. My experience is that this is
5 similar with most other gas log manufacturers and
6 that the frequently asked questions cited as the
7 basis for DOE's pilot consumption figures are
8 incorrect.

9 Two of the five sources cited as
10 manufacturers are actually dealers. Two of them are
11 actually different product lines from the same
12 company. This leaves out of that five, only one
13 true gas log set manufacturer as a source, and their
14 cited consumption of 1500 BTUs per hour is abnormal
15 to the industry. Based solely on pilot light
16 consumption, I contend that DOE's energy savings
17 estimates are overstated by at least 40 percent.

18 Next issue, pilot light yearly usage. DOE
19 contends that the pilot lights are operated the same
20 amount of time for both gas fireplace appliances and
21 for gas log sets. It assumes that pilot lights
22 operate year-round for 75 percent of the
23 installations, and for the remaining 25 percent, the
24 consumer operates the pilots for one-fourth of the
25 year. I contend that gas log sets should not be

1 lumped in with the gas fireplaces for this issue.
2 Pilot lights are more visible and accessible in gas
3 log sets than they are in gas fireplace appliances.
4 Most consumers first light their gas log pilot when
5 there's a sustained cold, first good cold snap in
6 the autumn and turn it off when there's a sustained
7 warmth, spring. Depending on the geographic area,
8 this would result in sustained pilot usage from four
9 to six months. Based solely on yearly usage
10 assumptions, I contend that DOE has overstated the
11 energy savings by over 65 percent. Overall, I
12 contend that DOE has overstated the energy savings
13 estimates by about one hundred and five percent,
14 just on these two issues.

15 Whenever I sit on standards technical
16 committees, my radar is always on against proposals
17 that would be so restrictive that they would stifle
18 innovation or damage the market for the products.
19 The proposal to lump gas log sets together with gas
20 fireplace appliances, the horribly incorrect
21 assumptions about the types of gas log controls sold
22 in today's market, and the assumptions that lead to
23 highly overstated energy savings from the gas log
24 sets, points to a rush to judgment with the proposed
25 rule that will lead to irreparable harm to the gas

1 log industry, which is comprised almost completely
2 of small businesses. Consumers will be severely
3 impacted by a limiting of choice of the types of gas
4 logs and the tremendous increase in price. Frankly,
5 I couldn't have designed a better job- or company-
6 killer for small business than what this proposal
7 represents.

8 My lapel pin represents my membership in
9 Rotary International, another organization founded
10 in the early 1900's. Rotarians follow the four way
11 test of the things we think, say, and do.

12 1. Is it the truth?

13 2. Is it fair to all concerned?

14 3. Will it build good will and better friendships?

15 4. Is it beneficial to all concerned?

16 In my estimation, the proposed rule fails the four-
17 way test.

18 I respectfully recommend that you
19 immediately halt this rule and conduct a more
20 thorough research that is representative of the
21 actual gas log market. Thank you for the
22 opportunity to present to you. I welcome any
23 questions.

24 MR. BROOKMAN: Thank you. Jim.

25 MR. RANFONE: Yes, Jim Ranfone with the

1 American Gas Association. We certainly agree with
2 most of the comments today, and I'm not going to go
3 into any more detail in supporting a majority of the
4 comments that were submitted and discussed.

5 It's just amazing, when we looked at this
6 rulemaking how far it's gotten out of hand. We
7 never thought the Department would include products
8 designed and certified to Z21.50 or 60 were included
9 in this entire rulemaking from the get-go. When we
10 looked at the rule as it's been presented now, it's
11 kind of ironic that, you know, there's no test
12 procedure for the product, Z21.50 or 60 products,
13 that the test procedure isn't applicable; number
14 two, having been around a while, because I think
15 there's only a few of us in the room that had been
16 around when the test procedures were developed for
17 this product line, home heating equipment not
18 including furnaces, this product wasn't considered
19 as part of that developed test method.

20 When we get into the Federal Trade
21 Commission looking at labeling for the product, this
22 product wasn't considered during that labeling
23 discussion. It was certainly not, we believe,
24 included in the original intent of Congress that the
25 product be designed to furnish warm heat -- and I

1 think you've heard enough of that this morning. I'm
2 not going to repeat that.

3 But when we looked at the final proposal
4 here, which basically says you're not included as
5 long as you, you know, for Z21.50 or 60 products, as
6 long as you have a label that says "not for use as a
7 heating appliance." Well, it's not for use as a
8 heating appliance, and DOE is agreeing to that and
9 suggesting you put a label on the product, then how
10 does it become a product? And then to go on and say
11 well, it's -- you put that label on but then you
12 can't have standing pilots.

13 There needs to be some sense of reality
14 here and to what you're attempting to do in terms of
15 energy conservation, and how it's going to impact
16 the customers. And that's what we're concerned
17 about, specifically the replacement market and
18 what's going to be the availability of products if
19 this rule would ever see the light of day, which we
20 hope it doesn't. We hope it goes back to DOE,
21 review it. Maybe for some reason you don't like the
22 product, for whatever reason, and maybe you don't
23 like red cars for that matter, but that's not the
24 issue here.

25 We don't believe legally you can cut --

1 this product is covered under the legislation. Take
2 another look at the legislation and if you want to
3 modify legislation, you want to change it, you want
4 to include it, have at it, get the legislation
5 changed. But currently we don't believe it is a
6 covered product, and we stand on that.

7 I think the actions from HPBA and the
8 other organizations and the manufacturers involved
9 are -- this is a desperation issue for them at this
10 point in time as to whether or not the product as
11 they're known today, and which are going to be
12 designed for the future, is going to be -- continue
13 to exist.

14 We'll follow up with additional comments
15 on this, but, you know, in terms of -- I've got to
16 say this, you know, the way the country is today,
17 being over-regulated, I've never seen anything in my
18 time from the regulatory standpoint, that takes an
19 issue and has expanded to an area which is miniscule
20 when you think of it in terms of overall energy, and
21 is about ready to just implode an industry for no
22 reason. Thank you.

23 MR. BROOKMAN: Thank you. Other opening
24 remarks? I think we're due for a break. Let me
25 remind everybody here present that the Department

1 really appreciates your comments in writing.

2 Several of you, thank you, have already provided
3 your comments that you read into the record.

4 Let's take a break. It's now 11 o'clock.

5 We will resume at 11:15. Many of you are not
6 familiar with the way it works here in the Forestall
7 Building. You must wear this visitor's badge
8 visible in the hallways of the Forestall Building.
9 There are restrooms at both ends of the hall. Down
10 on the ground floor directly below us there's a
11 coffee shop. Please don't leave the building.
12 You'll have to reenter through security if you do,
13 and thanks for a good start on the day.

14 We will, when we resume, you can scan
15 ahead in your packet. These materials will be
16 covered with PowerPoint slides, and there's an
17 opportunity for question and answer and discussion
18 at that point. So we'll resume at 11:15. See you
19 back here then.

20 (Whereupon, the meeting was recessed for a
21 17 minute period.)

22 MR. BROOKMAN: As I said at the outset,
23 all of you received a packet of information. We are
24 going to proceed with the packet in the order that
25 these pages are stacked. We're going to commence

1 with regulatory history, which begins on slide nine,
2 and we're going to hear from John Cymbalsky.

3 **Regulatory History**

4 MR. CYMBALSKY: Okay. Thank you, Doug.
5 So back to the deck. Thank you again for all your
6 introductory remarks. I think it covered a wide
7 swath of what I'm going to present here in the deck
8 going forward. So to the extent that your comments
9 have already been made, they are already part of the
10 record. They don't need to be repeated but, again,
11 you're free to make comments as we go along. So
12 let's start with the regulatory history.

13 The Energy Policy and Conservation Act,
14 EPCA, of 1975, prior to being amended in 1987, EPCA
15 included home heating equipment as covered products.
16 And in 1987 the National Appliance and Energy
17 Conservation Act amended EPCA to replace the term
18 "home heating equipment" with "direct heating
19 equipment." It established standards for direct
20 heating equipment and required that DOE determine
21 whether these standards should be amended.

22 DOE amended the statutorily prescribed
23 standards for direct heating equipment for the first
24 time in a final rule published on April 16, 2010.
25 This final rule created a definition for vented

1 hearth heater. It established product classes for
2 gas hearth direct heating equipment, that is vented
3 hearth heaters, and amended the minimum standards
4 for direct heating equipment, including gas hearth
5 direct heating equipment.

6 EPCA itself does not define direct heating
7 equipment. DOE established definitions for direct
8 heating equipment, vented home heating equipment, or
9 vented heater, and finally vented hearth heater.

10 DOE interprets the term vented hearth
11 heater as included vented hearth -- vented heating
12 hearth products, decorative hearth products, and gas
13 log sets. DOE believes that because these products
14 provide heat to the living space, they meet the
15 definition of direct heating equipment.

16 So, Issue Box Number 1, given the lack of
17 statutory definition for direct heating equipment,
18 DOE requests comment on whether DOE's interpretation
19 that decorative vented hearth products and vented
20 gas log sets are types of direct heating equipment
21 is reasonable.

22 And I know a lot of this was covered
23 already in your opening statements, but comment box
24 1 if you'd like to make more comments.

25 MR. BROOKMAN: Frank Stanonik.

1 MR. STANONIK: Frank Stanonik with AHRI.

2 I think in relation to this issue and the whole
3 point that, okay, there isn't a statutory definition
4 in the legislation, but my -- well, I think DOE's
5 interpretation is not reasonable because you --
6 because it seems to ignore what actually was
7 implemented in National Appliance Energy
8 Conservation Act. And by that I mean that, okay, it
9 wasn't a definition, but in fact the only products
10 for which minimal efficiency standards were
11 established in 1987 were room heaters, floor
12 furnaces and wall furnaces.

13 And recognizing that back then, okay
14 perhaps we didn't call it consensus agreements, but
15 the efforts that resulted in NAECA was, in fact an
16 agreement among the interested parties including
17 industry to accept federal efficiency standards.
18 And so this was certainly discussed among
19 manufacturers and conservationists, other people,
20 and there's no question, as you've heard from the
21 testimony, decorative appliances existed back then.
22 They've been around for a long time, and in the
23 context of that discussion, if there had been an
24 intent, or if it had been determined that decorative
25 appliances, whatever shape or form, were part of

1 direct heating equipment, it becomes difficult to
2 conceive that federal minimal efficiency standards
3 would have been established that wouldn't have
4 identified those as distinct products subject to
5 some minimum requirement.

6 I'm going to tell you the people back then
7 knew what they were doing, and they identified room
8 heaters, floor furnaces, wall furnaces as subject to
9 minimum requirements. They didn't identify a
10 decorative gas fireplace. They didn't identify a
11 gas log set for installation in a wood-burning
12 fireplace as products for which there would be
13 minimum standards. They didn't identify vented
14 fireplace heaters, because in fact, that product
15 didn't exist at the time. But as we mentioned in
16 comments that we submitted back in 2010, that as
17 that product evolved, in fact, there was a standard
18 developed, a safety standard developed that clearly
19 identified, these are heaters, and these are subject
20 to NAECA.

21 And so I think that given the fact that
22 okay, there's no statutory definition, but the
23 practice, the implementation of the regulations
24 clearly are in the direction that products that were
25 decorative were not subject and were not intended to

1 have minimum efficiency requirements. And I think
2 that DOE has somehow missed that point.

3 MR. BROOKMAN: Okay. Jim Ranfone.

4 MR. RANFONE: Yes, Jim Ranfone, American
5 Gas Association. Let me just add on to Frank's
6 comments about this term direct heating equipment
7 versus vented home heating equipment, because I
8 think that's sort of one of the genesis of the issue
9 here in terms of what's covered.

10 The test procedure is for vented home
11 heating equipment, it's not for direct heating
12 equipment. And I believe, you know, you can either
13 believe me or not on this, but when NAECA was
14 developed back in 1986 or '87, the use of the
15 inclusion of direct heating equipment into the
16 legislation was almost at the tail end of
17 negotiations. Manufacturers at that time -- I was
18 with the Gas Appliance Manufacturers Association --
19 was considering furnaces and what the level should
20 be, but when it came to this product, direct heating
21 equipment, that name I believe, comes from the
22 product class division that was represented by GAMA
23 at the time --

24 MR. BROOKMAN: Jim, did you participate in
25 those negotiations?

1 MR. RANFONE: Yes. Yes, and the
2 decorative equipment was certainly not included. We
3 were talking about room heaters, wall furnaces and
4 floor furnaces, and I think there's no doubt that
5 those products were covered. The reason the
6 legislation was revised to add this category of
7 direct heating equipment was because the
8 manufacturers wanted preemption from state
9 regulations. That was the primary reason. They
10 agreed to levels, they agreed to the strong
11 preemptive positions in there, because at the time,
12 I believe California was looking at regulations on
13 this product class. Specifically floor furnaces,
14 because one of the big proponents for energy
15 efficiency had a floor furnace in his house and he
16 wanted that product covered. So the real concern
17 was preemption.

18 When we're talking about, you know, you're
19 talking about these products -- at that time there
20 was never any inclusion of any decorative appliances
21 in those discussions. The standards themselves,
22 Z21.50 and 60, at that time, did not include
23 efficiency requirements. There were none.

24 The other gas standards, including room
25 heaters, both classes of wall furnaces, gravity or

1 fan type, floor furnaces, did have efficiency
2 requirements. Believe it or not, the appliance
3 standards at that time had n.. efficiencies. They
4 had them on a thermal basis, on a steady-state
5 basis. DOE, when they did their test procedure,
6 when they, as required by law in the late 70's did
7 include a test procedure for those products.
8 Decorative were not considered.

9 I don't know if that adds a little bit of
10 insight as to why that term "direct heating
11 equipment" is in the law, but I think that's what
12 happened. I think in the transfer of okay, let's
13 put that product into the legislation, mainly
14 because we want federal preemption, number two,
15 these are our minimums for these product classes.
16 That sort of resolved the manufacturers issue at
17 that time.

18 Here we are in 2011, and suddenly we're
19 reinterpreting what happened. And like I said
20 before, if you're really interested in looking at
21 hearth products in terms of efficiency or whatever,
22 you really need to go back and take a look at the
23 product class and do your economics and technical
24 evaluation.

25 MR. BROOKMAN: Jack, you wish? Jack?

1 Okay. Thank you. Yes, Tim Ballo.

2 MR. BALLO: Tim Ballo with Earth Justice.

3 It seems to me that in considering whether DOE has
4 properly interpreted vented hearth products and gas
5 log sets are types of direct heating equipment, it
6 almost doesn't matter once you have a standard that
7 covers vented hearth heaters, and I think most in
8 the room would admit there are some subset of
9 products that are both designed and intended
10 primarily to serve a heating function. You need to
11 come up with some way to draw a line around those
12 products and to separate them from products that are
13 more ornamental and less heating products.

14 So it seems to me that what the Department
15 has done here is propose a way to draw that line and
16 I've heard a lot of objections to the way, the
17 particular methods. I'm not sure there's anything
18 that can't be resolved, whether it's by recognizing
19 a role for match light products or for different
20 ANSI standards for gas log sets, or through some of
21 the tweaks to the standard. But I mean the fact is
22 we have a standard for vented hearth heaters and
23 there has to be some way to identify products that
24 standard should apply to and products that it
25 shouldn't apply to.

1 MR. BROOKMAN: Jack.

2 MR. GOLDMAN: Jack Goldman, HPBA. I guess
3 one of the problems I have is that this proposed
4 regulation doesn't just distinguish. Because if an
5 appliance, a gas log set or a decorative fireplace
6 cannot meet the four conditions, then if my
7 interpretation is correct, then they're then subject
8 to the energy efficiency requirements. They are
9 then regulated -- if they're going to be sold, they
10 then must be regulated as per the April 2010 rule,
11 and so it is not a distinction, it is a choice
12 between either meeting the four exceptions, if they
13 can be met, or being regulated.

14 MR. BROOKMAN: Tim.

15 MR. BALLO: Well, my comment is then we
16 need to get the exceptions right. If these
17 exceptions don't work, what exceptions do work?
18 Because we need to get something in place to
19 distinguish between these two types of products.

20 MR. BROOKMAN: Excuse me.

21 MR. CYMBALSKY: So Doug earlier said that
22 he should silence all your --

23 MR. BROOKMAN: I had it in my briefcase,
24 sorry about that.

25 PARTICIPANT: It's comforting. We all get

1 a free pass.

2 MR. BROOKMAN: So I'll remind everybody
3 again, silence all cell phones. Other comments?
4 Yes, please. Barton.

5 MR. DAY: Yes, just responding to Tim's
6 comment. Tim, the issue, the difficulty here is
7 that it's one thing to distinguish between products
8 that are not direct heating equipment and products
9 that are direct heating equipment. And that's not a
10 discussion that the proposed rule is aimed at. The
11 proposed rule classifies everything as direct
12 heating equipment, and then you've got requirements
13 A, requirements B, but it's all direct heating
14 equipment. And it's not. I mean the argument that
15 decorative products are direct heating equipment is,
16 I will be polite and say, not well taken.

17 MR. BROOKMAN: Other comments. Yes,
18 please, Rett.

19 MR. RASMUSSEN: Rett Rasmussen. Just as
20 your phone went off and a mistake was made, I think
21 what's the biggest issue right here is in the face
22 of people who, you know, deal with gas log sets on a
23 daily basis for decades, in the face of our
24 experience, if DOE will admit they made a mistake
25 and are willing to actually take action to correct

1 those mistakes rather than get into a
2 confrontational type standpoint and everybody's just
3 staring off across the line at each other, you know,
4 we want to make sure everything's done properly too.
5 But not needlessly, not just for the sake of getting
6 something done. It's got to be done for the
7 American people. It's got to be done properly and
8 represent -- not just throw out things wholesale
9 that are a part of the market and working now, you
10 know, throw out the baby with the bath water type of
11 thing, here just to accomplish something.

12 We came here in the spirit of cooperation,
13 ostensibly because our industry is in peril with the
14 way this is written right now. If we don't comply
15 with the four exclusions, all four of them as
16 they're proposed right now, then we are put into
17 this regulated category for which we have no way of
18 complying, other than decrease our BTUs to 9000 BTUs
19 -- and again, I remind you of the seven pilot
20 lights, this long. Maybe a few more if you use my
21 definition of how much a pilot light consumes, you
22 might have 14 or 12 pilot lights worth of flame to
23 fit whatever size fireplace. So we are here in the
24 spirit of cooperation because we want to keep our
25 businesses intact. We don't want to go away. A

1 hundred and four years is not something to just walk
2 away from, for myself, so on that basis I do avail
3 myself to answer questions to help out in any other
4 way and hope that we cannot just get into this, what
5 are you going to give up type of thing. Because
6 that seems to be kind of where some of the
7 negotiations have been throughout the last period of
8 time and then we get this big rush within the last
9 month and a half, all of a sudden, gas logs are
10 included where they hadn't been. In fact, they're
11 explicitly excluded in all conversations in the
12 frequently asked questions. I feel kind of blind-
13 sided in all this. So would like to see cooperation
14 and then a willingness on the other side, as we seem
15 to be split up here geographically in this room on -
16 - with a dividing line. Let's cross that divide and
17 let's make this thing work right for the market.

18 MR. BROOKMAN: So there's more contact to
19 follow. Other questions, comments on this specific
20 issue before we move on. Yes, Jack.

21 MR. GOLDMAN: I would like to ask DOE what
22 is the basis for changing its opinion 180 degrees
23 from the statement written by Mohammed Khan in the
24 FAQ in April 2010?

25 MR. BROOKMAN: John Cymbalsky.

1 MR. CYMBALSKY: Well, I think you can read
2 in the preamble that we came to the conclusion that
3 gas log sets were part of this.

4 MR. BROOKMAN: Go ahead, Jack.

5 MR. GOLDMAN: Jack Goldman. Yes, I read
6 the preamble. The preamble is a conclusion. I'm
7 asking for the basis for the agency's decision, and
8 there is no available information that you've made
9 available as part of this comment period. So I have
10 to take that as a non-answer, okay.

11 MR. CYMBALSKY: Well, you can comment and
12 we will take that under consideration. Thank you.

13 MR. BROOKMAN: Jack.

14 MR. GOLDMAN: You're asking me to comment
15 on something that I haven't seen.

16 MR. CYMBALSKY: Thank you.

17 MR. BROOKMAN: Okay. So additional
18 questions and comments. Leslie. Please use the
19 microphone.

20 MR. BORTZ: Rett just told you that we
21 would be willing to discuss some sort of a way of
22 getting together, and you've just said nothing.
23 That's not right.

24 MR. BROOKMAN: Additional comments on this
25 series of issues before we move on? Okay, let's

1 move on.

2 **Proposed Amended Definition of Vented Hearth Heaters**

3 MR. CYMBALSKY: So we'll move on to the
4 proposed amended definition of vented hearth
5 heaters. On further consideration of the April 2010
6 final rule, DOE developed its current proposal which
7 it believes would result in significant additional
8 energy savings, preserve consumer choice, and reduce
9 the burden on industry.

10 DOE is proposing to amend the criteria for
11 a vented gas hearth product, or vented gas log set
12 to be considered decorative in nature, and thereby
13 eligible for exclusion from the DOE energy
14 conservations standards for vented hearth heaters.
15 In order to do this we have proposed the following
16 exclusion criteria.

- 17 1. Certified to ANSI Z21.50 and not Z21.88 for
18 vented gas hearth products only, for example,
19 gas fireplaces, gas fireplace inserts, and gas
20 stoves.
- 21 2. Certified to ANSI Z21.60 for vented gas logs
22 only
- 23 3. Sold without a thermostat and with a warranty
24 provision expressly voiding all manufacturer
25 warranties in the event the product is used

1 with a thermostat

2 4. Expressly and conspicuously identified on its

3 rating plate and in all manufacturer

4 advertising and product literature, as a

5 decorative product, not for use as a heating

6 appliance. And finally, with respect to

7 products manufactured after July 21, 2014, not

8 equipped with a standing pilot light or other

9 continuously burning ignition source.

10 This next slide just actually prints

11 what's in the Notice. I'm not going to read it, but

12 this is -- the summary slide before this covers all

13 this ground, but in more detail.

14 So we come to Issue Box Number 2. The

15 proposed compliance date, that is July 1, 2014, for

16 vented gas hearth products and vented gas log sets

17 to remove standing pilot lights or other

18 continuously burning ignition in order to qualify

19 for the exclusion. DOE seeks information regarding

20 what manufacturers will need to do to meet that

21 date, or whether a different date would be

22 preferable. If suggesting a different date, DOE is

23 interested in specific rationales and accompanying

24 data as to why a different timeline for eliminating

25 standing pilots or other continuously burning

1 ignition sources from decorative gas hearth products
2 and/or vented gas log sets may be warranted.

3 And we'll take comment on Issue Box Number
4 2.

5 MR. BROOKMAN: Jack.

6 MR. GOLDMAN: Jack Goldman. I thought the
7 burden of a proposal was for the agency to explain
8 why it has a deadline. What I've just heard is that
9 the agency has put out an arbitrary date, which it
10 has not explained in the Federal Register notice and
11 there's no record, and now it's basically saying to
12 the regulated community, if you don't like it, you
13 have to tell us why it has to be different. I
14 didn't think that was the burden in the rulemaking,
15 and I would like to know why the agency is taking
16 that tack.

17 MR. CYMBALSKY: So, again, we ask for your
18 comment on our date, and we will consider all
19 comments.

20 MR. BROOKMAN: Jack.

21 MR. GOLDMAN: Could you just say that
22 you're not answering my questions, please? I would
23 appreciate that.

24 MR. CYMBALSKY: We are accepting your
25 comments. Thank you.

1 MR. GOLDMAN: Thank you.

2 MR. BROOKMAN: Leslie. Please use the
3 microphone.

4 MR. BORTZ: Is it on?

5 MR. BROOKMAN: Yes.

6 MR. BORTZ: I have a question going back,
7 should I wait until later?

8 MR. BROOKMAN: How far back?

9 MR. BORTZ: The first --

10 MR. BROOKMAN: Comment box?

11 MR. BORTZ: Yes.

12 MR. BROOKMAN: Well, let's do it now.

13 MR. CYMBALSKY: Okay. I'll put that back
14 on the screen. There you go.

15 MR. BROOKMAN: Leslie.

16 MR. BORTZ: What you say is you're
17 proposing to amend the criteria for vented gas log
18 sets, which is what we make, to be considered
19 decorative in nature and thereby eligible for
20 exclusion. You have exclusion criteria which are
21 impossible to meet, and the criteria -- the other
22 criteria -- are also impossible to meet. Not -- not
23 maybe, it is impossible to put a 9000 BTU set into a
24 wood burning fireplace. It will not pass any
25 standard. You can not do it. What you have here is

1 one impossibility versus another. Thank you.

2 MR. BROOKMAN: Thank you.

3 MR. CYMBALSKY: Thank you.

4 MR. BROOKMAN: Rett.

5 MR. RASMUSSEN: Rett Rasmussen. We're
6 talking less than three years for component
7 manufacturers -- if we were going to go to all EIS
8 as an exclusion, to come up with things better than
9 what they have on the market now. I've been banging
10 on the component manufacturers, and just so you
11 know, we don't make everything, every piece that
12 goes into our products. We are dependent upon the
13 market of component manufacturers, those valve
14 manufacturers, pilot manufacturers, which many times
15 are different and other component manufacturers to
16 pull our sets together.

17 The electronic ignitions is probably the
18 least mature of all components that we use in our
19 products. Up until recently, the only thing we
20 could use for electronic ignition systems were
21 essentially furnace controls that we applied to the
22 fireplace. They're not specifically made to fit, as
23 I discussed in my comments, the sizing issues that
24 we have, as a retrofit gas log manufacturer who does
25 not have all of the voids that a gas fireplace

1 appliance manufacturer can build into their product
2 to hide these controls. So as a decorative product,
3 having to cram these things in, and as well have our
4 gas log set there, takes away the decorative
5 appearance of the log set.

6 So having less than -- probably for at
7 least ten years, every time a valve manufacturer
8 comes in, I give him what my holy grail of a system
9 is. I want electronic ignition system, one that
10 does not have a standing pilot, that is battery
11 operated, that has variable flame height remote
12 control so the person can sit in their easy chair
13 and with just pressing the button, raise and lower
14 the flame height. It's got to be small footprint,
15 but yet large BTU flow because we don't stop at 30
16 inch as our set size. We accommodate the larger
17 fireplaces that are in the marketplace and , you
18 know, those people who, unfortunately who can afford
19 to pay for that type of system, by virtue of the
20 fact that they're putting large fireplaces into
21 large homes, they don't have that available to them.
22 It's just kind of entering the marketplace now.

23 And again, as I said, this has been every
24 year, every time I speak with a component
25 manufacturer for at least the last decade, there

1 still isn't a great thing. Even one guy that showed
2 me something two trade shows ago, which would be
3 well over a year and a half ago, he still doesn't
4 have it ready to a point where he can give me a
5 price on it, on the complete system. He still has a
6 lot of things he hasn't worked out. And then even
7 when he gets me a price, you know, the manufacturing
8 time is going to be eight to 12 weeks. So, you
9 know, less than three years with knowing how, being
10 dependent upon people who aren't at this table, I
11 find as being highly dangerous to my business, it's
12 viability, to consumer choice, to everything.

13 If your intention is to kill gas log sets,
14 then just put it in the record, we want to kill gas
15 log sets, because doing it the way it is here, is an
16 end round, is not honest, is underhanded. And so
17 let's just put it out on the table. If your
18 intention is not to kill gas log sets, then please
19 work with us to find a viable solution.

20 MR. BROOKMAN: Thank you. Jack.

21 MR. GOLDMAN: I'll pass.

22 MR. BROOKMAN: Additional comments on the
23 proposed compliance date. Thanks for that
24 illustration. Frank.

25 MR. STANONIK: Perhaps not so much a

1 comment as a question. Certainly when the final
2 rule was published and leading up to that, there
3 were technical support documents that justified the
4 -- explained the decisions and all that stuff. And
5 in terms of the data that we provided in helping
6 that process, we did provided data on shipments and
7 information on floor furnaces, room heaters, wall
8 furnaces.

9 What seems to have happened here is we've
10 got into this discussion about both the vented
11 decorative appliances and the gas log sets, and a
12 suggestion in essence, to impose a standing pilot
13 ban which wasn't proposed in the final rule --
14 whatever effect the AFUE requirements had on pilots
15 is there, it's not a direct you can or cannot have
16 one, but effectively you can't, but it's not a
17 prescriptive requirement.

18 And I guess my question is, we're now
19 talking about a prescriptive requirement on a subset
20 of products that, to my knowledge of the TSDs,
21 wasn't really significantly considered. Is DOE
22 preparing, let's say, a supplementary TSD to get
23 into the thorough analysis of what this means to
24 this subset of the industry?

25 MR. CYMBALSKY: Well, I think what we

1 presented today was what manufacturers would have to
2 do to get the exclusion, and so the pilot light was
3 one of them.

4 MR. BROOKMAN: Frank.

5 MR. STANONIK: Okay, but in terms of what
6 I've heard, and in this case, what I don't know,
7 there hasn't really been an analysis -- okay, how
8 many players are in this industry? How many
9 products are sold on an annual basis? What's the
10 net energy savings that is anticipated to be saved?

11 MR. CYMBALSKY: That'll come in a later
12 slide.

13 MR. STANONIK: Okay.

14 MR. BROOKMAN: So, we'll get to those
15 slides in a little bit. You want to take up issue
16 three now?

17 MR. CYMBALSKY: Sure. So Issue Number 3,
18 the proposed requirements for exclusion from the
19 energy conservation standard as a decorative vented
20 hearth product or vented gas log set.

21 MR. BROOKMAN: Jack.

22 MR. GOLDMAN: Since there is no discussion
23 in the April 2010 rule and there is no discussion in
24 the proposal of July 22, 2011, and there's nothing
25 in the record, I would like to have, at this point,

1 a description of the bases for the criteria.

2 MR. CYMBALSKY: The four criteria
3 presented here today, and you can feel free to
4 comment on what the criteria are.

5 MR. BROOKMAN: Issue Number 3 is on Slide
6 16.

7 MR. CYMBALSKY: So Issue 3 relates to this
8 slide which is what the proposed exclusion criteria
9 are, so here we have listed the criteria and we are
10 seeking comment at this time.

11 MR. BROOKMAN: Okay. So that's on --
12 those criteria are shown on Slide 14, Jack.

13 MR. GOLDMAN: Jack Goldman. In response
14 to your comment, Mr. Cymbalsky, again, I was always
15 under the impression that the APA, the agency's own
16 regulations, and the EO all required the agency to
17 put forth its rationale for its decisions in order
18 for the regulated community and the public to
19 comment, and that has not been done.

20 MR. CYMBALSKY: Thank you for your
21 comment.

22 MR. BROOKMAN: So we're now still
23 considering Issue 3, that you can see in your
24 slides, at the bottom of Slide 16 in the packet, the
25 proposed requirements for exclusion from the energy

1 conservation standard as a decorative vented hearth
2 product or vented gas log sets. Barton.

3 MR. DAY: There's a fundamental disconnect
4 in the proposal which is the premise that one needs
5 an exclusion is based on the proposition that one is
6 otherwise subject to heating efficiency standards.
7 And DOE has never looked at applying heating
8 efficiency standards to decorative products. It
9 never considered the issue whether those standards
10 would be technologically feasible or economically
11 justified for vented gas fireplaces outside the
12 heater category.

13 And now you're proposing to sweep in gas
14 log sets and there never has been any discussion
15 about whether the heating efficiency standards would
16 be technologically feasible or economically
17 justified for gas log sets, and yet those standards
18 would apply. How is that possible? I mean, I don't
19 understand the logic here.

20 MR. BROOKMAN: Thank you. Additional
21 comments. Rett.

22 MR. RASMUSSEN: Rett Rasmussen. With
23 regard to rationale behind Z21.60 as the choice for
24 vented gas log sets, I'm curious as to how the DOE,
25 in their, I will assume, best attempt at research of

1 the gas log market, missed at least 50 percent of
2 the gas logs sold that are match lighted. Anybody
3 like to address that? To me, it brings into
4 question all the other supporting rationale, which
5 as Mr. Goldman has mentioned, we have not been
6 afforded, other than a few websites, that as we've,
7 you know, I've seen only one is actually a
8 manufacturer, and that was just on the issue of the
9 pilot light consumption. I'm just curious as to
10 just how that all came about to support these
11 provisions which have very far-reaching consequences
12 to this industry.

13 MR. CYMBALSKY: So we heard that and we
14 listen to that and we appreciate that comment in
15 your opening remarks, so we thank you for that.

16 MR. BROOKMAN: Joanna.

17 MS. MAUER: Joanna Mauer. Just generally
18 on the exclusion criteria, I think what's kind of
19 important overall is to try to prevent loopholes
20 where non-decorative products could qualify for the
21 exclusion. That seems to be what DOE's intending to
22 do here.

23 MR. BROOKMAN: Okay. Thank you. Leslie.

24 MR. BORTZ: I'm sorry, what non-decorative
25 products are you talking about with respect to

1 vented gas logs?

2 MS. MAUER: Or I should say products that
3 are not primarily or not solely intended for use as
4 decorative products that are -- would be actual
5 heating products.

6 MR. BORTZ: I'm sorry, there are no gas
7 logs like that. By definition.

8 MS. MAUER: Well, I guess I'm talking
9 maybe more generally, about also the vented gas
10 fireplaces.

11 MR. BORTZ: I don't make vented gas
12 fireplaces, and you may be right. I make vented gas
13 logs and there are none.

14 MR. BROOKMAN: It's a definitional issue.
15 Rett, go ahead.

16 MR. RASMUSSEN: Yes, Rett Rasmussen.
17 Yeah, we have to watch the generalities because
18 specifically these items affect vented gas log sets,
19 and then also the Z21.60 has nothing to do with
20 energy conservation, has nothing to do with energy
21 consumption other than it's limits that it has
22 within the standard itself. But it has -- because
23 as we discussed earlier, by definition, they're not
24 used in an enclosure that is a part of the gas logs.
25 You cannot determine -- well, actually, you can

1 determine -- they're essentially 100 percent
2 efficient in and of themselves. It's when they're
3 placed into the enclosure into which they're
4 intended to be used that it takes on the efficiency
5 of that particular appliance.

6 Fireplaces were originally designed as
7 cooking appliances. They were not really used to
8 provide heat. Their shape and function is such that
9 because you have to exhaust out the product of
10 combustion, it does take out most of the heat up the
11 chimney. Otherwise, you get those products of
12 combustion -- your soot and your carbon monoxide and
13 dioxide and water vapor -- into the living area,
14 which is then harmful to the occupants of it. So I
15 don't understand why Z21.60 is part of this
16 exclusionary thing because with regard to the whole
17 overall function of this proposed rule and the whole
18 rulemaking, it has nothing to do with energy
19 conservation.

20 MR. BROOKMAN: Okay. Thank you. Yes, Tim
21 Ballo.

22 MR. BALLO: Tim Ballo. I'm not trying to
23 be incendiary, which is a terrible word to use, but
24 on the issue of whether these are heating products,
25 gas log sets specifically, whether gas logs are

1 heating products or ornamental products, the
2 Rasmussen comments discussed the use of thermostats
3 with these products, and how with a thermostat the
4 consumer sets a comfortable temperature setting at
5 which the gas log set cuts off the flame. So I
6 mean, if you have to equip it with a thermostat
7 because otherwise it will make the room too hot,
8 isn't that a heating appliance?

9 MR. RASMUSSEN: Rett Rasmussen. It's not
10 its primary function. And as I did state in my
11 statement, that thermostats are a very small
12 proportion of use with gas log sets. It's just that
13 it's a consumer choice. Some people want to have
14 that ability. Some -- and again it goes back to the
15 efficiency of the fireplace in which it's being
16 used. Some fireplaces are much more efficient than
17 others. Some homes are much more tightly
18 constructed than others. A newer home, built to
19 more recent building standards, are going to have
20 much less air exchange with the outside.
21 Unfortunately, those types of standards that have
22 been put into place are creating the sick building
23 syndrome and other types of problems. You know,
24 over-regulation hasn't helped a lot of people. It's
25 causing a lot of health issues because they're not

1 getting the fresh air that they need in the room to
2 be healthy. So, yes, thermostats are more equated
3 with heaters, but it is a function that the valve
4 system, some of them, not all, some of the valve
5 systems, the milli volt control ones, have as a
6 retrofit to them. They can either push a button or
7 they can put it on the wall, but it's a control
8 device for turning it on and off, and as I said,
9 some people, more because they're elderly, aren't
10 going to want to reach down or be able to reach down
11 to the floor level or where the fireplaces is
12 located to be able to turn it off. So they may have
13 that extra little thermostat on the wall to
14 accomplish that.

15 MR. BALLO: I can appreciate the heating
16 functionality is not the primary purpose, but it
17 seems to me that at some point it becomes such a
18 significant secondary purpose that it takes it out
19 of the realm of other products that also generate
20 heat. I'm not aware of anyone putting a thermostat
21 on their refrigerator because the thing makes too
22 much heat when it's operating. I think there is
23 sort of a categorical difference with the extent to
24 which that secondary function is very significant
25 for some of these products.

1 MR. RASMUSSEN: Rett Rasmussen. Yeah, but
2 cars have speedometers that go above 100 miles per
3 hour, but we don't mandate governors to keep it
4 below 65. You know, there's a certain amount of
5 free choice out there as to how things are going to
6 be used. These products, of their nature, as we've
7 discussed, are not heaters, but you do get a
8 residual heat benefit, which in most people's world,
9 is an extra benefit. It's a good thing that they
10 actually derive a little bit of heat benefit out of
11 it. We don't sell it as primary heaters, by any
12 means, at best, just because of the nature of the
13 enclosures that they're used in, they're at best a
14 supplemental heater, definitely an emergency heat.

15 With the hurricane here, it wasn't hot
16 enough, but the ice storms that happen, I can't
17 believe the amount of calls we get from people
18 saying thank god I had my gas log set. I'd have
19 been cold and my family would have been in great
20 discomfort if I didn't have that ability, because I
21 didn't have electricity to run the fans on my
22 heater, I didn't have electricity to run my heat
23 pump. I had some means of instant on, instant off
24 controllable heat, as opposed to -- you know, to get
25 the heat, they're not going to be at the other end

1 of the house to get it, they're going to huddle up
2 right in front of it where they can derive the
3 benefit of the luminous flame, the logs actually
4 heating up and radiating some flame. But that's not
5 what they're there for. They're not a primary
6 heater.

7 MR. BROOKMAN: Okay. Leslie.

8 MR. BORTZ: Rett and I are partners in the
9 South Coast Air Quality Management Districts. We
10 happen to differ on this issue. I think that may be
11 why you should maybe talk to the people in the
12 industry. We don't sell thermostats, Rett does.
13 Okay. We do certain things in a certain way. I'm
14 not -- I can't speak for him even though he's my
15 partner. He speaks for him, I speak for me. We
16 don't have a problem with that. We agree. So I
17 think that there's -- and I do believe that if you
18 had the 20 people, 15, 20, 25 people that make gas
19 log sets, you would get, sometimes, ten or 15
20 different opinions on topics. I think that's
21 normal.

22 MR. BROOKMAN: Okay. So final comment
23 right before we move on. Yes.

24 MR. RASMUSSEN: Rett Rasmussen. Believe
25 me, thermostats, on the scheme of things, I couldn't

1 care less about them. I mean they're a very small
2 portion, most of them are sold with vent-free gas
3 log sets. In fact ANSI Z21.60 prohibits the use of
4 a thermostatically controlled device, so Z21.60
5 covers that just in and of itself if you do that.
6 If you decide to go outside of Z21.60, which I
7 recommend, to incorporate more of the market for gas
8 logs, sure. If you want to get rid of thermostats,
9 I don't have a big problem with it. I just, as a --
10 again, I look at standards with regard to stifling
11 innovation and hurting the market. It is an option
12 which some customers -- I respond to the market as
13 most manufacturers, most companies do. We have
14 people that ask, can I use it? Many things we say
15 no, you can't, just as I spoke about the e-mail from
16 the customer, the lady who had the vented gas
17 fireplace appliance and wanted to put our product
18 into it. I'm sorry, it's not safe. You can't do
19 that. Thermostats are -- it's not a huge issue. I
20 just bring it up.

21 MR. BROOKMAN: Okay. So we're going to
22 move on now. Move on to the next topic, which is
23 moving on to Analysis of National Energy Savings.
24 John Cymbalsky.

25 **Analysis of National Energy Savings**

1 MR. CYMBALSKY: Okay. Thanks Doug. So
2 this gets to Frank's question earlier, what about
3 the national energy savings. Now we've heard a lot
4 about -- from the opening remarks about how our
5 assumptions here and the data that we have might be
6 different than what you have, and so we would like
7 you to submit your data in writing, in spreadsheets,
8 however you have it. The more data the better. We
9 love data. We love numbers.

10 I'm not going to go through all of these
11 numbers here. I would just like to point out that
12 these are the numbers we used for the analysis. If
13 you take issue with them, please provide data,
14 source the data, the more the better. We like data.
15 So obviously there could be numbers that are
16 different than this, and we would like to see them.

17 So this is what we came up with. I would
18 just like to point out a few numbers here on this
19 page that I know, I heard in the room about the
20 housing industry and how that drives a lot of the
21 market. Just to let you know, in our shipments
22 analysis, the housing starts are a big part of how
23 we derive the shipments. So we are -- we agree with
24 you on that, that the housing starts will drive to a
25 large extent, the shipments.

1 Again, you can go through and you can pick
2 at every one of these numbers if you'd like. I
3 prefer not to get into every number here. But if
4 you would please provide us comments on all the data
5 that you see here on this page, that would be great.
6 And going down to the bottom, essentially the bottom
7 line here is that we think we have about 120
8 trillion BTUs of extra energy savings over the 2010
9 rule, final rule.

10 MR. BROOKMAN: Jack.

11 MR. GOLDMAN: Jack Goldman. Again, I need
12 to point out that the industry does not have the
13 benefit of the analysis done, other than what's in
14 the preamble, and it puts the industry at an extreme
15 disadvantage to basically comment on something which
16 involve a lot of assumptions and calculations
17 without being able to see them, and I think that's
18 wrong.

19 MR. CYMBALSKY: Thank you.

20 MR. BROOKMAN: Thank you. Frank Stanonik.

21 MR. STANONIK: John, there is one thing
22 here that's not let's say intuitively obvious. When
23 you're talking about the average unit energy
24 consumption, I'm assuming that's the consumption of
25 both the burner and the pilot? Not just the pilot.

1 Do you, off the top of your head, know what you
2 assumed was the average input of the pilot?

3 MR. CYMBALSKY: It's not in the formula.

4 MR. STANONIK: I can work it backwards, I
5 was just curious.

6 MR. CYMBALSKY: Right. I don't have that
7 number off the top of my head.

8 MR. STANONIK: Okay.

9 MR. BROOKMAN: James.

10 MR. RANFONE: Jim Ranfone from AGA. Is
11 there an economic analysis payback periods for the
12 requirement for 50s and 60s to go with electronic
13 ignition? Is there anything done on that?

14 MR. CYMBALSKY: So there'll be a slide on
15 some economics in the back here.

16 MR. RANFONE: Okay.

17 MR. BROOKMAN: Okay. Leslie.

18 MR. BORTZ: Leslie Bortz. I don't mean to
19 be disrespectful, but I did travel here from
20 California, and did spend several weeks trying to
21 put together some of the information. I would like
22 to discuss just one of these, for hopefully not more
23 than four minutes because I think it has something
24 to do with the quality of the research that you have
25 performed. I have this because I have one eye that

1 doesn't see, so I have to look at bigger letters in
2 order to see the words, I'm sorry. I have this
3 document which is the same as what is in the CFR. I
4 don't know who prepared this document. I just am
5 saying that because on page 25 --

6 MR. BROOKMAN: Leslie, can you identify
7 the document, please?

8 MR. BORTZ: I'm sorry.

9 MR. BROOKMAN: Yeah, please do that.

10 MR. BORTZ: This document says "US CA case
11 Number 10-1113 Document Number 1319806 filed
12 7/15/2011, page 1 of 56, Exhibit 1, Notice of
13 Proposed Rulemaking.

14 MR. BROOKMAN: Thank you for doing that.
15 Okay. Proceed.

16 MR. BORTZ: Okay. If you have that
17 document, if you don't somebody will find it in the
18 CFR, on Page 25 of that document, you state,
19 "Continuous pilot energy use is 1250 BTUs per hour
20 for vented gas logs." You then go to Footnote
21 Number 9. Footnote Number 9 says, "This value was
22 derived from data collected on the following
23 manufacturer websites." Might take me a minute,
24 again, I apologize.

25 PARTICIPANT: It's 43946 for people who

1 are now searching for that.

2 MR. BROOKMAN: 43946.

3 MR. CYMBALSKY: Yes, in the Federal
4 Register notice, so Footnote Number 9 at the bottom
5 right.

6 MR. BORTZ: Right. Number 1, Pittsburgh
7 Gas Grill and Heater Company. They're not a
8 manufacturer. They are a distributor or a dealer.
9 If you go to gas logs, vented gas logs on their site
10 and you spend more than the first minute looking at
11 FAQs, their site brings you to our site. If you're
12 talking about FAQs, I talked to the owner of their
13 site and he sent me the following e-mail. "This e-
14 mail is to confirm that on our website, on our
15 Frequently Asked Questions page, question number 1
16 refers to ventless gas logs. We will correct this
17 error as soon as possible. Please do not hesitate
18 to contact me if you have any questions." Number
19 one.

20 Number 2. Hargrove. They are a
21 manufacturer of gas logs. "To whom it may concern.
22 It has come to my attention that some of the
23 statistics that the Department of Energy is using in
24 making new regulations regarding gas log sets are
25 way off or misused." He then gives various bits of

1 information. I'd be happy to share it with you. He
2 says, pilots that have thermocouples, which are 90
3 percent of what vented gas logs have, use 600 BTUs,
4 not 1250.

5 MR. BROOKMAN: And just say who's that --
6 who's that from?

7 MR. BORTZ: Hargrove, the number two
8 person.

9 MR. BROOKMAN: Gotcha. Okay.

10 MR. BORTZ: Number three. And when I'm
11 done with Number 3, Number 4 and Number 5 will be
12 quick. Leonard's Stone and Fireplace. They are not
13 a manufacturer of gas logs. They are a dealer or a
14 distributor. When you go to their Frequently Asked
15 Questions, I will read their answer. It says "How
16 much gas logs does the pilot light use? A pilot
17 light will burn 800 to 1500 BTUs per hour. Your
18 monthly gas bill should include your exact cost per
19 therm, 100,000 BTUs. Based on this rate, you can
20 calculate the cost for your area to operate a pilot
21 light." They're in Fort Worth, Texas.

22 Number 4, Fireside Hearth and Home,
23 they're also not a manufacturer of gas logs. Go to
24 their Frequently Asked Questions, read the answer to
25 their question, and it's the exact same words,

1 letter for letter. All of these Frequently Asked
2 Questions are the exact same questions, word for
3 word.

4 To the last one, Heatilator. Heatilator
5 is a major manufacturer, probably the biggest,
6 probably by far the biggest. Read their answer.
7 It's the exact same words. There's not a single
8 letter that's different. All of the Frequently
9 Asked Questions are the same. That's not a way to
10 investigate pilot usage. That is a poor job. I'm
11 sorry, I don't mean to sound as confrontational as I
12 am, but I come here from California, and you have
13 not done -- I'm an American. I'm 67 years old. You
14 can't do this to me. You can't do this to us. Your
15 research is just horrible. It's not in keeping with
16 what I would think the federal government should be
17 doing. It's wrong. Basically just totally wrong,
18 and it doesn't take into consideration that anybody
19 did more than two minutes of just putting something
20 together.

21 MR. BROOKMAN: Thank you. Jack.

22 MR. GOLDMAN: Jack Goldman. Just to
23 further amplify that, the last company that was in
24 the survey of websites makes no gas log sets, and
25 yet it's cited for BTU content of gas log sets. I

1 would like to know how that happened.

2 MR. BROOKMAN: Okay. So there's a lot of
3 data here on Slide 18. Any additional comments on
4 Slide 18 before we move on. Frank.

5 MR. STANONIK: With some assistance here,
6 just to correct and not have John do stuff he
7 doesn't need to do. I really asked the wrong
8 question. It turns out that those average
9 consumptions are actually the pilot energy
10 consumption, and so I don't really need to know the
11 average input of the burners. I got help too, but I
12 checked it myself, and that's just pilot energy.

13 MR. CYMBALSKY: Okay. So it -- it flows
14 from top to bottom, Frank.

15 MR. STANONIK: Yes.

16 MR. BROOKMAN: Okay. Thank you.

17 MR. CYMBALSKY: Okay, so one last plea to
18 submit data on all this. Thank you.

19 MR. BROOKMAN: Okay. Let's move on.

20 MR. CYMBALSKY: Move on to Small Business
21 Impacts.

22 **Small Business Impacts**

23 MR. CYMBALSKY: Residential direct heating
24 equipment, including hearth product manufacturing is
25 classified under the NAICS Code 333414, Heating

1 Equipment, except warm air furnaces manufacturing.
2 The size threshold for a small business is 500
3 employees or fewer. In our work we identified ten
4 vented gas hearth direct heating equipment small
5 business manufacturers in the April 2010 final rule.

6 DOE also identified seven manufacturers of
7 vented gas log sets, three of which also manufacture
8 vented gas hearth products.

9 In our work we estimated manufacturer
10 compliance cost of the amended definition, based on
11 analysis done in April 2010 final rule. We assume
12 that the primary cost of compliance to this would be
13 to recertify products to the applicable ANSI
14 standards if they are modified to meet the
15 exclusion. DOE estimated these costs will be
16 approximately \$693,000.

17 I know we've heard in the opening remarks
18 -- we heard from you that these numbers may be
19 different than what you expect, so we'll take
20 comment on this slide.

21 MR. BROOKMAN: Jack.

22 MR. GOLDMAN: Well, this is going to be
23 repetitious. Jack Goldman. I would like to know
24 the basis for these calculations and assumptions,
25 and particularly the assumptions. Assumptions are

1 assertions unless there's some thinking behind them.
2 And we have not been -- it has not been shared with
3 us what the basis for the assumptions that were
4 made. And given that gas log sets were not even
5 considered, supposedly, in the April 2010 rule, I
6 don't know how you can base information from that
7 rule on this new proposal. Thank you.

8 MR. CYMBALSKY: I again, ask you to
9 provide any data that would get to this issue,
10 please.

11 MR. BROOKMAN: Frank.

12 MR. STANONIK: Frank Stanonik. The ten
13 vented gas hearth direct heating equipment
14 manufacturers that you have identified, do you know
15 does that include both companies that manufacture
16 both fireplace heaters and decorative fireplaces?

17 MR. CYMBALSKY: It's a mix, so yes.

18 MR. STANONIK: Are they -- are they
19 distinctly identified in any way?

20 MR. CYMBALSKY: I don't think we listed
21 them out in the rule.

22 MR. STANONIK: Okay.

23 MR. BROOKMAN: Leslie.

24 MR. BORTZ: Leslie Bortz. You say here
25 that you've identified four. My concern is your

1 identification process. Had you gone to the HPBA
2 membership directory, which couldn't have been that
3 hard since you were talking to HPBA this whole time,
4 you would have found 20 to 30 to 35 names there.
5 Had you gone to Hearth and Home magazine, which is
6 the industry's trade magazine, you would have found
7 30 or 40 names there. Had you gone to Washington
8 Gas, which puts out a huge booklet every year about
9 natural gas, I think most of you live in WSSC or
10 Washington Gas area, you would have seen this. Had
11 you Googled "gas logs," you would have gotten eight
12 million-plus responses, or eight million answers.
13 How can you say you're doing research?

14 Again, I don't mean to be -- I am -- I
15 just can't believe -- I am, and maybe I do mean to
16 be. I don't believe that this is research. You're
17 my Department of Energy. That's not fair.

18 MR. BROOKMAN: Rett.

19 MR. RASMUSSEN: Rett Rasmussen. Yeah,
20 we've pretty well established and I'm sure HPBA will
21 back up that the majority, not the majority,
22 probably about all except for maybe one manufacturer
23 that also makes the gas fireplace appliances, is a -
24 - we're all that manufacture gas log sets small
25 businesses. Our companies, 40, 45 people. The

1 economy was huffing on better cylinders, things were
2 doing a lot better, we had, you know, maybe 75, and
3 that's also for making our gas grill products. So
4 we're not just solely gas logs.

5 It will have a tremendous impact on small
6 business, there's just no doubt about it. It is a
7 tremendous -- and it is not just our manufacturing
8 businesses. You know, we touch a lot of lives, a
9 lot of other businesses in our day-to-day. You
10 know, the people we buy the cement from, the
11 aggregate, the steel, the boxes, the cartooning
12 materials, the families of our employees that we
13 support through our wages, the insurance agent, the
14 insurance companies that get our premiums. Health
15 insurance. All on down the line, it's a lot of
16 lives that we touch, so it's not just Leslie and I
17 that are here and our other manufacturers that chose
18 not to be here today, it's very far-reaching, and I
19 just ask that as representatives of our government
20 that you take that into account as you are imposing
21 rules on the governed.

22 MR. BROOKMAN: Thank you. Additional
23 comments on Slide 20, small business impacts. Any
24 additional comments? James.

25 MR. RANFONE: Just a quick question. Jim

1 Ranfone from American Gas Association. What is the
2 penalty, the DOE penalty, or the federal penalty for
3 non-compliance, whether it's on the standing pilot -
4 - let's assume that went into place, or the
5 efficiency level wasn't met? I thought I remembered
6 it was \$100 a day for every model or every piece
7 produced. Is that correct or not? What is the
8 penalty for small businesses?

9 (Comment off mic)

10 MR. RANFONE: I think when you're looking
11 at impact to small business, that's an important
12 issue, whether or not companies want to stay in
13 business, based on the fact that these penalties may
14 be imposed on, whether it's the gas log requirement
15 or the minimum efficiency requirement.

16 MR. BROOKMAN: Dan Cohen.

17 MR. COHEN: Dan Cohen, DOE General
18 Counsel. Just to be clear on that, there's a
19 requirement that the penalty amounts be amended
20 periodically for inflation, so I just don't remember
21 the exact --

22 MR. RANFONE: It's probably more then.

23 MR. COHEN: -- last time -- yeah.

24 (Comment off mic)

25 MR. BROOKMAN: So, for the record, repeat

1 that again, John.

2 MR. CYMBALSKY: So, Ashley Armstrong in
3 the back who works on certification, compliance and
4 enforcement stated that there is guidance on our
5 website that will tell you how much the fine
6 schedule is.

7 MR. BROOKMAN: Okay. So I thought I saw
8 some other folks on this side of the room that had
9 comments. No? All set?

10 MR. CYMBALSKY: Actually, I think that the
11 last remark from Rett was actually a very good segue
12 into closing remarks, because it sounded a lot to me
13 like a closing remark.

14 **Submitting Written Comments**

15 MR. CYMBALSKY: The last two slides just
16 pretty much give you the instructions on submitting
17 written comments. Again, we appreciate all comments
18 in written form. We appreciate as much data that's
19 not proprietary that you can provide us, so that we
20 can look at our analysis.

21 Again, here's all the information, comment
22 period closes September 20, 2011, so that's about
23 three weeks away.

24 And then here's some important web links
25 for our program, and in particular, this rulemaking.

1 And in closing, for me I just want to
2 thank everybody for traveling here, long distance
3 especially. Thank you for your views on this and we
4 -- in advance, I appreciate any written comments and
5 data that you will provide us to support this
6 rulemaking. Thank you.

7 MR. BROOKMAN: Tim Ballo.

8 MR. BALLO: It's not so much a closing
9 remark, actually, I just had a question, if any of
10 the manufacturers feel comfortable answering. I
11 think maybe one or two of you in your opening
12 remarks discussed the cost of moving to electronic
13 ignition in these products and suggested it would be
14 in the order of \$600 per product, and I'm just
15 wondering, if that's true, why would anyone want
16 that in their -- why do you sell any at all if
17 they're so much more expensive, and the amenity to
18 me doesn't seem worth it.

19 MR. RASMUSSEN: Rett Rasmussen. I'll
20 start. You're right. Proposed the way that this
21 rule is, where it would require it on all retrofit
22 gas log sets, you're right, people wouldn't want
23 that. Where people are using it mostly are in
24 extensive remodels or new construction fireplaces,
25 where they're creating a vault adjacent to, but

1 outside of the firebox, where they can locate all of
2 these components, and then they're integrating it in
3 to these whole house automation, smart home systems,
4 where they can, with one remote, they can turn on
5 the lights, lift the blinds, turn on the gas log set
6 from their one remote. But that's just such a small
7 proportion of the gas log sales that are out there,
8 and I think I said that it was 3.6 at best. My
9 sense it's well less than five percent of all of the
10 gas log sets that are sold out there.

11 MR. BROOKMAN: Leslie, go ahead.

12 MR. BORTZ: We've been gathering
13 statistics, and I've been traveling, and my attorney
14 has asked for various statistics and have been
15 trying to get them, and as you know, they're not as
16 easy to get when you ask a specific question. We
17 don't keep records, necessarily, the way your
18 questions are, any of you. But that's fine, we'd be
19 happy to do it.

20 My guess -- that's preamble to my guess is
21 that half of the IPIs that we sell are for LP.
22 Fifteen percent, maybe a little less than 15 percent
23 of the logs that we sell are for LP. LP people are
24 much more conscious because LP is more expensive, so
25 we broke out in our testimony, natural gas from LP,

1 and said that maybe some number, I don't remember,
2 less than half of the people on natural gas turn
3 their pilots off seasonally, but almost all of the
4 people on LP do. I think LP, for a similar amount
5 of energy, may be two and a half to three times as
6 expensive. I don't know. But people who use LP are
7 very conscious of the costs involved. They have --
8 they're smaller. They buy these products, but
9 they're conscious of the cost involved, so you can
10 see that when the cost gets to be an issue, it does
11 become at least for some people, worthwhile to do.
12 It's not an issue on the 85 percent -- and I think
13 we're a little bit high on LP because Florida is a
14 lot LP and we happen to be a good distribution in
15 Florida, and he doesn't yet.

16 MR. BROOKMAN: Okay, Rett, you're next,
17 and before you go, we're going to move towards
18 closing remarks. I'm going to distribute -- the
19 Department puts together a copy of the business
20 cards of all the attendees here, so we'll distribute
21 these now. Rett, please.

22 MR. RASMUSSEN: Rett Rasmussen. Well, in
23 follow up to Leslie, I hope not to be restricted
24 from going after his piece of the market in Florida
25 and in other places, but one more amplification to

1 your question, Tim.

2 Some people fear gas. They're just
3 inherently afraid of gas, either from a lifetime
4 experience, or frankly, from gas companies. Gas
5 companies do a very good job of instilling fear of
6 gas into their customers. Oh, don't light that
7 pilot yourself, call us, we'll come out and light
8 the pilot. So they'll say, okay, I'd like a pilot-
9 less ignition system, so you present that to them.
10 Then they see the cost, and they go, well maybe I'm
11 not that afraid of it. Go with the standing pilot
12 system or something else. Or match-lighted if it's
13 natural gas.

14 Propane, they have no choice. They have
15 to have a standing pilot system, or an electronic
16 ignition system. Economics comes to play a big part
17 in it, that's why it's such a small part of our
18 sales. It is very expensive, that and then the size
19 issue. It takes away from the decorative effect of
20 our decorative appliances.

21 MR. BROOKMAN: Leslie, it looks like
22 you've got something else there.

23 MR. BORTZ: I just wanted to --

24 MR. BROOKMAN: Yes, please do.

25 MR. BORTZ: -- do one last thing. This is

1 something that I made up and we've been sending this
2 out to all over the United States for -- we haven't
3 updated it for 2011 yet. It talks about why you
4 should use natural gas in your wood burning
5 fireplace. And I think what you have to do first is
6 realize what the alternatives are, before you can
7 say whether a product is efficient or not, you have
8 to realize what are the alternatives.

9 But I talk about all fossil fuels are not
10 created equal. And I talk about cleanliness and
11 plentiful and more economical and comes from North
12 America, and save a tree. This was done in 2009 and
13 2010, 2008 and 2007, and I don't see anything on
14 there about heat. The word heat or warmth isn't on
15 there. We don't sell it that way. You can take a
16 look. Some people, obviously, business you know,
17 people advertise they do things, but we're sitting
18 here trying to sell the cleanest, most abundant
19 fuel.

20 MR. BROOKMAN: Okay. Jim.

21 MR. RANFONE: Oh, no.

22 MR. BROOKMAN: No? So, Rett.

23 MR. RASMUSSEN: Just one more thing. Rett
24 Rasmussen. Going back to our discussion about
25 thermostats. People see flame, the consumer, and

1 they're naturally going to ask, well, how much heat
2 does it put out? I don't care what labels you put
3 on it, this and that, people see flame -- it goes
4 back to something hard wired into human beings, you
5 know, from the first day that Og, the caveman, saw
6 fire that sustained itself after lightning strike
7 and then was able to figure out, hey, it takes the
8 chill away. And an open fire, in a camp fire
9 situation is not very efficient as a heater, but it
10 provides warmth and comfort to that person.

11 That's what our products do as a byproduct
12 of the decorative effect. When people ask me, why
13 would I want a gas log set, the first thing I talk
14 about is how good it makes that otherwise black hole
15 in the wall appear for the 95 percent of the time or
16 more that it's not in use. So it's all part of
17 decorating a home. People -- you know, a fireplace
18 is normally the focal point of the room in which
19 it's in. People spend all kinds of money on
20 furniture, draperies, wall coverings, art work,
21 everything else that sits on the coffee table, and a
22 lot of times they've put nothing into the fireplace,
23 which is the focal point. A gas log set is a very
24 inexpensive way of furnishing that fireplace. And
25 then you can get into screens and tool sets and

1 fenders and andirons and things like that, but
2 that's up for the dealer to work at. But that's --
3 that's really kind of tying in a little bit more on
4 the benefits of gas logs.

5 MR. BROOKMAN: Okay, then let's move to
6 closing remarks. I would say, in my experience,
7 running a lot of these meetings for many years,
8 we've never had as complete a set of opening remarks
9 as we did this morning, so all that information that
10 was laid out and read into the record, it's going to
11 be there in the complete transcript of this meeting.
12 I don't think we need to repeat all of that, but
13 perhaps there are additional closing comments now as
14 we move towards closure of this meeting.

15 **Closing Remarks**

16 MR. BROOKMAN: Yes, Leslie.

17 MR. BORTZ: You're going to get almost
18 everything in this book, not the copy of the CFR.
19 Jack Goldman asked you, and I ask you, what is your
20 research based on, and I know you're not going to
21 answer. I'm going to stop.

22 MR. BROOKMAN: For the record, let me just
23 say that you've got a folio there, a ring binder
24 with about two or three inches of materials in it,
25 so thanks for offering that up for the Department of

1 Energy. Let me see, Robert.

2 MR. ELLIOTT: Bob Elliott, with National
3 Propane Gas Association. When I look at this Notice
4 of Proposed Rulemaking and the conduct of the public
5 meeting, and you read through it -- and I'm not
6 familiar with this section of the energy policy
7 conservation act, but I used to know Robert's Rules
8 of Order pretty well and that sort of thing -- but
9 when you read through this, it keeps using the word
10 discussion, and to me it just seems like the burden
11 of proof is on us, and yet you have a very robust
12 representation of the industry, and question after
13 question, with the exception of Mr. Cohen, you know,
14 there's been no response whatsoever. And to me
15 that's just not an open discussion. And I just
16 would encourage you to, before you conclude the
17 meeting, to give some thought to the resolve of this
18 issue. I mean you've got all the players here, at
19 least you've certainly got a lot of the
20 stakeholders, and you just listened to our comments
21 and now you're going to conclude. You've got people
22 that have come from California, you've got, you
23 know, ... day out, we've got four hours, we're
24 supposed to go to four p.m., yet this has been sort
25 of a one-sided discussion.

1 So I kind of encourage you and also
2 challenge you to take advantage of this opportunity
3 and see if we can't come to some meeting of the
4 minds or something.

5 MR. BROOKMAN: Okay. Frank.

6 MR. STANONIK: Frank Stanonik with AHRI.
7 The discussion today and the NOPR talks about
8 excluding certain products based on certain
9 criteria. And I guess I would just like to suggest
10 that maybe the Department should look at turning
11 that around and simply identifying those products
12 that are including, based on having certain
13 characteristics. In other words, let's not talk
14 about gas logs that have these features or whatever,
15 maybe the idea is that if there is some apparent
16 decorative appliance, but in fact it is advertised
17 as a heater or it is advertised as operating at X
18 efficiency, that's included.

19 So maybe the approach here should be that
20 you identify products that are included by their
21 characteristics, not ask the industry to make
22 accommodations to in fact validate their products
23 aren't included.

24 MR. BROOKMAN: Okay. Thanks. Additional
25 comments, closing remarks. Rett.

1 MR. RASMUSSEN: Rett Rasmussen. The
2 comment period closes on September 20th and just
3 supposing DOE takes into account the testimony, the
4 comments that have been made and recognizes that
5 changes need to be made. I'm unfamiliar with what
6 the process would be from this point on, and I would
7 appreciate enlightenment as to what that would be.

8 MR. BROOKMAN: John Cymbalsky.

9 MR. CYMBALSKY: Okay. So we'll take your
10 comments throughout the comment period and then
11 there's a 90-day minimum period for the final rule,
12 so we accept all your comments, we look at them, we
13 respond to them in the final rule.

14 MR. RASMUSSEN: So you'll -- you respond
15 to each comment --

16 MR. CYMBALSKY: In the preamble.

17 MR. RASMUSSEN: Individually?

18 MR. CYMBALSKY: Correct. We group a bunch
19 together that are similar, and respond.

20 MR. RASMUSSEN: Pardon me, I'm sorry.
21 Will the responses be more than what we've had today
22 of "thank you for your comments"? Because that is a
23 response.

24 MR. CYMBALSKY: Right.

25 MR. RASMUSSEN: You know, will we be --

1 will they be viewed on the merits of the comments
2 that we've made?

3 MR. CYMBALSKY: Yes. Correct.

4 MR. RASMUSSEN: And at what point --
5 where's the tipping point that says we need to
6 revise the text that's in the proposed rule? Where
7 is that tipping point? Maybe you can't answer that
8 now, but there's got to be one someplace, and it may
9 be on the first comment that's made, it may be on
10 something else. We've already pointed out large
11 deficiencies in the research that was done to
12 support these particular provisions of the exclusion
13 or the other parts. What is the process then? You
14 get to the end of the 90 days after answering the
15 comments, what happens? What if you decide we've
16 got to do something else? How does that process
17 work and how are we notified of that?

18 MR. COHEN: This is Dan Cohen. So just to
19 be clear on the 90 days, that is a legal requirement
20 between the publication of a proposed rule and the
21 publication of a final rule. We can't publish
22 earlier than that. It has to be at least that
23 spread between the publication of both rules.
24 Ninety days from July -- whatever it was --

25 MR. CYMBALSKY: July 22nd.

1 MR. COHEN: July 22nd. So we couldn't
2 publish a final rule prior to 90 days from then.

3 So what we do is, as John said, we'll go
4 through all the comments that have -- that we get
5 both here and through the remainder of the comment
6 period. To the extent we have to do additional
7 research, we will do that. We will look at all the
8 information we're provided. We'll come up with
9 substantive responses.

10 Just theoretically, because I'm not going
11 to say -- we don't know what we would do with that -
12 - there's two possibilities -- well, there's a range
13 of possibilities. One is we look at all the
14 information -- one extreme would be we look at all
15 the information and say, doesn't change our minds,
16 we go forward. The other extreme I guess is, we
17 look at all the information and say, oh my goodness,
18 stop. Anywhere in between is obviously an option
19 too.

20 It could be that one potential is we look
21 at the information, it leads us to make revisions in
22 the proposal, and we go out with a final rule with
23 those revisions. To the extent that those revisions
24 potentially -- and again, this is all just
25 generically process-wise -- to the extent that those

1 revisions might be significant enough that we need
2 additional comment, we would go out with another
3 proposal, and seek more comment.

4 MR. RASMUSSEN: And so any changes that
5 are made will, in fact, be open to public comment or
6 --

7 MR. COHEN: May or may not.

8 MR. RASMUSSEN: -- may or may not?

9 MR. COHEN: May or may not, right.
10 Depends on the extent of the changes.

11 MR. RASMUSSEN: Ooph. Okay.

12 MR. BROOKMAN: Jack.

13 MR. RASMUSSEN: Thank you.

14 MR. GOLDMAN: Jack Goldman. I'd like to
15 pose a question to John Cymbalsky and Dan Cohen,
16 which came up as a result of this discussion. I
17 would like to know what the national emergency is
18 that requires this rule to be issued so quickly,
19 especially given the dearth of information that you
20 have in your preamble, and the complete lack of
21 information that you have in your rulemaking record.
22 I wonder is this a national energy emergency that
23 requires this, because the Department usually moves
24 with a little more deliberate speed than 90 days
25 from start to finish.

1 MR. BROOKMAN: Dan.

2 MR. COHEN: Dan Cohen. Again, I would
3 just point out that all of the 90 days, just to be
4 clear about this, is just a minimum time period in
5 the statute. I'm not saying we're going to do it
6 within 90 days. I'm just saying that is -- John
7 referred to a 90 day period, that's what the 90 days
8 is.

9 MR. GOLDMAN: I would like to point out
10 that in opposition to a motion for a briefing
11 schedule, which is a public document, the agency has
12 committed to a 90 day period. So you told the court
13 that you're going for the minimum. So I'd like to
14 know why you're doing that.

15 MR. COHEN: I'm just not going to comment
16 on the litigation.

17 MR. GOLDMAN: No, I'm using the litigation
18 simply as the evidence that you have committed to a
19 90 day period. I am asking you, from a regulatory
20 point of view, why you are going with a 90 day
21 period. It has nothing to do with litigation except
22 I'm using the brief as proof that you've committed
23 to 90 days.

24 MR. COHEN: Again, I'm just -- you say
25 that's a matter that is in the litigation --

1 MR. GOLDMAN: No, that matter is not
2 litigation. You have said in a public document to
3 the court that you were committing to 90 days. I'm
4 not asking you about your litigation strategy. I am
5 asking you why you have committed to 90 days, and if
6 it's for litigation, then that is a distortion of
7 the regulatory process. But I'd like to know, from
8 a regulatory point of view, why you've committed to
9 90 days.

10 MR. BROOKMAN: Yeah. So he's not going to
11 respond. Jane, did you wish to comment? No? Okay.
12 Leslie.

13 MR. BORTZ: Number one. I stand ready to
14 help you, if you need information. I think you need
15 information. It's up to you to think whether you --
16 what you think. I'm standing ready to help you,
17 number one.

18 And despite the fact that, as you can
19 tell, I disagree with you very strongly, I do thank
20 you for giving me this opportunity. At least you
21 gave me the opportunity, and I thank you for that.
22 Thank you.

23 MR. BROOKMAN: Okay. Yes, please say your
24 name for the record.

25 MR. CAGNOLI: Yes, Alan Cagnoli with HPBA.

1 Considering the speed with which things are moving,
2 how fast will we be able to get the transcript in
3 our hands of this proceeding. Can we have it by
4 Tuesday?

5 MR. CYMBALSKY: Three business days, I'm
6 told.

7 MR. CAGNOLI: Three business days. Can
8 you tell me exactly which day that will be?

9 MR. CYMBALSKY: Well, then, we review the
10 transcript after that, so --

11 MR. BROOKMAN: So --

12 MR. CAGNOLI: Then which day will it be?

13 MR. CYMBALSKY: What do you think,
14 Mohammed?

15 MR. BROOKMAN: Mohammed Khan.

16 MR. KHAN: Mohammed Khan, DOE. Generally
17 we'll receive the transcript from the court reporter
18 within two or three business days, as just
19 mentioned. Then it's our responsibility to go over
20 it, check it for accuracy, and that might take just
21 a day, so after that then we can move forward with
22 making it publicly available.

23 MR. BROOKMAN: Perhaps then in the middle
24 of next week?

25 MR. CAGNOLI: I would rather have a date

1 than a general description of when.

2 MR. CYMBALSKY: So three business days is
3 next Wednesday, since Monday is a holiday. Let's
4 say the end of next week would be the earliest, so.

5 MR. CAGNOLI: And this is Alan Cagnoli
6 again. So with less than 60 days left before the
7 final rule, so we're talking actually about -- so
8 that would be eight weeks, we're talking -- we will
9 only have maybe seven or six weeks with which to
10 review the testimony and add those comments -- add
11 that into our comments? And actually less time,
12 because the comments are due on the 20th. Okay. I
13 just wanted to make sure that's part of the record.

14 MR. BROOKMAN: Okay.

15 MR. CAGNOLI: Thank you.

16 MR. BROOKMAN: Thank you. Leslie.

17 MR. BORTZ: What you're saying is the
18 comments are due on the 20th. You have to have time
19 to take a look at them. You will then go forward
20 with whatever you do. You don't have to respond to
21 those comments, do you? Like you're responding with
22 the transcript? You don't have to do it? Do you
23 have to respond to those comments?

24 MR. KHAN: Yeah.

25 MR. CYMBALSKY: We look at all the

1 comments that are submitted to us, up until
2 September 20th.

3 MR. BORTZ: Yes.

4 MR. CYMBALSKY: And then as we read
5 through them, that is incorporated as deemed to be
6 fit in the final rule, so yes.

7 MR. BORTZ: The rule which will be out by
8 October 11th. Excuse me, October 15th.

9 MR. BROOKMAN: I guess they don't --
10 they're not commenting on the date.

11 MR. BORTZ: They did.

12 MR. BROOKMAN: Say it again.

13 MR. COHEN: Dan Cohen. Just to be clear
14 on that date. That simply is a date which is a
15 minimum period of time by which -- before which we
16 cannot publish a final rule. It doesn't mean we
17 will publish on that date, it just means we can't do
18 it before that date.

19 MR. BORTZ: Fuzzy.

20 MR. BROOKMAN: Okay. Rett.

21 MR. RASMUSSEN: Rett Rasmussen. I'm
22 sorry, Mr. Cymbalsky, I think I heard you say right
23 now that you're not specifically answering comments
24 raised in this, that you're incorporating it into --
25 and maybe I misheard you right now, but it sounded

1 like you gave an answer different than you gave to
2 my question earlier.

3 MR. CYMBALSKY: No, I don't think it was
4 different. We take all the comments and we respond
5 to the comments in the --

6 MR. RASMUSSEN: Thank you.

7 MR. BROOKMAN: Okay. So, I think --

8 MR. BORTZ: Respond to the comments?
9 That's what you just said?

10 MR. CYMBALSKY: In the preamble, we
11 present all the comments that we receive, we group
12 them together, all the ones that are pertinent to
13 the rulemaking, yes.

14 MR. BORTZ: In the preamble?

15 MR. CYMBALSKY: Of the final rule.

16 MR. BROOKMAN: So I think we have now
17 concluded the closing remarks. From my perspective,
18 I would thank all of you for the candor and
19 straightforward discussion today and comment. Very
20 helpful, I think, to the Department.

21 I'm going to hand out an evaluation form
22 that's one thing that the Department does for all
23 their meetings, and I will just turn it back to John
24 Cymbalsky for closing remarks.

25 MR. CYMBALSKY: Yeah, I think I have

1 already said mine, but thanks for coming, and
2 appreciate all the heartfelt remarks today. Thank
3 you.

4 MR. BROOKMAN: Safe travels.

5 (Whereupon, at 12:46 p.m., the meeting in
6 the above captioned matter was adjourned.)

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REPORTER'S CERTIFICATE

This is to certify that the attached proceedings
before:

U.S. DEPARTMENT OF ENERGY

In the Matter of:

**DIRECT HEATING EQUIPMENT ENERGY CONSERVATION
STANDARD
NOTICE OF PROPOSED RULEMAKING**

Were held as herein appears and that this is the
original transcript thereof for the file of the
Department, Commission, Board, Administrative Law
Judge or the Agency.

Further, I am neither counsel for or related to
any party to the above proceedings.

Wendy Greene
Official Reporter

Dated: September 6, 2011