

## **GAS STOVES: DEVELOPING REGULATORY AND LITIGATION ACTIONS**

To Our Clients and Friends:

The Biden Administration has sparked debate over the safety and efficiency of gas stoves. In January, the Consumer Product Safety Commission (CPSC) began exploring the safety of gas stoves based on recent studies related to alleged health effects from indoor air pollutant emissions.<sup>[1]</sup> Then, in February, the Department of Energy proposed new efficiency standards that would require removing most existing gas stove models from the market.<sup>[2]</sup> Both agencies are now requesting public input. Members of Congress, state governments, local municipalities, and private plaintiffs also are advancing efforts to investigate and limit the use of “combustible appliances,” including gas stoves.

With gas stoves in approximately 38 percent of American homes, any regulatory restriction on them could have a significant market effect on stove manufacturers, retailers, and the fossil fuel industry. This alert reviews the current status of federal regulatory action and discusses how related investigations and litigation are developing. Interested stakeholders should consider making submissions to the CPSC and Department of Energy, as well as preparing for potential investigations and litigation.

### **CPSC Actions**

In an October meeting, the CPSC unanimously adopted an amendment to obtain public input on potential gas stove hazards.<sup>[3]</sup> That action stemmed from the CPSC’s focus on studies related to the potential health effects of gas stoves, including one 2022 study that attributed almost 13 percent of childhood asthma in the United States to gas stove use.<sup>[4]</sup> Under the amendment, CPSC staff was directed to submit “to the Commission a Request for Information (RFI) to seek public input on hazards associated with gas stoves and proposed solutions to those hazards.”

Following adoption of the amendment to issue an RFI, Commissioner Richard L. Trumka Jr. said in an interview that “[a]ny option is on the table” with respect to addressing potential harms from gas stoves. “Products that can’t be made safe can be banned,” he stated.<sup>[5]</sup> That statement drew a fiery rebuke from certain lawmakers, businesses, and consumers, leading the White House to come out against a gas stove ban,<sup>[6]</sup> and CPSC Chairman Alexander Hoehn-Saric to remark on January 11, 2023, that he is “not looking to ban gas stoves” and that the CPSC “has no proceeding to do so.”<sup>[7]</sup>

The RFI ordered in October, however, is still proceeding. Indeed, the CPSC published the RFI on March 7, and the agency requires that **all public comments be submitted by May 8, 2023.**<sup>[8]</sup> The RFI “seeks input from the public on chronic chemical hazards from gas ranges” and asks “consumers, manufacturers, government agencies, non-governmental organizations, and researchers” to provide information related to:

- “the scope and scale of potential chronic chemical hazards, exposures, and risks associated with gas range use”;
- “data sources and approaches CPSC should consider when completing an evaluation of chronic chemical hazards, exposures, and risks related to gas range use”; and,
- “potential tradeoffs between different hazards (*e.g.*, chemical, fire, mechanical, or other) associated with the use of gas ranges, electric ranges (including older and newer models), and other large cooking appliances.”[9]

In a statement accompanying the announcement of the RFI, Commissioner Trumka declared it “an important milestone on the road to protecting consumers from potential hazards in their homes—the emissions from gas stoves.”[10] He also expressed an expectation that the “RFI will set records for consumer and scientific participation . . . because right now, more people are aware than ever before of the potential hazards in this space.”[11]

Actions following the CPSC’s issuance of past RFIs suggest that its issuance of the RFI may lead to efforts to restrict gas stoves and other combustible appliances. For example, the CPSC developed stringent carbon monoxide sensor standards in 2015[13] based on findings from a 2014 RFI that requested information on detecting carbon monoxide.[12] A 2016 CPSC RFI on crib bumpers[14] likewise resulted in a 2020 notice of proposed rulemaking[15] that then was superseded by a 2021 law[16] banning the products.[17]

Given this history, engagement with the RFI is critical for stakeholders seeking to inform any further action that the CPSC may take related to gas stoves. Interested stakeholders can submit information to the CPSC’s RFI by May 8, 2023, including appropriate scientific information, data sources, and analysis regarding potential and comparative risks and benefits of gas stoves and related products. If the RFI results in agency rulemaking, interested stakeholders should submit comments.

## **Department of Energy Rulemaking**

The Department of Energy proposed a rule on February 1, 2023 that would set maximum energy-consumption standards for gas and electric stoves.[18] If adopted, the proposed rule would apply to product classes, including gas stoves, “manufactured in, or imported into, the United States starting on the date three years after the publication of any final rule for this rulemaking.” While not outright banning gas stoves, the proposed rule would effectively ban most models on the market today, as most stoves currently sold could not meet the proposed energy consumption standard. That, in turn, would require redesigning gas stoves—or moving away from gas stoves altogether. Indeed, the Department estimates in the proposed rule that the impact on stove manufacturers would be approximately –\$154.8 million to –\$150.4 million between 2022 and 2056, with total conversion costs of \$183.4 million.[19]

Various individuals and entities have expressed skepticism that the Department’s proposed rule meets the requirements of its authorizing statutes, including that the energy-consumption standard in the proposed rule be “technologically feasible and economically justified and . . . result in a significant conservation of energy.”[20]

# GIBSON DUNN

The Department requires **all public comments to be submitted by April 17, 2023**. Issues for potential comment include the scope of the Department’s regulatory authority, the information on which the Department relied in formulating the proposed rule, and the likely effect of the proposed rule on interested stakeholders.

## **Congressional Actions**

Regardless of what final actions federal agencies eventually may take, it already is clear that Congress will engage in the debate over gas stoves’ safety and efficiency.

In December 2022, Senator Cory Booker and Representative Donald Beyer Jr., along with other Congressional signees, wrote a letter to CPSC Chair Hoehn-Saric encouraging the CPSC to “take action to address . . . the risks posed to consumers from indoor air pollution generated by gas stoves.”<sup>[21]</sup> Similarly, Representative Raja Krishnamoorthi, Chair of the House Subcommittee on Economic and Consumer Policy in the 117th Congress, had requested information from the CPSC about its failure to warn consumers or establish safety standards for indoor air pollution from gas stoves, despite having knowledge of such risks as early as 1986. In the 118th Congress, it is possible that Senate Committees like the Health, Education, Labor and Pensions (HELP) Committee or the Permanent Subcommittee on Investigations might continue to encourage the CPSC to act.

By contrast, other congresspersons have come out against prohibitions on gas stoves.<sup>[22]</sup> In February 2023, Senate Energy Committee Chairman Joe Manchin and Senator Ted Cruz introduced legislation that would prohibit the use of federal funds by the CPSC “to regulate existing or new gas stoves as a banned hazardous product.”<sup>[23]</sup> The CPSC would also be prohibited under the proposed law from spending federal funds to impose or enforce product safety standards that would prohibit or substantially increase the price of gas stoves. Representative Debbie Lesko likewise has proposed the “Save Our Gas Stoves Act,” which would prevent finalizing, implementing, or enforcing Department of Energy rulemaking related to gas stoves.<sup>[24]</sup>

## **State and Local Actions**

Efforts at the federal level may continue to drive action at state and local levels of government. While twenty states have passed laws prohibiting cities from banning natural gas,<sup>[25]</sup> New York is now poised to ban gas stoves and other fossil-fuel hookups in new buildings as part of an all-electric mandate to help the state meet targets for greenhouse gas reduction.<sup>[26]</sup> Governor Kathy Hochul proposed the measure as part of the state’s budget, and both chambers of the state assembly have supported it. The proposed measure would phase in a ban with various exemptions and likely take effect sometime between 2025 and 2028.<sup>[27]</sup>

The proposed new-construction restriction in New York would resemble those enacted by dozens of U.S. municipalities, including New York City, and cities like Berkeley, California, which have already banned gas stoves in new buildings.<sup>[28]</sup>

Consistent with trends following safety concerns raised about other consumer products, State Attorneys General also may initiate investigations and lawsuits based on potential violations of state law. By way

of example, the Washington D.C. Attorney General’s Office filed a lawsuit against a baby food manufacturer in 2021 based on alleged misrepresentations of health and safety standards.[29] New York Attorney General Letitia James also requested information from several baby food manufacturers and took public action against their interests.[31] State Attorneys General may similarly investigate and sue gas stove manufacturers or natural gas providers under various consumer protection laws.

## **Potential Product Liability Litigation**

Just as consumers individually and as classes filed actions alleging injury from products like baby foods[32] and talcum powder,[33] users of gas stoves already have begun to initiate litigation on the basis of alleged concerns raised about gas stove safety. These claims emphasize alleged asthma or other health conditions due to indoor health pollutants.

For example, in one California class action, consumer plaintiffs allege that a manufacturer breached warranties and violated consumer protection and false advertising laws by selling stoves allegedly associated with harmful emissions.[34] Specifically, the plaintiffs claim that, had they known about the risks, they would have paid less for the gas stoves they purchased or not purchased the gas stoves at all. The plaintiffs further allege that the manufacturer chose not to make the gas stoves safer despite having the ability to do so.

It is essential that entities potentially subject to such litigation take steps to prepare for it and address potentially disparate lawsuits with a coordinated approach. Preparatory steps include taking measures to preserve privilege and considering how to manage the potential proliferation of lawsuits in multiple judicial districts.

## **Conclusion**

The debate over the safety of gas stoves is likely only to heat up over the coming year. As both the CPSC and the Department of Energy decide how to proceed with rulemaking or enforcement actions, Congress may investigate and consumer product-liability litigation will commence. Actions at the state and local level also are assured, with State Attorneys General likely to play a role. Gibson Dunn is well prepared to advise and assist clients in responding to, and engaging with, any of these developments.

---

[1] Ari Natter, *The US Consumer Product Safety Commission will move to regulate gas stoves as new research links them to childhood asthma*, Bloomberg (Jan. 9, 2023, 7:00 AM ET), available at <https://www.bloomberg.com/news/articles/2023-01-09/us-safety-agency-to-consider-ban-on-gas-stoves-amid-health-fears?leadSource=uverify%20wall>.

[2] Energy Conservation Program: Energy Conservation Standards for Consumer Conventional Cooking Products, 88 Fed. Reg. 6818 (proposed Feb. 1, 2023).

[3] U.S. Consumer Prod. Safety Comm’n, Minutes Of Commission Meeting, Decisional Matter: Fiscal Year 2023 Operating Plan (Oct. 26, 2022).

# GIBSON DUNN

[4] Eric D. Lebel, Colin J. Finnegan, Zutao Ouyang, & Robert B. Jackson, *Methane and NOx Emissions from Natural Gas Stoves, Cooktops, and Ovens in Residential Homes*, 56 *Env't Sci. & Tech.* 2529 (2022). *See also* Am. Pub. Health Assoc'n, *Gas Stove Emissions Are a Public Health Concern: Exposure to Indoor Nitrogen Dioxide Increases Risk of Illness in Children, Older Adults, and People with Underlying Health Conditions* (2022).

[5] Ari Natter, *The US Consumer Product Safety Commission will move to regulate gas stoves as new research links them to childhood asthma*, *Bloomberg* (Jan. 9, 2023, 7:00 AM ET), available at <https://www.bloomberg.com/news/articles/2023-01-09/us-safety-agency-to-consider-ban-on-gas-stoves-amid-health-fears?leadSource=uverify%20wall>.

[6] Hillary Vaughn & Chris Pandolfo, *Biden White House says it does not support gas stove ban*, *Fox Bus.* (Jan. 11, 2023, 1:09 PM ET).

[7] Alex Hoehn-Saric (@HoehnSaricCPSC), *Twitter* (Jan. 11, 2023, 10:46 AM), <https://twitter.com/HoehnSaricCPSC/status/1613200634194415616?cxt=HHwWgMC-icDbnuMsAAAA>.

[8] *Request for Information on Chronic Hazards Associated With Gas Ranges and Proposed Solutions*, 88 *Fed. Reg.* 14150 (proposed Mar. 7, 2023).

[9] *Id.*

[10] *Press Release, U.S. Consumer Prod. Safety Comm'n Comm'r Rich Trumka Jr., CPSC Approves Request for Information on Gas Stove Hazards and Potential Solutions* (Mar. 1, 2013).

[11] *Id.*

[12] *Carbon Monoxide/Combustion Sensor Forum and Request for Information*, 79 *Fed. Reg.* 21442 (proposed Apr. 16, 2014).

[13] *See* Ronald A. Jordan, U.S. Consumer Prod. Safety Comm'n, *Report on the Findings from CPSC's 2014 Carbon Monoxide/Combustion Sensor Forum and Request for Information* (Mar. 2015); *Letter from Ronald A. Jordan, Mechanical Engineer, U.S. Consumer Prod. Safety Comm'n, to Lorraine McCourt, Project Manager, CSA Group* (Sept. 30, 2015).

[14] *Request for Information Regarding Crib Bumpers*, 81 *Fed. Reg.* 7765 (proposed Feb. 16, 2016).

[15] *Safety Standard for Crib Bumpers/Liners*, 85 *Fed. Reg.* 18878 (proposed Apr. 3, 2020).

[16] *Safety Standard for Crib Bumpers/Liners; Withdrawal*, 87 *Fed. Reg.* 44306 (July 26, 2022).

[17] *Safe Sleep for Babies Act of 2021*, Pub. L. No. 117-126, 136 *Stat.* 1208.

[18] *Energy Conservation Program: Energy Conservation Standards for Consumer Conventional Cooking Products*, 88 *Fed. Reg.* 6818 (proposed Feb. 1, 2023).

[19] The DOE estimates the impact on manufacturers by measuring the change in industry net present value (“INPV”), defined as “the sum of the discounted cash flows to the industry from the base year through the end of the analysis period (2022-2056).” *Id.* “Using a real discount rate of 9.1 percent, DOE estimates that the INPV for manufacturers of consumer conventional cooking products in the case without new and amended standards is \$1,607 million in 2021 dollars. Under the proposed standards, the change in INPV is estimated to range from -9.6 percent to -9.4 percent, which is approximately -\$154.8 million to -\$150.4 million.” *Id.*

[20] 42 U.S.C. § 6295(o).

[21] Letter from Sen. Cory A. Booker, Rep. Donald S. Beyer Jr., et al. to Alex Hoehn-Saric, Chair, Consumer Prod. Safety Comm’n (Dec. 21, 2022).

[22] Ronny Jackson (@RonnyJacksonTX), Twitter (Jan. 20, 2023, 10:52 AM); Press Release, Energy & Commerce Chair Rodgers, Energy & Commerce Chair Rodgers’ Statement on Biden Considering Nationwide Gas Stove Ban (Jan. 11, 2023).

[23] Press Release, Sens. Cruz, Manchin Introduce Bipartisan Bill to Stop the Federal Government from Banning Gas Stoves (Feb. 2, 2023).

[24] To prohibit the Secretary of Energy from finalizing, implementing, or enforcing the proposed rule titled “Energy Conservation Program: Energy Conservation Standards for Consumer Conventional Cooking Products,” and for other purpose, H.R.1640, 118th Cong. (2023).

[25] Alex Brown, *Natural Gas Bans Are New Front in Effort to Curb Emissions*, Pew (Jan. 6, 2022).

[26] Scott Calvert, *New York Poised to Ban Gas Stoves in New Buildings as Part of All-Electric Mandate*, The Wall Street Journal (Mar. 26, 2023).

[27] *Id.*

[28] *Id.*; Ella Nilsen, *Cities tried to cut natural gas from new homes. The GOP and gas lobby preemptively quashed their effort*, CNN (Feb. 17, 2022), available at <https://www.cnn.com/2022/02/17/politics/natural-gas-ban-preemptive-laws-gop-climate/index.html>.

[29] Press Release, Office of the Attorney General for the District of Columbia, AG Racine Sues Baby Food Company Beech-Nut for Misleading Parents About the Health & Safety of Its Products (Apr. 21, 2021).

[30] Press Release, Letitia James, Attorney General James Leads Coalition Urging FDA to Accelerate Actions to Protect Children From Toxic Metals in Baby Food (Oct. 21, 2021).

[31] Press Release, Letitia James, Attorney General James Probes Toxic Substances Found in Baby Food Sold in New York (Apr. 29, 2021); *see also* Press Release, Letitia James, Attorney General James Leads



# GIBSON DUNN

Coalition Urging FDA to Accelerate Actions to Protect Children From Toxic Metals in Baby Food (Oct. 21, 2021).

[32] See, e.g., *In re Gerber Prods. Co. Heavy Metals Baby Food Litig.*, No. 1:21-cv-269 (Oct. 17, 2022 E.D. Va.).

[33] See, e.g., *In re Johnson & Johnson Talcum Powder Prods. Mktg., Sales Prac. & Liab. Litig.*, 903 F.3d 278, 284 (3d Cir. 2018).

[34] *Sherzai v. LG Electronics USA, Inc.*, No. 2:23-cv-00429-TLN-CKD (Mar. 8, 2023 E.D. Cal.).



*The following Gibson Dunn lawyers prepared this client alert: Michael Bopp, Gustav Eyler, Stacie Fletcher, Rachel Levick, Eugene Scalia, and Kirsten Bleiweiss\*.*

*Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding the issues discussed in this update. Please contact the Gibson Dunn lawyer with whom you usually work, any member of the firm's Administrative Law and Regulatory, Environmental Litigation and Mass Tort, FDA and Health Care, or Public Policy practice groups, or the authors:*

***FDA and Health Care / White Collar Defense and Investigations Groups:***

*Gustav W. Eyler – Washington, D.C. (+1 202-955-8610, [geyler@gibsondunn.com](mailto:geyler@gibsondunn.com))*

***Environmental Litigation and Mass Tort Group:***

*Stacie B. Fletcher – Washington, D.C. (+1 202-887-3627, [sfletcher@gibsondunn.com](mailto:sfletcher@gibsondunn.com))*

*Rachel Levick – Washington, D.C. (+1 202-887-3574, [rlevick@gibsondunn.com](mailto:rlevick@gibsondunn.com))*

***Public Policy Group:***

*Michael D. Bopp – Washington, D.C. (+1 202-955-8256, [mbopp@gibsondunn.com](mailto:mbopp@gibsondunn.com))*

***Administrative Law and Regulatory Group:***

*Eugene Scalia – Washington, D.C. (+1 202-955-8543, [escalia@gibsondunn.com](mailto:escalia@gibsondunn.com))*

*Helgi C. Walker – Washington, D.C. (+1 202-887-3599, [hwalker@gibsondunn.com](mailto:hwalker@gibsondunn.com))*

*\*Kirsten Bleiweiss is admitted to practice only in Maryland and is practicing under the supervision of members of the District of Columbia Bar under D.C. App. R. 49.*

© 2023 Gibson, Dunn & Crutcher LLP

*Attorney Advertising: The enclosed materials have been prepared for general informational purposes only and are not intended as legal advice. Please note, prior results do not guarantee a similar outcome.*