

PROTECT AMERICAN JOBS: DEFINE HEARTH PRODUCTS IN STATUTE



New definitions for “Decorative Hearth Products” and “Vented Hearth Heaters” will ensure appropriate regulations and establish a stable regulatory environment for American small businesses.

The Problem

Last year, the U.S. Court of Appeals for the D.C. Circuit determined in *Hearth, Patio & Barbecue Association (HPBA) v. Department of Energy (DOE)* that **the Energy Policy and Conservation Act (EPCA) of 1974 needs to be amended to further clarify the definitions of hearth products.** As such, the court concluded that **regulations** imposed on manufacturers of hearth products by the DOE were **unfounded** in the existing context.

Solution

Greater statutory clarity is required to ensure appropriate regulatory oversight of natural gas hearth products. **H.R. 3761** provides this, in statute, with definitions for “decorative hearth products” and “vented hearth heaters.” **H.R. 3761 will ensure that DOE is empowered to collaborate** with the manufacturers, distributors and retailers of hearth products when promulgating future regulations and standards.

Background

In a multi-part rulemaking initiated in 2006, DOE promulgated two related final rules that improperly imposed regulatory requirements on decorative hearth products (*HPBA v. DOE, 2013*). Despite repeated confirmation that decorative hearth products would not be part of the final rulemaking, DOE ultimately included these products in the final rule (75 Fed. Reg. 20112) without notice or opportunity for comment. Having improperly asserted jurisdiction over these decorative products, DOE later issued a second final rule (76 Fed. Reg. 71836) imposing “exclusion criteria” on the products and broadening the class of covered products to include decorative products that were deemed by DOE to not belong in the initial final rule.

In its decision, the U.S. Court of Appeals for the D.C. Circuit did not rule on these procedural missteps since DOE actually failed at an even more fundamental legal test of statutory interpretation. As noted in the court decision, in the effort to regulate products that Congress had not enumerated as “covered products,” DOE resorted to “push[ing] the outermost limits of interpretive credulity.” The court found that DOE circumvented “clear congressional intent” that decorative hearth products not be designated or regulated as “direct heating equipment.”

The court conceded that the lack of explicit definitions in EPCA “leaves a residuum of definitional uncertainty sufficient to establish ambiguity.” For this reason, it is important that DOE is provided a clear distinction of which products are heating products — “covered products” which may be subject to traditional energy efficiency requirements — and which products are not intended for heating (decorative) and are not currently subject to regulation under the EPCA.