ORAL ARGUMENT NOT YET SCHEDULED

IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

HEARTH, PATIO & BARBECUE
ASSOCIATION,

Petitioner,

v.

THE UNITED STATES DEPARTMENT OF ENERGY, et al.,

Respondents.

NATURAL RESOURCES DEFENSE COUNCIL,

Intervenor.

HEARTH, PATIO & BARBECUE ASSOCIATION and

NATIONAL PROPANE GAS ASSOCIATION,

Petitioners,

v.

THE UNITED STATES DEPARTMENT OF ENERGY, et al.,

Respondents.

Case Nos. 12-1010, 12-1014

Case Nos. 10-1113, 10-1181

Filed: 03/27/2012

<u>PETITIONERS' JOINT MOTION FOR INCREASE IN</u> <u>WORD LIMITATIONS FOR BRIEFS</u>

Petitioners, Hearth, Patio & Barbecue Association ("HPBA") and National Propane Gas Association ("NPGA"), respectfully move this Court to increase the word limitations for the briefs in the consolidated cases. H. Thomas Byron III, counsel for Respondents in the consolidated cases, the United States Department of Energy, et al. (hereafter collectively "DOE"), informs us that DOE takes no position on the motion. Timothy D. Ballo, counsel for Intervenor-Respondent Natural Resources Defense Council, informs us that it intends to oppose the motion.

- 1. The Court's Order filed on March 23, 2012, consolidates No. 10-1113 at al. and No. 12-1010 et al. and orders briefs not to exceed specified lengths, including Petitioners' joint brief and DOE's brief each not to exceed 14,000 words. It also directs that the parties address in their briefs the pending motion to dismiss No. 10-1113 et al.
- 2. Petitioners believe that an increase in words in the briefing is warranted. On January 3, 2012, Petitioner HPBA filed its opening brief of over 13,000 words in No. 10-1113 et al. (That briefing was superseded by the March 23 Order.) The Court's consolidation means that new briefs will need to be filed that involve review not only of the DOE final rule at issue in No. 10-1113 et al. but also of an additional DOE final rule that is not the

subject of No. 10-1113 et al. and involves additional issues. In addition, the Court has ordered the parties to address in the briefs the motion to dismiss rather than incorporate those arguments by reference. A provision for additional words is thus clearly warranted in the interests of fairness and justice.

3. HPBA in No. 10-1113 et al. is challenging, among other things, energy efficiency standards for "direct heating equipment" in DOE's final rule entitled, "Energy Conservation Program: Energy Conservation Standards for Residential Water Heaters, Direct Heating Equipment, and Pool Heaters," 75 Fed. Reg. 20112 (April 16, 2010). More specifically, HPBA is challenging DOE's decision in that final rule to regulate certain products as "direct heating equipment" and to subject them to heating efficiency standards. In contrast, HPBA and NPGA in No. 12-1010 et al. are challenging a subsequent DOE final rule entitled, "Energy Conservation Program: Energy Conservation Standards for Direct Heating Equipment," 76 Fed. Reg. 71836 (Nov. 18, 2011). Petitioners in No. 12-1010 et al. specifically challenge, among other things, DOE's decision in the subsequent final rule to expand the range of products subject to regulation as "direct heating equipment" and to impose certain other requirements as an alternative to compliance with the heating efficiency standards imposed by the April 16, 2010 rule. The two sets of challenges raise some related issues, but they address two different final rules that impose substantially different requirements on the basis of dramatically different administrative records.

4. Petitioners believe that an increase in word limitation for each brief by 50 percent is appropriate in light of the circumstances. On this basis, petitioners request that the Court order the following briefing format:

Petitioners' Joint Brief (not to exceed 21,000 words)

Respondents' Brief (not to exceed 21,000 words)

Respondent-Intervenor's Brief (not to exceed 13,125 words)

Petitioners' Joint Reply Brief (not to exceed 10,500 words)

Accordingly, Petitioners NPGA and HPBA respectfully request the Court to increase the word limitations for the briefs in the consolidated cases as specified herein.

Respectfully submitted, Dated: March 27, 2012

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CERTIFICATE OF SERVICE

I hereby certify that on March 27, 2012, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to the following:

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