

Section 236 under its authority to protect “the common defense and security.”

The Staff believes that Option 1 does not accomplish the objectives of increasing the deterrence of malevolent acts against NRC- and Agreement State-regulated facilities, radioactive material, nuclear material, or property. Option 2 is limited in scope to facilities or installations with risk-significant radioactive material and would not provide the desired deterrent value of consistent Federal criminal sanctions for certain other nuclear material or property, particularly during transport. Because Section 236 offers greater flexibility and greater capability for punishment than Section 229, Option 3 would likely have a greater deterrent value than Option 2. Option 3 would be simpler for licensees, the NRC, and Agreement States. Option 4 accomplishes the greatest increase in deterrence.

### III. Specific Questions

To assist the NRC in evaluating whether additional rulemaking should be undertaken to implement the criminal penalty provisions of Sections 229 and 236 of the AEA, the NRC is seeking stakeholder input on the following specific questions:

**Q1.1.** Should the NRC conduct further rulemaking to implement the authority of Section 229 or Section 236 of the AEA, or both?

**Q1.2.** Should the NRC forgo further rulemaking and rely on State criminal statutes (for both Agreement States and non-Agreement States) to deter individuals with malevolent intentions? Why?

**Q1.3.** If the commenter’s view is that the NRC should conduct a rulemaking, which option for rulemaking is best? Why? The available options (1 through 4) include no-action, rulemaking implementing the authority of Section 229 alone, Section 236 alone, or both Sections 229 and 236.

If a rulemaking is undertaken, the NRC is also seeking stakeholder input on the following questions:

**Q2.1.** Should the NRC include the range of radioactive materials specified in Appendix I to 10 CFR Part 73 in quantities equal to or exceeding the Category 2 threshold limits?

**Q2.2.** Alternatively, should the NRC use a different list of radionuclides, or different quantity limits? If so, what does the commenter suggest? Why?

**Q3.1.** Should the NRC include the waste materials recommended by the NRC staff, specifically SNF from production reactors and naval reactors? These new requirements would apply

only to activities regulated by the NRC, not to facilities or activities regulated by the U.S. Department of Energy.

**Q3.2.** Should the NRC include source material in the form of UF<sub>6</sub>? This would include both natural uranium and depleted uranium but not SNM, which is already covered as “nuclear fuel” under the current language of Section 236a.(3). Additionally, the NRC notes that uranium conversion and fuel fabrication facilities are already covered under the current language of Section 236a.(4). Thus, adding source material and depleted uranium in the form of UF<sub>6</sub> would allow for prosecution of malevolent acts against these materials while they are in transit.

**Q3.3.** Should the NRC include the other property recommended by its staff, specifically, classified enrichment technology components? Since the language of Section 236a.(4) currently includes uranium enrichment facilities, adding this classified material would allow for the prosecution of malevolent acts against classified enrichment technology while these components are in transit.

**Q4.1.** If the NRC conducts a rulemaking to implement the authority of Section 229 (Option 2), should it use a “public health and safety” basis or a “common defense and security” basis? Why? As noted above, the NRC is not recommending further rulemaking using the authority of Section 229; however, the agency is seeking stakeholder views on this issue.

**Q4.2.** If the NRC conducts a rulemaking to implement the authority of Section 236 (Option 3), should it use a “public health and safety” basis or a “common defense and security” basis? Why? As noted above, the NRC is recommending conducting a rulemaking to implement the authority of Section 236, using a “common defense and security” basis; however, the agency is seeking stakeholder views on this issue.

**Q4.3.** Should the NRC conduct a rulemaking implementing the combined authority of Sections 229 and 236 (Option 4), using either a “public health and safety” basis or a “common defense and security” basis? Why?

**Q4.4.** If the NRC conducts a rulemaking implementing the authority of Section 229, Section 236, or a combination of both, and uses a “public health and safety” basis, what is the appropriate Agreement State compatibility category for this rulemaking? Why?

### IV. Public Webinar

To facilitate the understanding of the public and other stakeholders of these issues and the submission of informed

comments, the NRC staff is planning to schedule a Webinar in August or September, 2011. Participants must register to participate in the Webinar. Registration closes 1 day before the Webinar. When the Webinar is scheduled, registration information may be found at the NRC’s public Web site under the headings Public Meetings & Involvement > Public Meeting Schedule; see Web page <http://www.nrc.gov/public-involve/public-meetings/index.cfm>.

Dated this 8th day of July 2011.

For the Nuclear Regulatory Commission.

**Michael C. Layton,**

*Acting Director, Division of Security Policy, Office of Nuclear Security and Incident Response.*

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## DEPARTMENT OF ENERGY

### 10 CFR Part 430

[Docket Number EERE–2011–BT–STD–0047]

**RIN 1904–AC56**

### Energy Conservation Program: Energy Conservation Standards for Direct Heating Equipment

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Notice of proposed rulemaking and announcement of public meeting.

**SUMMARY:** The Energy Policy and Conservation Act of 1975 (EPCA), as amended, prescribes energy conservation standards for various consumer products and certain commercial and industrial equipment, including direct heating equipment. In this notice, the U.S. Department of Energy (DOE) proposes to amend its definitions pertaining to direct heating equipment. Specifically, DOE is proposing to change to the definition of “vented hearth heater,” a type of direct heating equipment, to clarify the scope of the current exclusion for those vented hearth heaters that are decorative hearth products. The proposed modification to the existing exclusion would shift the focus from the current maximum input capacity limitation (*i.e.*, 9,000 Btu/h) to a number of other factors, including the absence of a standing pilot light or other continuously burning ignition source. DOE has tentatively concluded that these amendments would result in increased energy savings overall, as well as for the types of units under the exclusion. The notice also announces a

public meeting to receive comment on these proposed amendments to the definition for “vented hearth heater” and associated analyses and results.

**DATES:** DOE will hold a public meeting on September 1, 2011 from 9 a.m. to 4 p.m., at DOE headquarters in Washington, DC. The meeting will also be broadcast as a webinar. See section VII, “Public Participation,” for webinar registration information, participant instructions, and information about the capabilities available to webinar participants.

DOE will accept comments, data, and information regarding this notice of proposed rulemaking (NPR) before and after the public meeting, but no later than September 20, 2011. See section V, “Public Participation,” for details.

**ADDRESSES:** The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 8E-089, 1000 Independence Avenue, SW., Washington, DC 20585. To attend, please notify Ms. Brenda Edwards at (202) 586-2945. Please note that foreign nationals visiting DOE Headquarters are subject to advance security screening procedures. Any foreign national wishing to participate in the meeting should advise DOE as soon as possible by contacting Ms. Edwards to initiate the necessary procedures. Please also note that those wishing to bring laptops into the Forrestal Building will be required to obtain a property pass. Visitors should avoid bringing laptops, or allow an extra 45 minutes. Persons can attend the public meeting via webinar. For more information, refer to the section V, “Public Participation,” near the end of this notice.

Any comments submitted must identify the NPR on Energy Conservation Standards for Direct Heating Equipment, and provide docket number EERE-2011-BT-STD-0047 and/or regulatory information number (RIN) 1904-AC56. Comments may be submitted using any of the following methods:

1. *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

2. *E-mail:* DHE-2011-STD-0047@ee.doe.gov. Include Docket Number EERE-2011-BT-STD-0047 and/or RIN 1904-AC56 in the subject line of the message.

3. *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE-2J, 1000 Independence Avenue, SW., Washington, DC 20585-0121. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies.

4. *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza, SW., Suite 600, Washington, DC 20024. Telephone: (202) 586-2945. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

No telefacsimiles will be accepted. Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to the Office of Energy Efficiency and Renewable Energy through the methods listed above and by e-mail to *Christine\_J.\_Kymn@omb.eop.gov*.

For detailed instructions on submitting comments and additional information on the rulemaking process, see section V of this document (Public Participation).

**Docket:** The docket is available for review at <http://www.regulations.gov>, including **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials. All documents in the docket are listed in the <http://www.regulations.gov> index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

A link to the docket Web page can be found at: <http://www.regulations.gov/#!docketDetail;dt=FR+PR+N+O+SR+PS;rpp=250;so=DESC;sb=postedDate;po=0;D=EERE-2011-BT-STD-0047>. This Web page contains a link to the docket for this notice on the <http://www.regulations.gov> site. The <http://www.regulations.gov> Web page contains simple instructions on how to access all documents, including public comments, in the docket. See section V, “Public Participation,” for further information on how to submit comments through <http://www.regulations.gov>.

For further information on how to submit a public comment, review other public comments and the docket, or participate in the public meeting, contact Ms. Brenda Edwards at (202) 586-2945 or by e-mail: [Brenda.Edwards@ee.doe.gov](mailto:Brenda.Edwards@ee.doe.gov).

**FOR FURTHER INFORMATION CONTACT:** Mr. Mohammed Khan, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE-2J, 1000 Independence Avenue, SW., Washington, DC 20585-0121. Telephone: (202) 586-7892. E-mail: [Mohammed.Khan@ee.doe.gov](mailto:Mohammed.Khan@ee.doe.gov).

Mr. Eric Stas, U.S. Department of Energy, Office of the General Counsel, GC-71, 1000 Independence Avenue, SW., Washington, DC 20585-0121. Telephone: (202) 586-9507. E-mail: [Eric.Stas@hq.doe.gov](mailto:Eric.Stas@hq.doe.gov).

For information on how to submit or review public comments, contact Ms. Brenda Edwards, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE-2J, 1000 Independence Avenue, SW., Washington, DC 20585-0121. Telephone: (202) 586-2945. E-mail: [Brenda.Edwards@ee.doe.gov](mailto:Brenda.Edwards@ee.doe.gov).

## SUPPLEMENTARY INFORMATION:

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### I. Summary of the Proposed Rule

Title III, Part B<sup>1</sup> of the Energy Policy and Conservation Act of 1975 (EPCA or the Act), Public Law 94-163 (42 U.S.C.

<sup>1</sup> For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

6291–6309, as codified), established the Energy Conservation Program for Consumer Products Other Than Automobiles, which includes the types of direct heating equipment that are the subject of this rulemaking. (42 U.S.C. 6292(a)(9)) Pursuant to EPCA, any new or amended energy conservation standard that DOE prescribes for certain products, such as direct heating equipment, must be designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)). Furthermore, the new or amended standard must result in a significant conservation of energy. (42 U.S.C. 6295(o)(3)(B)). On April 16, 2010, DOE published a final rule (hereafter referred to as the April 2010 final rule) in accordance with these statutory provisions and other statutory requirements discussed in the final rule, which, in relevant part, promulgated definitions and energy conservation standards for vented gas hearth direct heating equipment. 75 FR 20112.

In establishing the definitions pertaining to direct heating equipment in the April 2010 final rule, DOE recognized the aesthetic appeal of certain gas hearth products and included a provision in its definition of “vented hearth heater” that considered certain gas hearth products to be decorative in nature, and excluded them from having to comply with DOE’s minimum energy conservation standard otherwise applicable to vented gas hearth direct heating equipment. The April 2010 final rule did not address vented gas log sets, which DOE also considers decorative in nature. DOE clarified its position on vented gas log sets in a document published on DOE’s Web site titled “*Frequently Asked Questions: ‘Vented Hearth Heater’ Definition*.”<sup>2</sup> In this notice, DOE proposes to further amend its definitions pertaining to direct heating equipment. Specifically, DOE is proposing to amend its definition of “vented hearth heater” to modify the conditions contained in the existing definition for the subset of such products to be considered decorative in nature and, therefore, not subject to the DOE’s minimum energy conservation standards for vented hearth heaters. In addition, DOE is proposing to include vented gas log sets in the definition of “vented hearth heater,” and to add a similar set of criteria for exclusion for vented gas log sets. DOE has tentatively

concluded that vented gas log sets warrant similar treatment to vented hearth products, due to the similarities between the two types of products. Both provide heat and aesthetic appeal for consumers, and they have certain similar characteristics, such as the presence of a flame and ceramic logs. The definition of “vented hearth heater” in the April 2010 final rule stated that “[t]hose heaters with a maximum input capacity less than or equal to 9,000 British thermal units per hour (Btu/h), as measured using DOE’s test procedure for vented home heating equipment (10 CFR Part 430, subpart B, appendix O), are considered purely decorative and are excluded from DOE’s regulations.” 75 FR 20112, 20234 (April 16, 2010). In this notice, DOE proposes to amend the definition for “vented hearth heater” to base the exclusion for decorative vented hearth products and vented gas log sets on several criteria, including the American National Standards Institute (ANSI) standard to which the product is certified. The proposed amended definition reads as set forth in the amendment to 10 CFR 430.2 later in this proposed rule.

DOE believes the amended definition of “vented hearth heater” would provide benefits to both consumers and the gas hearth products industry in terms of energy savings and product choice, by allowing manufacturers to continue to offer decorative hearth products across a broad range of input ratings, rather than limiting decorative hearth products to input ratings below the current limitation of 9,000 Btu/h. By eliminating the use of standing pilot lights in all decorative vented gas hearth products and vented gas log sets beginning on July 1, 2014, DOE believes the amended definition would result in a significant increase in overall energy savings, including those types of units eligible for the decorative products exclusion. At the same time, this proposal would lessen the impacts and burden on manufacturers of vented hearth heaters, while promoting a variety of available models for consumers. For vented gas log sets, the proposal would keep their treatment consistent with decorative vented hearth products, and would result in substantial energy savings. DOE estimates that the elimination of standing pilot lights in decorative vented hearth heater products and vented gas log sets would result in an additional 0.12 quads of additional energy savings over the 30-year period from 2014 through 2043, beyond those savings already achieved by the April 2010 final rule. Manufacturers who

choose not to avail themselves of the exclusion would be subject to the energy conservation standards for vented hearth heaters promulgated in the April 2010 final rule.

Therefore, DOE has tentatively concluded that the proposed amended definition of “vented hearth heater” would improve the existing definitions pertaining to direct heating equipment and further clarify the scope of the current exclusion from the energy conservation standards for those vented hearth heaters that are decorative hearth products. In addition, the proposal would result in significant additional energy savings, preserve consumer choice, and reduce the burden on industry. For these reasons, DOE has tentatively concluded that the proposed amendments to DOE’s definition of “vented hearth heater” would provide substantial benefits that outweigh the burden of the new requirements for products to be considered decorative hearth products, and accordingly, DOE proposes to adopt them in this notice. DOE’s rationale is presented in further detail immediately below.

## II. History of the Energy Conservation Standards Rulemaking and Current Standards

Prior to being amended in 1987, EPCA included home heating equipment as covered products. The amendments to EPCA effected by the National Appliance Energy Conservation Act of 1987 (NAECA; Pub. L. 100–12) included replacing the term “home heating equipment” with “direct heating equipment,” establishing standards for the direct heating equipment, and requiring that DOE determine whether these standards should be amended. (42 U.S.C. 6295(e)(3)–(4)) Nowhere in the statute is the term “direct heating equipment” defined. DOE amended the statutorily-prescribed standards for direct heating equipment for the first time in a final rule published on April 16, 2010 (*i.e.*, the April 2010 final rule), which prescribed the current energy conservation standards for direct heating equipment manufactured on or after April 16, 2013. 75 FR 20112. Of particular relevance here, the April 2010 final rule created a definition for “vented hearth heater,” established product classes for gas hearth direct heating equipment (*i.e.*, vented hearth heaters), and amended the minimum standards for direct heating equipment, including gas hearth direct heating equipment. The April 2010 final rule defined “vented hearth heater” at 10 CFR 430.2.

In addition, the April 2010 final rule amended the definition of “vented

<sup>2</sup> This document is available on DOE’s Web site at: [http://www1.eere.energy.gov/buildings/appliance\\_standards/residential/pdfs/htgp\\_finalrule\\_faqs.pdf](http://www1.eere.energy.gov/buildings/appliance_standards/residential/pdfs/htgp_finalrule_faqs.pdf).

home heating equipment or vented heater” to include vented hearth heaters, along with the other types of heaters (i.e., vented wall furnace, vented floor furnace, and vented room heater) that were already defined as vented home heating equipment.

The amended standards established in the April 2010 final rule for gas hearth direct heating equipment are set forth in Table II.1.

TABLE II.1—FEDERAL ENERGY EFFICIENCY STANDARDS FOR GAS HEARTH DIRECT HEATING EQUIPMENT

Product class	Standard level (Compliance date: 4/16/2013)
Gas hearth up to 20,000 Btu/h .....	AFUE* = 61%
Gas hearth over 20,000 Btu/h and up to 27,000 Btu/h ..	AFUE = 66%
Gas hearth over 27,000 Btu/h and up to 46,000 Btu/h ..	AFUE = 67%
Gas hearth over 46,000 Btu/h .....	AFUE = 68%

\* Annual Fuel Utilization Efficiency.

Following DOE’s adoption of the April 2010 final rule, the Hearth, Patio & Barbecue Association (HPBA) sued DOE in the United States Court of Appeals for the District of Columbia Circuit to invalidate the rule as it pertained to vented gas hearth products. Statement of Issues to Be Raised, *Hearth, Patio, & Barbecue Association v. Department of Energy, et al.*, No. 10–1113 (DC Cir. filed June 1, 2010). Litigation is pending; however, if this rule is adopted as proposed, it may make it unnecessary for the Court to resolve some of the issues surrounding the April 2010 final rule.

III. Discussion

A. Scope of Coverage of Vented Hearth Products

1. Description of Vented Hearth Products

Vented hearth products include gas-fired products such as fireplaces, fireplace inserts, stoves, and log sets that typically include aesthetic features (e.g., yellow flame, large flame) and that provide space heating. A vented hearth product can be intended to be a used as only a heating appliance or as a heat source with an aesthetic appeal. Characteristic of this duality of purpose, units designed as a heating appliance and those units that also have a decorative nature often share very similar external appearances, unit construction, and input capacities,

thereby making it difficult to differentiate between the two types of hearth products. DOE notes that the primary difference between the two types of vented hearth heaters is that decorative units provide ambiance and aesthetic utility associated with a solid fuel (e.g., wood-burning) fireplace in addition to heat output to the living space, whereas heating hearth products tend to focus on providing heat to the living space. Products intended for use as a heater are often shipped with or designed to be easily retrofitted with additional accessories that decorative products do not have, such as thermostats to control the heat output. However, DOE research has shown that such accessories are typically optional and, thus, not definitive in distinguishing between heaters and decorative units. To be clear, all vented hearth products constitute direct heating equipment where a gas-consuming device is inserted into the residential living space, but DOE believes that today’s proposal to modify the exclusion for decorative hearth products strikes an appropriate balance between energy savings and consumer choice for such units.

2. Definitions for “Direct Heating Equipment”

As discussed in section II above, before the enactment of NAECA, EPCA included “home heating equipment” in DOE’s appliance standards program. EPCA did not define “home heating equipment,” however. NAECA’s amendments to EPCA replaced the term “home heating equipment” with “direct heating equipment,” and specified energy conservation standards for “direct heating equipment,” but once again, the statute did not define the term “direct heating equipment.” In the absence of an unambiguous statutory definition, DOE has discretion to establish a reasonable regulatory definition. With that said, Congress’s use of such broad terminology signals that the definition is open to accommodate future technological changes in the marketplace in keeping with DOE’s energy-saving mandate under EPCA.

Prior to the April 2010 final rule, DOE had previously defined “home heating equipment” and related terms in its regulations, which can be found at 10 CFR 430.2. In the April 2010 final rule, DOE added a new definition of “direct heating equipment,” defining the term in the same manner that it had previously defined home heating equipment. 75 FR 20112, 20128, 20234 (April 16, 2010). DOE defines both “home heating equipment” and “direct

heating equipment” as meaning “vented home heating equipment and unvented home heating equipment.” In its definitions at 10 CFR 430.2, DOE goes on to define both “vented home heating equipment” and “unvented home heating equipment.” Prior to being amended in the April 2010 final rule, the definition of “vented home heating equipment,” relevant here, read as published in 10 CFR Parts 400–499, revised as of January 1, 2010.

a. Application to Vented Hearth Products

In the April 2010 final rule, DOE concluded that vented hearth products (i.e., gas-fired products such as fireplaces, fireplace inserts, stoves, and log sets) meet its definition of “vented home heating equipment,” because their designs furnish warmed air to the living space of a residence. DOE also concluded, therefore, that they are covered products under EPCA and are properly classified as direct heating equipment. 75 FR 20112, 20128 (April 16, 2010). Accordingly, DOE adopted a new definition of “vented hearth heater” and amended its definition of “vented home heating equipment or vented heater” to explicitly include vented hearth heaters, reading as published at 10 CFR 430.2.

DOE notes that the terminology “designed to furnish warmed air” in the definition of “vented home heating equipment” is not limited to furnishing warmed air through mechanical means by expelling or discharging such air, but can also refer to furnishing heat which warms the living space air through any method of heat transfer. Because of the very nature of hearth products (i.e., the presence of a flame), all hearth products create heat, and hearth products provide some amount of that heat to the surrounding living space, including radiant heat. As a result, DOE believes that all vented hearth products are designed to furnish warm air, regardless of whether they have a mechanical means for furnishing the air (such as a blower) or grills through which the warm air can be circulated via natural convection.

Based upon the above reasoning, DOE determined that decorative vented hearth products are a subset of vented hearth heaters. Further, DOE has concluded previously that all vented hearth heaters (including decorative vented hearth products) are included in the broader classification of direct heating equipment. However, because DOE recognizes the aesthetic aspects of vented hearth products that are decorative in nature, DOE adopted an exclusion for those products from the

energy conservation standards that were promulgated in the April 2010 final rule. DOE continues to support this conclusion today, but is proposing to change the scope of the exclusion in order to achieve greater energy savings, promote consumer product choice, and ease manufacturer burdens.

Given the lack of a statutory definition for “direct heating equipment,” DOE seeks comment regarding whether its interpretation that decorative vented hearth products are a type of direct heating equipment is reasonable. This is identified as Issue 1 in section V.E, “Issues on Which DOE Seeks Comment.”

#### b. Application to Vented Gas Log Sets

In the April 2010 final rule, DOE did not specifically address vented gas log sets under the broader classification of direct heating equipment. However, given their decorative nature, DOE published a document on DOE’s Web site titled “*Frequently Asked Questions: ‘Vented Hearth Heater’ Definition.*”<sup>3</sup> In that document, DOE stated that because gas log sets are not constructed as part of an entire enclosure (*i.e.*, there is no surrounding box or viewing pane) or a sealed system, they do not provide the same heating function as gas fireplaces, gas fireplace inserts, and gas stoves, which are constructed as enclosed systems. Due to these differences, DOE stated that vented gas log sets are intended to be installed for decorative purposes, and as a result, are not vented hearth heaters.

Upon reconsidering the definitions of “direct heating equipment,” “vented home heating equipment,” and “vented hearth heater” for this notice, DOE has determined that vented gas log sets are heating appliances (albeit relatively inefficient ones) and would be included as covered products under DOE’s definitions. This approach is consistent with DOE’s treatment of vented hearth products that provide both heat and aesthetic appeal. As noted above, DOE has determined that the terminology “designed to furnish warmed air” in the definition of “vented home heating equipment” is not limited to furnishing warmed air through mechanical means by expelling or discharging such air, but instead, it can refer to furnishing heat which warms the living space air through any method of heat transfer. Nor is the phrase “designed to furnish warmed air” dependent on a manufacturer’s principal intention in

designing, manufacturing, or marketing such products. Because vented gas log sets will provide some amount of heat to the living space, DOE believes that all vented gas log sets are designed to furnish warm air and, thus, are a subset of vented hearth heaters. As with decorative vented gas hearth products, DOE recognizes that vented gas log sets are typically decorative in nature, and is proposing to exclude them from DOE’s standards for vented hearth heaters if they meet the specific set of criteria outlined in section III.B and discussed in detail in section III.C.

Given the lack of a statutory definition for “direct heating equipment,” DOE seeks comment regarding whether its interpretation that vented gas log sets are a type of direct heating equipment is reasonable. This is identified as Issue 1 in section V.E, “Issues on Which DOE Seeks Comment.”

#### B. Proposed Definition for “Vented Hearth Heater”

The amended definition for “vented hearth heater” that DOE is proposing in today’s document reads as set forth in the amendment to 10 CFR 430.2 later in this proposed rule.

The amendments to the definition of “vented hearth heater” being proposed in this notice are related to the scope of the exclusion for the subset of such heaters that DOE has determined should not be subject to the current energy conservation standards otherwise applicable to vented hearth heaters. In the April 2010 final rule, DOE defined the exclusion for decorative vented hearth products as those with input ratings below 9,000 Btu/h. 75 FR 20112, 20129, 20234 (April 16, 2010). The changes to the definition that DOE is proposing in this notice are twofold and are discussed in the paragraphs that follow.

First, DOE is proposing to exclude vented gas log sets from being subject to the energy conservation standards for vented hearth heaters, provided that they meet the set of criteria outlined in the definition of “vented hearth heater.” These products were previously not considered to be subject to standards for direct heating equipment; however, as noted in section III.A.2.b, DOE now believes these products should be subject to standards, unless they qualify for an exclusion along the lines of that proposed for vented gas hearth products.

Second, DOE is also proposing a specific set of criteria (rather than the 9,000 Btu/h input rating limitation) for establishing that a subset of vented hearth products should be excluded

from the energy conservation standards because such units are decorative in nature. DOE believes that the conditions outlined in the definition for classifying a vented hearth product as decorative will create a clear division between vented hearth products that will be subject to DOE’s standards for gas hearth direct heating equipment and those vented hearth products that focus primarily on providing ambiance and aesthetic utility, which will not be subject to DOE’s standards. DOE also expects that the proposed amendments to the definition would lessen the burden on manufacturers and allow DOE to achieve greater energy savings than under the previous definition, while still achieving the energy efficiency mandate of EPCA, primarily through elimination of standing pilot lights or other continuously-burning ignition sources. In fact, DOE’s analysis suggests that amendments associated with the proposed definition would result in significant energy savings that will be greater than the savings under the definition adopted in the April 2010 final rule, both overall as well as for the types of units eligible for the exclusion. (See section III.D of this notice for details on the estimated energy savings.)

#### C. Description of Criteria for Classification as Decorative Vented Hearth Products

As noted above, DOE’s proposed amendments to the definition of “vented hearth heater” provide an exclusion for products that are decorative in nature, provided that they meet the criteria outlined in the definition. The exclusion criteria for vented gas log sets and vented hearth products are essentially the same (with the only exception being the first criterion), and are discussed together in the paragraphs below.

The first criterion that a product must meet to be considered a decorative vented hearth product or vented gas log set is that it must be certified to a certain ANSI standard. Specifically, for vented hearth products, it must be certified to ANSI Standard Z21.50, *Vented Gas Fireplaces*, and not be certified to ANSI Standard Z21.88, *Vented Gas Fireplace Heaters*. For vented gas log sets, it must be certified to ANSI Standard Z21.60, *Decorative Gas Fireplaces for Installation in a Solid-Fuel Fireplace*. DOE recognizes that the hearth products industry has attempted to distinguish between heater and decorative products using the certification under one of these standards as the criterion for classification into one category or the other. Further, ANSI Standard Z21.88 contains provisions that allow the main

<sup>3</sup> This document is available on DOE’s Web site at: [http://www1.eere.energy.gov/buildings/appliance\\_standards/residential/pdfs/htgpf\\_finalrule\\_faq.pdf](http://www1.eere.energy.gov/buildings/appliance_standards/residential/pdfs/htgpf_finalrule_faq.pdf).

burners to be thermostatically-controlled. Therefore, DOE believes this criterion would be helpful in differentiating between vented hearth heaters and vented hearth products that are decorative in nature. In addition, the criterion for gas log sets would ensure that any products that meet the conditions for exclusion from energy conservation standards are certified to ensure safety and proper operation as a gas log set.

The second criterion in the proposed definition is that the product must be sold without a thermostat and with a warranty provision expressly voiding all manufacturer warranties in the event the product is used with a thermostat. Hearth products intended for heating sometimes use thermostats to automatically turn on and off based on the temperature of the surrounding space. Often, thermostats are optional equipment that may be installed in the field. DOE believes that there should be no reason for a product intended to be used primarily for decorative purposes would need to employ a thermostat. In addition, DOE believes a provision in the warranty that voids it if a thermostat is installed will discourage the misuse of vented hearth products that are intended to be decorative and also discourage evasion of energy conservation standards by those who purchase decorative products and seek to use them as heaters.

The third criterion is that the product must expressly and conspicuously be identified on its rating plate and in all manufacturer advertising and product literature as a "Decorative Product: Not For Use As A Heating Appliance." This requirement will provide additional clarification for consumers and installers and make it obvious that the product is intended for decorative purposes only.

In the final criterion, which is perhaps of the greatest significance, DOE is proposing that products manufactured on or after July 1, 2014 must not be equipped with a standing pilot light or other continuously-burning ignition source in order to qualify for exclusion from energy conservation standards for vented hearth heaters. According to DOE's market research, more than half of the decorative hearth product market and more than three-quarters of the vented gas log market would not be impacted, because the products already utilize alternatives to a standing pilot light, such as an intermittent pilot or electronic ignition. However, if DOE adopts the proposed definition of "vented hearth heater" in a final rule, DOE notes that some products on the

market would need to be: (1) Redesigned to eliminate the use of standing pilot lights or other continuously-burning ignition source; (2) redesigned by April 16, 2013 to meet the required standard level for gas hearth direct heating equipment established by the April 2010 final rule; or (3) removed from the market prior to July 1, 2014. DOE believes that given the prevalence of the technological alternatives to standing pilot lights and other continuously-burning ignition sources (e.g., electronic ignition, intermittent pilot) and the experience of manufacturers in implementing these alternatives, a compliance date of July 1, 2014 allows a reasonable amount of time for manufacturers to redesign or remove from the market their products with standing pilots or shift production to product lines without a standing pilot or other continuously-burning ignition source. DOE is interested in receiving comment from interested parties on the proposed compliance date for vented gas hearth products and vented gas log sets, including specific rationales and accompanying data as to why a different timeline for eliminating standing pilots or other continuously-burning ignition sources from decorative vented gas hearth products or vented gas log sets may or may not be warranted. This is identified as Issue 2 in section V.E, "Issues on Which DOE Seeks Comment."

In addition, DOE seeks comments on all aspects of the proposed definition for "vented hearth heater," in particular, the criteria for exclusion of vented hearth products and vented gas log sets that are decorative in nature. This is identified as Issue 3 in section V.E, "Issues on Which DOE Seeks Comment."

#### D. National Energy Savings

As noted above, DOE is proposing that to qualify for an exclusion from the current energy conservation standards for products that are decorative in nature, vented gas hearth products and vented gas log sets manufactured on or after July 1, 2014 must not be equipped with a standing pilot light or other continuously-burning ignition source. DOE analyzed the energy savings expected to result from exclusion of the standing pilot light or other continuously-burning ignition source in the amended "vented hearth heater" definition. Based on information about vented hearth product models available in the market,<sup>4</sup> DOE estimated that

about 38 percent of the vented decorative hearth models on the market would need to be redesigned to eliminate the use of standing pilot lights or other continuously-burning ignition sources. DOE also estimated that 20 percent of vented gas logs would have standing pilot lights or other continuously-burning ignition sources, based on a 1997 GTI study.<sup>5</sup> The remaining portion of the market is assumed to already utilize ignition alternatives, such as an intermittent pilot or electronic ignition.

To estimate the energy savings associated with today's proposal, DOE assumed that all decorative hearth products and vented gas log models with standing pilot lights or other continuously-burning ignition sources would be replaced with an intermittent pilot ignition, and would have an average duration of the pilot operation of about 37.5 h/yr (the same as the main burner operating hours<sup>6</sup>). On average, continuous pilot energy use is about 350 Btu/h<sup>7</sup> for decorative vented hearth products<sup>8</sup> and 1,250 Btu/h for vented gas logs.<sup>9</sup> For both vented hearth products and vented gas log sets, DOE assumed that pilot lights operate year round (i.e., 8,760 h/yr) for 75 percent of the installations and that for the remaining 25 percent, the consumer operates the pilot for about one-fourth of the year (i.e., 2,190 h/yr). Thus, the average annual energy savings amount to 2.67 million Btu per unit for

Heating Equipment, and Pool Heaters (April 27, 2010).

<sup>5</sup> Menkedick, J., Hartford, P., Collins, S., Chumaker, S., Wells, D. Topic Report: Hearth Products Study (1995–1997). Gas Research Institute (GRI). September 1997. GRI–97/0298.

<sup>6</sup> Houck, James, "Residential Decorative Gas Fireplace Usage Characteristics" (Report prepared for HPBA) (2010).

<sup>7</sup> U.S. Department of Energy-Office of Codes and Standards, Technical Support Document: Energy Conservation Standards for Residential Water Heaters, Direct Heating Equipment, and Pool Heaters (April 27, 2010).

<sup>8</sup> U.S. Department of Energy-Office of Codes and Standards, Technical Support Document: Energy Conservation Standards for Residential Water Heaters, Direct Heating Equipment, and Pool Heaters (April 27, 2010).

<sup>9</sup> This value was derived from data collected on the following manufacturer Web sites:

Pittsburgh Gas Grill and Heater Co. Frequently Asked Questions. (URL: <http://www.pittsburghgasgrill.com/faq.html>).

Hargrove Hearth Products. Frequently Asked Questions. (URL: <http://www.hargrovegaslogs.com/faq.htm>).

Leonard's Stone & Fireplace. Frequently Asked Questions. (URL: <http://www.leonardstoneandfireplace.net/faq.html>).

Fireside Hearth & Home. Frequently Asked Questions. (URL: <http://www.firesidehearthandhome.com/faq.php>).

Heatilator. Common Questions. (URL: <http://www.heatilator.com/customerCare/searchFaq.asp?c=Gas>).

<sup>4</sup> U.S. Department of Energy-Office of Codes and Standards, Analytical Tools: Energy Conservation Standards for Residential Water Heaters, Direct

decorative vented hearth products and 9.53 million Btu per unit for vented gas logs. DOE assumed an average lifetime of 15 years for both decorative vented hearth and vented gas logs units and average annual shipments of 460,000 decorative vented hearth units and 103,000 vented gas logs units.

In the April 2010 final rule, DOE estimated the national energy savings over the analysis period (2013–2042) for the vented hearth heaters to be 0.19 quads. 75 FR 20112, 20185 (April 16, 2010). Based on current information, DOE has determined that approximately 70 percent of the vented hearth products considered in 2010 are decorative hearth products. If one assumes that manufacturers were to avail themselves of the exclusion proposed in this rulemaking for all such products, DOE's revised national energy savings (NES) estimates show that the savings for the vented hearth heaters under the April 2010 standards would be 0.06 quads, which does not include any energy savings from products considered decorative in nature. Using the above assumptions, DOE calculated the national energy savings over the analysis period to be 0.17 quads for decorative hearth products and 0.07 quads for vented gas log sets under the proposed revised definition of “vented hearth heater” in today's rule which would eliminate the standing pilot lights on those units. Accounting for the approximately 0.13 quad reduction in energy savings for 2010 final rule (from assuming that all decorative products avail themselves of the exclusion proposed in this rulemaking), DOE estimated that the net additional national energy savings compared to the 2010 final rule would be 0.12 quads (rounded to two significant figures).

#### IV. Procedural Issues and Regulatory Review

##### A. Review Under Executive Orders 12866 and 13563

Section 1(b)(1) of Executive Order 12866, “Regulatory Planning and Review,” 58 FR 51735 (Oct. 4, 1993), requires each agency to identify the problem that it intends to address, including, where applicable, the failures of private markets or public institutions that warrant new agency action, as well as to assess the significance of that problem. The problems that the standards in this rule address are as follows:

(1) There is a lack of consumer information and/or information processing capability about energy efficiency opportunities in the home appliance market.

(2) There is asymmetric information (one party to a transaction has more and better information than the other) and/or high transactions costs (costs of gathering information and affecting exchanges of goods and services).

(3) There are external benefits resulting from improved energy efficiency of direct heating equipment that are not captured by the users of such equipment. These benefits include externalities related to environmental protection and energy security that are not reflected in energy prices, such as reduced emissions of greenhouse gases.

In addition, DOE has determined that today's regulatory action is not an “economically significant regulatory action” under section 3(f)(1) of Executive Order 12866. Accordingly, DOE has not prepared a regulatory impact analysis (RIA) on today's rule, and the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) is not required to review this rule.

DOE has also reviewed this regulation pursuant to Executive Order 13563, issued on January 18, 2011 (76 FR 3281 (Jan. 21, 2011)). Executive Order 13563 is supplemental to and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, agencies are required by Executive Order 13563 to: (1) Propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

DOE emphasizes as well that Executive Order 13563 requires agencies to use the best available techniques to quantify anticipated present and future

benefits and costs as accurately as possible. In its guidance, the Office of Information and Regulatory Affairs has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in the preamble, DOE believes that today's NOPR is consistent with these principles, including the requirement that, to the extent permitted by law, agencies adopt a regulation only upon a reasoned determination that its benefits justify its costs and, in choosing among alternative regulatory approaches, those approaches maximize net benefits.

##### B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (IRFA) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, “Proper Consideration of Small Entities in Agency Rulemaking,” 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's Web site (<http://www.gc.doe.gov>).

DOE reviewed the impacts of the proposed amendments in today's NOPR under the provisions of the Regulatory Flexibility Act and the procedures and policies discussed above. As a result of this review, DOE has prepared an IRFA for vented hearth products, a copy of which DOE will transmit to the Chief Counsel for Advocacy of the SBA for review under 5 U.S.C. 605(b). As presented and discussed below, the IRFA describes potential impacts on small manufacturers of vented hearth products associated with the required capital and product conversion costs from the proposed amended definition for “vented hearth heater,” which would change the scope of the exclusion from the applicable energy conservation standard.

##### 1. Statement of the Need for, and Objectives of, the Rule

The reasons why DOE is proposing to amend the definition of “vented hearth heater” in today's NOPR and the



objectives of this and other related amendments are provided elsewhere in the preamble and not repeated here.

## 2. Description and Estimated Number of Small Entities Regulated

For manufacturers of direct heating equipment, the Small Business Administration (SBA) has set a size threshold, which defines those entities classified as “small businesses” for the purposes of the statute. DOE used the SBA’s small business size standards to determine whether any small entities would be subject to the requirements of the rule. 65 FR 30836, 30848 (May 15, 2000), as amended at 65 FR 53533, 53544 (Sept. 5, 2000) and codified at 13 CFR Part 121. The size standards are listed by North American Industry Classification System (NAICS) code and industry description, which are available at: [http://www.sba.gov/sites/default/files/Size\\_Standards\\_Table.pdf](http://www.sba.gov/sites/default/files/Size_Standards_Table.pdf). Direct heating equipment manufacturing is classified under NAICS 333414, “Heating Equipment (except Warm Air Furnaces) Manufacturing.” The SBA sets a threshold of 500 employees or less for an entity to be considered as a small business for this category.

In preparation for the April 2010 final rule, DOE conducted a market survey using all available public information to identify potential small manufacturers of the type of products that are the subject of this rulemaking. DOE’s research included the HPBA membership directory, Air-Conditioning, Heating, and Refrigeration Institute (AHRI) product databases, and individual company Web sites to find potential small business manufacturers. DOE also asked stakeholders and industry representatives if they were aware of any other small manufacturers during manufacturer interviews and at previous DOE public meetings. DOE reviewed all publicly-available data and contacted various companies, as necessary, to determine whether they met the SBA’s definition of a small business manufacturer of covered residential direct heating equipment. DOE screened out companies that did not offer products covered by this rulemaking, did not meet the definition of a “small business,” or are foreign owned and operated. In the April 2010 final rule, DOE identified 10 small manufacturers of vented gas hearth products, and DOE believes that the vented hearth heater market has not changed significantly since the time of the April 2010 final rule. Before issuing the NOPR that lead to the April 2010 final rule, DOE attempted to contact the small business manufacturers of vented hearth products. One of the small

businesses consented to being interviewed during the MIA interviews, and DOE received feedback from an additional two small businesses through survey responses. DOE also obtained information about small business impacts while interviewing manufacturers that exceed the small business size threshold of 500 employees in this industry. The remaining small businesses that DOE identified in the rule did not respond to requests for additional information or interviews.

For this rulemaking, DOE also identified seven small business manufacturers of vented gas log sets. Of these manufacturers, three are also small business manufacturers of decorative hearth products and, consequently, were previously identified. The only covered products made by the remaining four small business manufacturers are vented gas log sets. DOE attempted to contact the four small business manufacturers of gas log sets that it identified. Additionally, DOE believes that given the similarities in these types of products, the compliance costs of small business manufacturers of vented gas log sets resulting from this rulemaking can be reasonably assumed to be largely the same as the compliance costs of small business manufacturers of vented gas hearth products.

## 3. Description and Estimate of Compliance Requirements

For the April 2010 final rule, DOE calculated the anticipated capital and product development costs for vented hearth heaters by estimating per-line cost and average number of product lines for a typical small business manufacturer. DOE used certification databases, product catalogs, interviews with manufacturers, and sources of public information to estimate the impacts of the rule on small business manufacturers. In the final rule, DOE concluded that because a typical manufacturer of vented hearth products already offers multiple product lines that meet and exceed the required efficiencies and because most product lines that did not meet the proposed standard could be upgraded with relatively minor changes, manufacturers, including the small business manufacturers, would be able to maintain a viable number of product offerings. 75 FR 20112, 20231 (April 16, 2010).

In order to comply with the energy conservation standards promulgated in the April 2010 final rule, manufacturers of decorative hearth products with efficiencies lower than the minimum

allowable standard and input ratings above 9,000 Btu/h would need to either: (1) Redesign their products to meet the required standard level for gas hearth direct heating equipment; (2) redesign their products to ensure that input ratings are below 9,000 Btu/h; or (3) discontinue manufacturing those products. In the April 2010 final rule, DOE assumed manufacturers would redesign their products with input rating below 9,000 Btu/h with relatively minor changes to existing decorative products. 75 FR 20112, 20129 (April 16, 2010). Under the amended definition of “vented hearth heater” proposed in this notice, the 9,000 Btu/h limitation would no longer apply for purposes of exclusion from the energy conservation standard. Instead, vented hearth products (regardless of input rating) would not be subject to the minimum standard for vented hearth heaters if they comply with the four criteria outlined above (*i.e.*, (1) Certified to ANSI Standard Z21.50 and not to ANSI Standard Z21.88); (2) sold without a thermostat and with a warranty provision expressly voiding all manufacturer warranties in the event the product is used with a thermostat; (3) expressly and conspicuously identified on its rating plate and in all manufacturer’s advertising and product literature as a “Decorative Product: Not For Use As A Heating Appliance”; and (4) with respect to products sold after July 1, 2014, not equipped with a standing pilot light or other continuously-burning ignition source). Under the April 2010 final rule, vented gas log sets were not addressed. However, under today’s proposal, vented gas log sets would be required to either meet the energy conservation standard for vented hearth heaters or to meet the four criteria outlined above for their exclusion (which are the same as the criteria for vented hearth products, except that they must be certified to ANSI Z21.60, rather than ANSI Z21.50, as it is the applicable standard for gas log sets).

Each of the definitional criteria for decorative gas hearth products and vented gas log sets would have differing impacts on small business manufacturers. The first criterion (that the product must be certified to ANSI Standard Z21.50 and not ANSI Standard Z21.88 for decorative hearth products, and that the product must be certified to ANSI Z21.60 for gas log sets) would not impose new conversion costs on small businesses since DOE is not aware of any vented hearth products on the market that are not already certified to one of these standards. Products



considered by manufacturers to be decorative in nature are already certified to ANSI Standard Z21.50 (vented hearth products), and to ANSI Z21.60 (vented gas log sets). For these reasons, DOE believes that this criterion would not cause any additional compliance requirements for manufacturers, including small businesses.

Complying with the second and third criteria would require manufacturers to clearly identify the decorative nature of the vented hearth product and vented gas log set, as well as further detail the warranty provisions of the hearth product. These provisions would require an update of the product and marketing literature and product labeling, which DOE believes would result in added product conversion costs. However, DOE notes that product conversion costs to update manufacturer literature and labels will also be required under the definition and standards for gas hearth direct heating equipment (*i.e.*, vented hearth heaters) set forth by the April 2010 final rule, due to the requirements for making representations of the AFUE as well as certifying compliance to the Department. Under the April 2010 final rule, all of the product and marketing materials would have to have been revised to reflect the test AFUE. Because the compliance date for the standards promulgated in the April 2010 final rule is April 2013, DOE believes that manufacturers have likely not already updated product literature in preparation for compliance with those standards. Consequently, DOE estimated that all manufacturers, including small businesses, would continue to incur these product conversion cost under both rules for those products affected by the definitional change. Regarding the second criterion that eliminates the option for manufacturers to offer a thermostat with any decorative hearths, DOE does not believe that this would impose any additional costs or burdens because thermostats are optional features and their removal would not require any redesign of existing product lines. Further, many decorative hearths are not offered with an optional thermostat from the point of sale by the manufacturer, so DOE believes this criterion alone would have little impact on the existing market, but would provide additional assurance that decorative products are not being installed as heating appliances. Consequently, DOE believes that the second and third criteria would simply result in revising product specifications, marketing materials, and products labels to make clear the intended use of

decorative hearths, which DOE believes would have a minimal impact on manufacturers, including small businesses.

Lastly, DOE considered the impacts of the final criterion to qualify for the decorative exclusion from the energy conservation standards for vented hearth heaters and vented gas log sets. That criterion requires manufacturers to eliminate standing pilot lights and other continuously-burning ignition devices from decorative vented hearth products by July 1, 2014 which would cause manufacturers to incur conversion costs to qualify for the proposed exclusion from the energy conservation standards. To calculate the conversion costs for decorative hearth products to remove standing pilots, DOE approximated the total number of product lines for decorative vented hearth products using the average number of annual shipments of decorative gas hearth products per product line, along with the average total shipments assumed for the analysis of national energy savings (*i.e.*, 460,000 units per year). To determine the average number of annual shipments of decorative gas hearth products per product line, DOE assumed that each decorative vented gas hearth product line has approximately the same number of annual shipments per line as the gas hearth products analyzed for the April 2010 final rule. Using this method, DOE found approximately 110 total decorative product lines. Using the assumption that 38 percent of decorative gas hearth products would have to remove standing pilots, 42 of these product lines would have to be upgraded by July 1, 2014. To calculate the conversion costs for vented gas log sets, DOE used market data and the assumptions for the per line conversion costs to remove standing pilots from gas hearth products. To determine the number of vented gas log product lines with standing pilots, DOE reviewed the company Web sites for all manufacturers of gas hearth products and all manufacturers that certify gas space heaters with the California Energy Commission (CEC) and are listed in CEC's appliance efficiency directory. DOE also conducted product searches to verify that it had captured all vented gas log sets that use a standing pilot. If it was not clear from the literature whether the vented gas log sets had a standing pilot, DOE assumed the product used a standing pilot. DOE found 35 vented gas log product lines that would need to be updated to remove the standing pilot ignition system by the July 1, 2014 deadline set in the proposed exclusion.

DOE believes that the elimination of standing pilot would only result in product conversion costs associated with testing and recertification to the ANSI safety standards for the newly designed products. If all 77 product lines need to be retested and recertified as a result of the incorporation of standing pilots into the system, the estimated product conversion cost would be approximately \$693,000 for the industry to comply with the proposed July 1, 2014 exclusion criteria for both decorative gas hearth products and vented gas log sets. DOE does not believe any capital conversion costs would be needed for manufacturers to comply with the criterion for elimination of the standing pilot, because manufacturers would not need to make any changes to their existing facilities to incorporate this design change into their product lines. Overall, the total conversion costs with today's proposed amendments would be expected to be slightly lower than the total conversion costs for manufacturers of vented gas hearth heaters for the April 2010 final rule.

In considering the impacts of this requirement, DOE compared it to the alternative of leaving in place the requirements in the April 2010 final rule, assuming manufacturers chose not to design for a Btu rating lower than 9,000 Btu/h. If the definition of "vented hearth heater" were to remain as it was in the April 2010 final rule, manufacturers would have to redesign all decorative hearth products with input ratings over 9,000 Btu/h either to meet the minimum standard for gas hearth direct heating equipment or to have an input rating below 9,000 Btu/h, or discontinue manufacturing those products. Under the newly proposed definition, instead of completely redesigning those products to improve energy efficiency, manufacturers could make a comparatively minor engineering change of replacing the standing pilot or other continuously-burning ignition with an alternative technology such as an electronic ignition or interrupted ignition device. DOE believes that replacing the standing pilot or other continuously-burning ignition device with an alternative technology would be less burdensome to manufacturers than a complete redesign of decorative hearth products to meet the minimum standard or to have an input rating below 9,000 Btu/h. Moreover, a redesign to comply with the energy conservation standard would likely necessitate elimination of any standing pilot on units so equipped anyway, along with additional

engineering changes to improve efficiency. In addition, manufacturers would be required to test and certify their equipment to DOE efficiency's standards along with the ANSI safety standards, further increasing the cost and burden of compliance with the energy conservation standard in comparison to simply replacing the standing pilot or continuously-burning ignition with an alternative technology.

As a result of the considerations discussed above, DOE has concluded that today's proposal would not disproportionately impact small manufacturers of vented hearth products and vented gas logs. DOE requests comment on its assessment of the impact of today's proposal on small business manufacturers.

#### 4. Duplication, Overlap, and Conflict with Other Rules and Regulations

DOE is not aware of any rules or regulations that duplicate, overlap, or conflict with the rule being considered today.

#### 5. Significant Alternatives to the Proposed Rule

The discussion above analyzes impacts on small businesses that would result from the amended definition for "vented hearth heater," due to its effect on which units will be subject to energy conservation standards. DOE believes that the amended definition proposed in this notice would represent a similar burden on industry, including small business manufacturers, in comparison to the definition included in the April 2010 final rule. In that rule, DOE rejected the other alternatives to the rule because of the lower energy savings that associated with those alternatives.

DOE continues to seek input from businesses that would be affected by this rulemaking and will consider comments received in response to the NOPR for the development of final rule. This is identified as Issue 4 in section V.E, "Issues on Which DOE Seeks Comment."

#### C. Review Under the Paperwork Reduction Act of 1995

Manufacturers of direct heating equipment must certify to DOE that their products comply with any applicable energy conservation standards. In certifying compliance, manufacturers must test their products according to the DOE test procedures for direct heating equipment, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and

commercial equipment, including direct heating equipment. (76 FR 12422 (March 7, 2011)). The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (PRA). (44 U.S.C. 3501 *et seq.*) This requirement has been approved by OMB under OMB control number 1910-1400. Public reporting burden for the certification is estimated to average 20 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

#### D. Review Under the National Environmental Policy Act of 1969

DOE has prepared a draft environmental assessment (EA) of the impacts of the proposed rule pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), the regulations of the Council on Environmental Quality (40 CFR Parts 1500-1508), and DOE's regulations for compliance with the National Environmental Policy Act of 1969 (10 CFR Part 1021). This assessment, which has been placed in the docket for this rulemaking, includes an examination of the potential effects of emission reductions likely to result from the rule in the context of global climate change, as well as other types of environmental impacts. The estimated additional cumulative CO<sub>2</sub> and NO<sub>x</sub> emissions reductions for these proposed amendments to the energy conservation standards are 5.0 million metric tons (Mt) for CO<sub>2</sub> and 3.9 thousand metric tons (kt) for NO<sub>x</sub>. Before issuing a final rule for direct heating equipment, DOE will consider public comments and, as appropriate, determine whether to issue a finding of no significant impact (FONSI) as part of a final EA or to prepare an environmental impact statement (EIS) for this rulemaking.

#### E. Review Under Executive Order 13132

Executive Order 13132, "Federalism," 64 FR 43255 (Aug. 10, 1999) imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order

requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of today's proposed rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297) No further action is required by Executive Order 13132.

#### F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. 61 FR 4729 (Feb. 7, 1996). Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this proposed rule meets the relevant standards of Executive Order 12988.

### *G. Review Under the Unfunded Mandates Reform Act of 1995*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed “significant intergovernmental mandate,” and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. DOE’s policy statement is also available at <http://www.gc.doe.gov>.

Today’s proposed rule does not contain a Federal intergovernmental mandate, because it will not require expenditures of \$100 million or more by State, local, and Tribal governments, in the aggregate, or by the private sector. DOE has considered expenditures that will result from updating manufacturer literature, product labels, and making design changes to decorative hearth products to eliminate the standing pilot light or other continuously-burning ignition source, and concluded that these expenditures will total less than \$100 million. Accordingly, no further action is required under the UMRA.

### *H. Review Under the Treasury and General Government Appropriations Act, 1999*

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to

prepare a Family Policymaking Assessment.

### *I. Review Under Executive Order 12630*

DOE has determined, under Executive Order 12630, “Governmental Actions and Interference with Constitutionally Protected Property Rights,” 53 FR 8859 (Mar. 18, 1988), that this regulation would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

### *J. Review Under the Treasury and General Government Appropriations Act, 2001*

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for Federal agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB’s guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE’s guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed today’s NOPR under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

### *K. Review Under Executive Order 13211*

Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,” 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OIRA at OMB, a Statement of Energy Effects for any proposed significant energy action. A “significant energy action” is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

DOE has tentatively concluded that today’s regulatory action, which sets forth amended definitions for direct heating equipment, is not a significant energy action because the proposed standards are not likely to have a significant adverse effect on the supply,

distribution, or use of energy, nor has it been designated as such by the Administrator at OIRA. Accordingly, DOE has not prepared a Statement of Energy Effects on the proposed rule.

### *L. Review Under the Information Quality Bulletin for Peer Review*

On December 16, 2004, OMB, in consultation with the Office of Science and Technology Policy (OSTP), issued its Final Information Quality Bulletin for Peer Review (the Bulletin). 70 FR 2664 (Jan. 14, 2005). The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal Government, including influential scientific information related to agency regulatory actions. The purpose of the bulletin is to enhance the quality and credibility of the Government’s scientific information. Under the Bulletin, the energy conservation standards rulemaking analyses are “influential scientific information,” which the Bulletin defines as “scientific information the agency reasonably can determine will have, or does have, a clear and substantial impact on important public policies or private sector decisions.” *Id.* at 2667.

In response to OMB’s Bulletin, DOE conducted formal in-progress peer reviews of the energy conservation standards development process and analyses and has prepared a Peer Review Report pertaining to the energy conservation standards rulemaking analyses. Generation of this report involved a rigorous, formal, and documented evaluation using objective criteria and qualified and independent reviewers to make a judgment as to the technical/scientific/business merit, the actual or anticipated results, and the productivity and management effectiveness of programs and/or projects. The “Energy Conservation Standards Rulemaking Peer Review Report” dated February 2007 has been disseminated and is available at the following Web site: [http://www1.eere.energy.gov/buildings/appliance\\_standards/peer\\_review.html](http://www1.eere.energy.gov/buildings/appliance_standards/peer_review.html).

## **V. Public Participation**

### *A. Attendance at the Public Meeting*

The time, date, and location of the public meeting are listed in the **DATES** and **ADDRESSES** sections at the beginning of this notice. If you plan to attend the public meeting, please notify Ms. Brenda Edwards at (202) 586–2945 or [Brenda.Edwards@ee.doe.gov](mailto:Brenda.Edwards@ee.doe.gov). As explained in the **ADDRESSES** section, foreign nationals visiting DOE

Headquarters are subject to advance security screening procedures.

In addition, you can attend the public meeting via webinar. Webinar registration information, participant instructions, and information about the capabilities available to webinar participants will be published on DOE's Web site at: [http://www.eere.energy.gov/buildings/appliance\\_standards/residential/direct\\_heating.html](http://www.eere.energy.gov/buildings/appliance_standards/residential/direct_heating.html). Participants are responsible for ensuring their systems are compatible with the webinar software.

#### *B. Procedure for Submitting Prepared General Statements for Distribution*

Any person who has plans to present a prepared general statement may request that copies of his or her statement be made available at the public meeting. Such persons may submit requests, along with an advance electronic copy of their statement in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format, to the appropriate address shown in the **ADDRESSES** section at the beginning of this notice. The request and advance copy of statements must be received at least one week before the public meeting and may be e-mailed, hand-delivered, or sent by mail. DOE prefers to receive requests and advance copies via e-mail. Please include a telephone number to enable DOE staff to make follow-up contact, if needed.

#### *C. Conduct of the Public Meeting*

DOE will designate a DOE official to preside at the public meeting and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA (42 U.S.C. 6306). There shall not be discussion of proprietary information, costs or prices, market share, or other commercial matters regulated by U.S. anti-trust laws. A court reporter will be present to record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the public meeting. After the public meeting, interested parties may submit further comments on the proceedings as well as on any aspect of the rulemaking until the end of the comment period.

The public meeting will be conducted in an informal, conference style. DOE will present summaries of comments received before the public meeting, allow time for prepared general statements by participants, and encourage all interested parties to share their views on issues affecting this

rulemaking. Each participant will be allowed to make a general statement (within time limits determined by DOE), before the discussion of specific topics. DOE will allow, as time permits, other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly and comment on statements made by others. Participants should be prepared to answer questions by DOE and by other participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to this rulemaking. The official conducting the public meeting will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for the proper conduct of the public meeting.

A transcript of the public meeting will be included in the docket, which can be viewed as described in the *Docket* section at the beginning of this notice. In addition, copies of the transcript will be posted on the DOE Web site, and any person may buy a copy of the transcript from the transcribing reporter.

#### *D. Submission of Comments*

DOE will accept comments, data, and information regarding this proposed rule before or after the public meeting, but no later than the date provided in the **DATES** section at the beginning of this proposed rule. Interested parties may submit comments, data, and other information using any of the methods described in the **ADDRESSES** section at the beginning of this notice.

*Submitting comments via http://www.regulations.gov.* The <http://www.regulations.gov> Web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment itself or in any documents attached to your comment.

Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Otherwise, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to <http://www.regulations.gov> information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through <http://www.regulations.gov> cannot be claimed as CBI. Comments received through the Web site will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section below.

DOE processes submissions made through <http://www.regulations.gov> before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that <http://www.regulations.gov> provides after you have successfully uploaded your comment.

*Submitting comments via e-mail, hand delivery/courier, or mail.* Comments and documents submitted via e-mail, hand delivery, or mail also will be posted to <http://www.regulations.gov>. If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information in a cover letter. Include your first and last names, e-mail address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via mail or hand delivery/courier, please provide all items on a CD, if feasible, in which case it is not necessary to submit printed copies. No facsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not

secured, that are written in English, and that are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

**Campaign form letters.** Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

**Confidential Business Information.** Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via e-mail, postal mail, or hand delivery/courier two well-marked copies: one copy of the document marked confidential including all the information believed to be confidential, and one copy of the document marked non-confidential with the information believed to be confidential deleted. Submit these documents via e-mail or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

#### *E. Issues on Which DOE Seeks Comment*

Although DOE welcomes comments on any aspect of this proposal, DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

1. Given the lack of a statutory definition for "direct heating

equipment," whether DOE's interpretation that decorative vented hearth products and vented gas log sets are types of direct heating equipment is reasonable.

2. The proposed compliance date for vented gas hearth products and vented gas log sets, including specific rationales and accompanying data as to why a different timeline for eliminating standing pilots or other continuously-burning ignition sources from decorative gas hearth products may or may not be warranted.

3. The proposed exclusion as a decorative vented hearth product or vented gas log set from the energy conservation standard.

4. Impacts of the proposed amended definition of "vented hearth heater" on small business manufacturers of decorative vented hearth products or vented gas log sets.

#### **VI. Approval of the Office of the Secretary**

The Secretary of Energy has approved publication of today's proposed rule.

#### **List of Subjects in 10 CFR Part 430**

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Intergovernmental relations, Reporting and recordkeeping requirements, and Small businesses.

Issued in Washington, DC, on July 14, 2011.

**Kathleen Hogan,**

*Deputy Assistant Secretary for Energy Efficiency, Office of Technology Development, Energy Efficiency and Renewable Energy.*

For the reasons set forth in the preamble, DOE proposes to amend Part 430 of Chapter II, Subchapter D, of Title 10 of the Code of Federal Regulations, to read as set forth below:

#### **PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS**

1. The authority citation for part 430 continues to read as follows:

**Authority:** 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

2. Section 430.2 is amended by revising the definition for "vented hearth heater" to read as follows:

##### **§ 430.2 Definitions.**

\* \* \* \* \*

*Vented hearth heater* means a vented appliance which simulates a solid fuel fireplace and is designed to furnish warm air, with or without duct connections, to the space in which it is

installed. The circulation of heated room air may be by gravity or mechanical means. A vented hearth heater may be freestanding, recessed, zero clearance, or a gas fireplace insert or stove. The following products are not subject to the energy conservation standards for vented hearth heaters:

(1) Vented gas log sets that meet all of the following four criteria:

(i) Certified to ANSI Standard Z21.60; (ii) Sold without a thermostat and with a warranty provision expressly voiding all manufacturer warranties in the event the product is used with a thermostat; (iii) Expressly and conspicuously identified on its rating plate and in all manufacturer's advertising and product literature as a "Decorative Product: Not For Use As A Heating Appliance"; and (iv) With respect to products sold after July 1, 2014, not equipped with a standing pilot light or other continuously-burning ignition source; and

(2) Vented gas hearth products that meet all of the following four criteria:

(i) Certified to ANSI Standard Z21.50 and not to ANSI Standard Z21.88; (ii) Sold without a thermostat and with a warranty provision expressly voiding all manufacturer warranties in the event the product is used with a thermostat; (iii) Expressly and conspicuously identified on its rating plate and in all manufacturer's advertising and product literature as a "Decorative Product: Not For Use As A Heating Appliance"; and (iv) With respect to products sold after July 1, 2014, not equipped with a standing pilot light or other continuously-burning ignition source.

\* \* \* \* \*

[FR Doc. 2011–18310 Filed 7–21–11; 8:45 am]

**BILLING CODE 6450–01–P**

#### **FEDERAL RESERVE SYSTEM**

##### **12 CFR Chapter II**

[Docket No. OP–1427]

#### **Continued Application of Regulations to Savings and Loan Holding Companies**

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Notice of intent and request for comment.

**SUMMARY:** The Board of Governors of the Federal Reserve System ("Board") is issuing this notice of its intention to continue to enforce certain regulations previously issued by the Office of Thrift Supervision ("OTS") after assuming supervisory responsibility for savings and loan holding companies ("SLHCs")