[6450-01-P]

DEPARTMENT OF ENERGY

10 CFR Parts 430 and 431

[EERE–2018–BT–STD-0018]

RIN 1904-AE39

Energy Conservation Program for Appliance Standards: Energy Conservation Standards for Residential Furnaces and Commercial Water Heaters

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

ACTION: Notification of proposed interpretive rule; request for comment.

SUMMARY: On January 15, 2021, the Department of Energy (DOE or Department) published a final interpretive rule in the *Federal Register* determining that, in the context of residential furnaces, commercial water heaters, and similarly-situated products or equipment, use of non-condensing technology (and associated venting) constitutes a performance-related "feature" under the Energy Policy and Conservation Act, as amended (EPCA), that cannot be eliminated through adoption of an energy conservation standard. DOE deems it prudent to revisit its interpretation. For the reasons stated in this document, the Department proposes to return to its previous and long-standing interpretation (in effect prior to the January 15, 2021 final interpretive rule), under which the technology used to supply heated air or hot water is not a performance-related

"feature" that provides a distinct consumer utility under EPCA. DOE requests comment on its proposed interpretation. Once DOE has arrived at a final interpretation, the Department plans to again evaluate whether amended energy conservation standards would result in significant savings of energy, be technologically feasible, and be economically justified, consistent with its interpretation.

DATES: DOE will accept comments, data, and information regarding this proposed interpretive rule no later than [**INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER***].

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *www.regulations.gov*. Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE–2018–BT–STD-0018 and/or RIN number 1904-AE39, by e-mail: to *ResFurnaceCommWaterHeater2018STD0018@ee.doe.gov*. Include docket number EERE–2018–BT–STD-0018 and/or RIN number 1904-AE39 in the subject line of the message. Submit electronic comments in WordPerfect, Microsoft Word, PDF, or ASCII file format, and avoid the use of special characters or any form of encryption.

Although DOE has routinely accepted public comment submissions through a variety of mechanisms, including postal mail and hand delivery/courier, the Department has found it necessary to make temporary modifications to the comment submission process in light of the ongoing COVID-19 pandemic. DOE is currently suspending

receipt of public comments via postal mail and hand delivery/courier. If a commenter finds that this change poses an undue hardship, please contact Appliance Standards Program staff at (202) 586-1445 to discuss the need for alternative arrangements. Once the COVID-19 pandemic health emergency is resolved, DOE anticipates resuming all of its regular options for public comment submission, including postal mail and hand delivery/courier.

No telefacsimiles (faxes) will be accepted. For detailed instructions on submitting comments and additional information on this process, see section IV (Public Participation) of this document.

Docket: The docket for this activity, which includes *Federal Register* notices, comments, and other supporting documents/materials, is available for review at *www.regulations.gov*. All documents in the docket are listed in the *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.

The docket webpage can be found at: *www.regulations.gov/#!docketDetail;D=EERE-2018-BT-STD-0018*. The docket webpage contains instructions on how to access all documents, including public comments, in the docket.

FOR FURTHER INFORMATION CONTACT: Ms. Catherine Rivest, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE-5B, 1000 Independence Avenue, SW., Washington, DC, 20585-0121. Telephone: (202) 586-7335. Email: *ApplianceStandardsQuestions@ee.doe.gov*.

Mr. Eric Stas, U.S. Department of Energy, Office of the General Counsel, GC-33, 1000 Independence Avenue, SW., Washington, DC, 20585-0121. Telephone: (202) 586-5827. Email: *Eric.Stas@hq.doe.gov*.

For further information on how to submit a comment or review other public comments and the docket, contact the Appliance and Equipment Standards Program staff at (202) 287-1445 or by email: *ApplianceStandardsQuestions@ee.doe.gov*.

SUPPLEMENTARY INFORMATION:

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I. Introduction and Background

The following sections discuss the statutory authority underlying this proposed interpretive rule, as well as the relevant background related to determination of what

constitutes a "feature" for the purpose of establishing energy conservation standards under EPCA. Additionally, these sections address DOE's historic interpretation, DOE's interpretation in the January 15, 2021 final interpretive rule (86 FR 4776), and the issuance of Executive Order 13990. This background sets the stage for presentation of DOE's current proposed interpretive rule addressing whether non-condensing technology (and associated venting) constitutes a performance-related "feature" under EPCA which may not be eliminated by an energy conservation standard.

A. Authority

EPCA[1], Pub. L. 94-163 (42 U.S.C. 6291 *et seq.*), as amended, authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. When establishing new or amended standards for covered products, DOE is directed to consider any lessening of the utility or the performance of covered products likely to result from the imposition of the standard. (42 U.S.C. 6295(o)(2)(B)(i)(IV)) Moreover, the Secretary of Energy (Secretary) may not prescribe an amended or new standard if the Secretary finds (and publishes such finding) that interested persons have established by a preponderance of the evidence that the standard is likely to result in the unavailability in the United States in any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes (collectively

[1] All references to EPCA in this document refer to the statute as amended through the Energy Act of 2020, Pub. L. 116-260 (Dec. 27, 2020).

referred to hereafter as "features") that are substantially the same as those generally available in the United States at the time of the Secretary's finding. (42 U.S.C. 6295(o)(4); the "features" provision)

EPCA provides a companion provision at 42 U.S.C. 6295(q)(1), which requires that a rule prescribing an energy conservation standard for a type of covered products shall specify a level of energy use or efficiency higher or lower than that which applies (or would apply) to any group of covered products which have the same function or intended use, if the Secretary determines that covered products within such group:

> (A) consume a different kind of energy from that consumed by other covered products within such type (or class); or
>
> (B) have a capacity or other performance-related feature which other products within such type (or class) do not have and such feature justifies a higher or lower standard from that which applies (or will apply) to other products within such type (or class).

In making a determination of whether a performance-related feature justifies the establishment of a higher or lower standard, the Secretary must consider such factors as the utility to the consumer of such a feature, and such other factors as the Secretary deems appropriate. (42 U.S.C. 6295(q)(1))

These provisions apply generally to covered commercial and industrial equipment, other than ASHRAE equipment,[2] through the crosswalk provision at 42 U.S.C. 6316(a). ASHRAE equipment has its own separate statutory scheme under EPCA, with the default situation being that DOE must adopt the level set forth in ASHRAE Standard 90.1 unless the Department has clear and convincing evidence to adopt a more stringent standard (*see* 42 U.S.C. 6313(a)(6)). Under 42 U.S.C. 6313(a)(6)(B)(iii)(II)(aa), there is a provision similar to the "features" provision previously discussed that states that the Secretary may not prescribe an amended standard under this subparagraph if the Secretary finds (and publishes the finding) that interested persons have established by a preponderance of the evidence that a standard is likely to result in the unavailability in the United States in any product type (or class) of performance characteristics (including reliability, features, sizes, capacities, and volumes) that are substantially the same as those generally available in the United States at the time of the finding of the Secretary. However, it is noted that this provision contains the specific limitation that it applies to an amended standard prescribed *under this subparagraph* (*i.e.,* when DOE is acting under its authority to set a more-stringent standard). There is no companion "features" provision under 42 U.S.C. 6313(a)(6)(A), which is the provision that would apply when DOE is triggered to adopt the levels set by ASHRAE. There is likewise no companion provision to 42 U.S.C. 6295(q)(1) for ASHRAE equipment.

[2] "ASHRAE" refers to the American Society of Heating, Refrigerating and Air-Conditioning Engineers. Under EPCA, "ASHRAE equipment" refers to small commercial package air conditioning and heating equipment, large commercial package air conditioning and heating equipment, very large commercial package air conditioning and heating equipment, packaged terminal air conditioners, packaged terminal heat pumps, warm-air furnaces, packaged boilers, storage water heaters, instantaneous water heaters, and unfired hot water storage tanks, which are addressed by ASHRAE in ASHRAE Standard 90.1, *Energy Standard for Buildings Except Low-Rise Residential Buildings.* (*See* 42 U.S.C. 6313(a)(6))

In addition, on January 20, 2021, the White House issued Executive Order 13990, "Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis." 86 FR 7037 (Jan. 25, 2021). Section 1 of that Order lists several policies related to the protection of public health and the environment, including reducing greenhouse gas emissions and bolstering the Nation's resilience to climate change. *Id.* at 86 FR 7037, 7041. Section 2 of the Order also instructs all agencies to review "existing regulations, orders, guidance documents, policies, and any other similar agency actions (agency actions) promulgated, issued, or adopted between January 20, 2017, and January 20, 2021, that are or may be inconsistent with, or present obstacles to, [these policies]." *Id.* Agencies are then directed, as appropriate and consistent with applicable law, to consider suspending, revising, or rescinding these agency actions and to immediately commence work to confront the climate crisis. *Id.*

In light of E.O. 13990, DOE has undertaken a review of the final interpretation and withdrawal of proposed rulemakings published in the *Federal Register* on January 15, 2021. While E.O. 13990 triggered the Department's re-evaluation, DOE is relying on the analysis presented below, based upon EPCA, to re-examine the January 2021 Final Interpretive Rule. Accordingly, the Department has initially determined that the historic application of the "features" provision to non-condensing technology reflects the better reading of the requirements in EPCA.

B. Historic Interpretation of the "Features" Provision

As discussed, when evaluating and establishing energy conservation standards, DOE is required to divide covered products into product classes by the type of energy used, by capacity, or by other performance-related features that DOE determines justify a different standard. In making a determination of whether a performance-related feature justifies a different standard, the Department must consider factors such as the utility to the consumer of the feature and other factors DOE determines are appropriate. (42 U.S.C. 6295(q)) As the product class provision is complementary to the "features" provision, consideration of what constitutes a feature and what constitutes utility for the purpose of establishing a product class is germane to the application of the "features" provision.

At a basic level, a "feature" is a trait, attribute, or function of a product. The usefulness and benefit provided to a consumer by a feature is the feature's "utility." Given the multitude of covered products and equipment for which DOE is responsible, the Department has found the concept of "feature" to be very case-specific. 86 FR 4776, 4797 (Jan. 15, 2021). No single definition could effectively capture the potential for features across the broad array of consumer products and commercial equipment subject to EPCA's regulatory scheme. *Id.* That is why DOE developed the concept of consumer utility and how the consumer interacts with the product/equipment for when DOE is assessing "features." *Id.*

Historically, DOE has viewed utility as an aspect of the product that is accessible to the layperson and is based on user operation and interaction with the product. This interpretation has been applied in DOE's previous rulemakings by determining utility

through the value the item brings to the consumer, rather than through analyzing complicated design features that do not impact what the consumer perceives as the value of the product, or costs that anyone, including the consumer, manufacturer, installer, or utility companies, may bear. DOE reasoned that this approach is consistent with EPCA's requirement for a separate and extensive analysis of economic justification for the adoption of any new or amended energy conservation standard (*see* 42 U.S.C. 6295(o)(2)(A)–(B) and (3)). Examples of prior consideration of the "features" provision, utility, and product/equipment classes are provided in the following paragraphs.

In a final rule addressing energy conservation standards for cooking products, DOE did not consider a design option that eliminated oven door windows. 63 FR 48038, 48041 (Sept. 8, 1998). A number of commenters asserted that the oven door window provides consumer utility by alleviating the need for users to open the oven door to check on the contents. *Id.* DOE agreed with commenters that the removal of the oven door window would increase the frequency in which consumers open the oven door. *Id.* DOE also found this increased opening would have the potential to increase energy usage. *Id.* DOE further indicated that it would re-evaluate oven door window designs should a window material with higher thermal insulation properties become a proven technology. *Id.*

In the case of residential clothes washers, DOE has maintained a product class distinction based on axis of loading (*i.e.,* front-loading and top-loading units). Based on comments received during rulemakings, DOE identified axis of loading as a feature that impacts consumer utility (*i.e.*, the longer cycle times of front-loading residential clothes

washers versus cycle times for top-loaders are likely to impact consumer utility). 77 FR 32307, 32319 (May 31, 2012). Conversely, DOE eliminated the suds-saving product class because the market had changed, and, at the time of the rulemaking, DOE did not identify any suds-saving residential clothes washers on the market in the United States. 77 FR 32307, 32317 (May 31, 2012).

In a 2011 rulemaking, DOE created separate product classes for vented and ventless residential clothes dryers based on DOE's recognition of the "unique utility" that ventless clothes dryers offer to consumers. 76 FR 22454, 22485 (April 21, 2011). This utility could be characterized as the ability to have a clothes dryer in a living area where vents are impossible to install (*i.e.,* an apartment in a high-rise building). As explained in the accompanying technical support document, ventless dryers can be installed in locations where venting dryers would be precluded due to venting restrictions.[3]

But in another rulemaking, DOE found that water heaters that utilize heat pump technology did not need to be put in a separate product class from conventional types of hot water heaters that utilize electric resistance technology, even though water heaters utilizing heat pumps require the additional installation of a condensate drain that a hot water heater utilizing electric resistance technology does not require. 75 FR 20112, 20135 (April 16, 2010). Regardless of the installation factors, DOE did not find the mode of heating water to be a performance-related feature or provide a unique utility. *Id.* DOE also noted comments stating that in the then-current market, water heaters that

[3] *See* pp. 3-59 of the technical support document, available at *www.regulations.gov/document/EERE-2007-BT-STD-0010-0053*.

employed heat pump technology were advertised as replacements for water heaters that employed electric resistance technology. *Id.*

However, DOE has cautioned that disparate products may have very different consumer utilities, thereby making direct comparisons difficult and potentially misleading. 76 FR 22454, 22485 (April 21, 2011).

C. January 15, 2021 Final Interpretive Rule Regarding Non-Condensing Technology

On March 12, 2015, DOE published a notice of proposed rulemaking (NOPR) in the *Federal Register* to amend energy conservation standards for residential non-weatherized gas furnaces and mobile home furnaces, in furtherance of its statutory obligation to determine whether more stringent amended standards would be technologically feasible and economically justified, and would save a significant amount of energy. 80 FR 13120 (March 2015 Furnace NOPR). To provide further consideration of comments suggesting a separate product class for furnaces based on input capacity and in order to mitigate some of the negative impacts of the proposed standards, DOE published a notice of data availability (NODA) in the *Federal Register* on September 14, 2015. 80 FR 55038 (September 2015 Furnaces NODA). DOE subsequently published a supplemental notice of proposed rulemaking (SNOPR) for this rulemaking in the *Federal Register* on September 23, 2016, in which DOE proposed to establish capacity-based product classes. 81 FR 65720 (September 2016 Furnaces SNOPR). On May 31, 2016, DOE published in the *Federal Register* a proposal to amend the energy conservation

standards for commercial water heaters. 81 FR 34440 (May 2016 Commercial Water Heaters NOPR).

In both the residential furnaces rulemaking and the commercial water heaters rulemaking, DOE proposed amended energy conservation standards that would effectively require products/equipment in certain classes to use condensing technology to meet the amended standards. *See* 81 FR 65720, 65852 (Sept. 23, 2016) and 81 FR 34440, 34503-34504 (May 31, 2016). For the product/equipment classes where such standards were proposed, if finalized, the amended standards would have effectively eliminated all non-condensing products/equipment that are currently on the market in those classes.

In the March 2015 Furnace NOPR, DOE tentatively concluded that the methods by which a furnace is vented -- which is a significant differentiator of condensing and non-condensing furnaces -- do not provide any separate performance-related impacts. Therefore, DOE had no statutory basis for defining a separate class based on venting and drainage characteristics because venting methods do not provide unique utility to consumers beyond the basic function of providing heat, which all furnaces perform. 80 FR 13120, 13138 (March 12, 2015). In the September 2016 Furnace SNOPR, DOE reiterated its tentative conclusion that methods of venting do not provide any performance-related utility separate from the basic function of a furnace. 81 FR 65720, 65753 (Sept. 23, 2016). Similarly, in the May 2016 Commercial Water Heater NOPR, DOE tentatively concluded that both non-condensing and condensing gas-fired commercial water heating equipment provide the same hot water for use by commercial

consumers, and, therefore, separate equipment classes could not be justified. 81 FR 34440, 34463 (May 31, 2016).

On October 18, 2018, DOE received a petition for rulemaking submitted by the American Public Gas Association, Spire, Inc., the Natural Gas Supply Association, the American Gas Association, and the National Propane Gas Association, collectively referred to as the "Gas Industry Petitioners," asking DOE to: (1) issue an interpretive rule stating that DOE's proposed energy conservation standards for residential furnaces and commercial water heaters would result in the unavailability of "performance characteristics" within the meaning of EPCA, specifically by eliminating from the market units utilizing non-condensing technology, and (2) withdraw the proposed energy conservation standards for residential furnaces and commercial water heaters based upon such findings. DOE published the notice of petition in the *Federal Register* on November 1, 2018 and requested public comment.[4] 83 FR 54883.

Following consideration of the comments on the petition, DOE published a notice of proposed interpretive rule on July 11, 2019, presenting DOE's tentative interpretation that, in the context of residential furnaces, commercial water heaters, and similarly-situated products/equipment, use of non-condensing technology (and associated venting) would constitute a performance-related "feature" under EPCA that cannot be eliminated through adoption of an energy conservation standard. 84 FR 33011 (July 2019 Proposed

[4] In response to requests submitted by two stakeholders, DOE extended the initial 90-day comment period for an additional 30 days. 84 FR 449 (Jan. 29, 2019).

Interpretive Rule).[5] DOE also provided that, if such interpretation were to be finalized, it anticipated developing supplemental notices of proposed rulemaking that would implement the new legal interpretation for the subject residential furnaces and commercial water heaters. 84 FR 33011, 33021 (July 11, 2019).

DOE published a supplemental notice of proposed interpretation in the *Federal Register* on September 24, 2020, which proposed alternative approaches to product/equipment class setting in this context. 85 FR 60090. The supplemental proposed interpretive rule was in response to comments expressing concern with the proposed focus on "non-condensing" technology as the performance-related feature. 85 FR 60090, 60094-60095 (Sept. 24, 2020). Alternatively, the supplemental notice of proposed interpretation considered venting compatibility as a possible "feature." 85 FR 60095 (Sept. 24, 2020). DOE requested comment on this alternative approach. *Id.*

On January 15, 2021, DOE published in the *Federal Register* a final interpretive rule determining that, in the context of residential furnaces, commercial water heaters, and similarly-situated products/equipment, use of non-condensing technology (and associated venting) constitutes a performance-related "feature" under EPCA that cannot be eliminated through adoption of an energy conservation standard. 86 FR 4776 (January 2021 Final Interpretation). Following consideration of comments and data submitted by stakeholders in response to the proposed interpretation and supplemental proposal, DOE

[5] The July 2019 Proposed Interpretive Rule granted the request for an interpretive rule but initially denied the Gas Industry Petitioners' request to withdraw DOE's earlier proposed rules for residential furnaces and commercial water heaters. 84 FR 33011, 33021 (July 11, 2019).

found that when used by the appliances in question, non-condensing technology (and associated venting) constitutes a performance-related feature that provides consumer utility distinct from that provided by such appliances that employ condensing technology. More specifically, in contrast to condensing units, non-condensing units: (1) avoid complex installations in certain locations constrained by space, existing venting, and available drainage; (2) avoid the encroachment on usable space that would occur in certain installations, and (3) do not enhance the level of fuel switching that might accompany standard setting absent a separate product/equipment class for non-condensing appliance. 86 FR 4776, 4816 (Jan. 15, 2021). DOE stated that such an interpretation would extend to all relevant/applicable cases involving consumer products, non-ASHRAE commercial equipment, and ASHRAE equipment where DOE adopts a level more stringent than the ASHRAE level. 86 FR 4776, 4816-4817 (Jan. 15, 2021).

In light of this final interpretation, DOE withdrew its March 12, 2015 proposed rule and September 23, 2016 supplemental proposed rule for energy conservation standards for non-weatherized gas furnace and mobile home gas furnaces, as well as its May 31, 2016 proposed rule for energy conservation standards for commercial water heating equipment. 86 FR 3873 (Jan. 15, 2021). However, DOE has not implemented the January 15, 2021 final interpretation in the context of any individual energy conservation standards rulemakings for affected covered products/equipment.

II. Proposed Interpretive Rule

Based on DOE's reconsideration of the January 2021 Final Interpretation, the Department is proposing to revise its interpretation of EPCA's "features" provision in the context of condensing and non-condensing technology used in furnaces, water heating equipment, and similarly-situated appliances. Consistent with the interpretation presented in the May 2015 Furnaces NOPR, the September 2016 Furnaces SNOPR, and the May 2016 Commercial Water Heaters NOPR, DOE tentatively concludes that in the context of residential furnaces, commercial water heaters, and similarly-situated products or equipment, use of non-condensing technology (and associated venting) is not a performance-related "feature" for the purpose of the EPCA prohibitions at 42 U.S.C. 6295(o)(4) and 42 U.S.C. 6313(a)(6)(B)(iii)(II)(aa). DOE initially finds that non-condensing technology (and the associated venting) does not provide unique utility to consumers separate from an appliance's function of providing heated air or water, as applicable.

Upon further consideration, DOE has tentatively concluded that utility is determined through the benefits and values the feature provides to the consumer while interacting with the product, not through analyzing or making comparisons to more complicated design features, or costs that anyone, including the consumer, manufacturer, installer, or utility companies, may bear. Stated differently, DOE has tentatively determined that differences in cost or complexity of installation between different methods of venting (*e.g.*., a condensing furnace versus a non-condensing furnace) do not make any method of venting a performance-related feature under 42 U.S.C. 6295(o)(4), as would justify separating the products/equipment into different product/equipment classes under 42 U.S.C. 6295(q)(1). Again, this approach is consistent with EPCA's

requirement for a separate and extensive analysis of economic justification for the adoption of any new or amended energy conservation standard (*see* 42 U.S.C. 6295(o)(2)–(3); 42 U.S.C. 6313(a)(6)(A)-(C); 42 U.S.C. 6316(a)).

Therefore, because DOE has come to see that the issues underlying its January 15, 2021 final interpretive rule are appropriately framed as matters of cost, this proposed interpretation would return those issues for resolution to their proper sphere as part of DOE's economic analysis in individual energy conservation standards rulemakings. DOE initially finds this interpretation to be the best reading of the relevant provisions of EPCA, which is consistent with the intent and purposes of the statute. In DOE's view, the proposed interpretation would align better with EPCA's goals of increasing the energy efficiency of covered products and equipment through the establishment and amendment of energy conservation standards and promoting conservation measures when feasible. (42 U.S.C. 6291 *et seq.*, as amended) The following paragraphs set forth DOE's rationale for its proposed revised interpretation in further detail. As background, DOE must follow specific statutory criteria for prescribing new or amended standards for covered products and covered equipment. In general, a new or amended standard must be designed to achieve the maximum improvement in energy efficiency that the Secretary determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A); 42 U.S.C. 6295(o)(3)(B); 42 U.S.C. 6316(a)) In deciding whether a proposed standard is economically justified, DOE must determine whether the benefits of the standard exceed its burdens after receiving comments on the proposed standard and by considering, to the greatest extent practicable, seven factors (*see* footnote 6). One of the seven factors for consideration is the lessening of the utility or the performance of the

covered products likely to result from the standard. (42 U.S.C. 6295(o)(2)(B)(i)(IV); 42 U.S.C. 6313(a)(6)(B)(ii)(IV); 42 U.S.C. 6316(a)) As discussed, EPCA further directs that the Secretary may not prescribe an amended or new standard if the Secretary finds (and publishes such finding) that interested persons have established by a preponderance of the evidence that the standard is likely to result in the unavailability in the United States in any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States at the time of the Secretary's finding. (42 U.S.C. 6295(o)(4); 42 U.S.C. 6313(a)(6)(B)(iii)(II); 42 U.S.C. 6316(a)) Also, as discussed, when prescribing an energy conservation standard, DOE must consider whether separate product/equipment classes are justified based on performance-related features and their associated utility. (42 U.S.C. 6295(q)(1); 42 U.S.C. 6316(a)) The "features" provision, the seven factors for economic justification, and the product class provisions are all required considerations in establishing new and amended energy conservation standards.

As mentioned previously, a "feature" is a trait, attribute, or function of a product. The usefulness and benefit provided to a consumer by a feature is the feature's "utility," and consumer utility is used to evaluate whether a purported feature justifies a separate product class. DOE has historically viewed utility of a product or equipment as an aspect of the appliance that is accessible to the layperson consumer and is based upon user operation and interaction with that appliance. Examples of features, such as oven door windows and angle of access for clothes washers, are illustrative of this principle. Consumers use the oven door window (in conjunction with the oven lamp) to gauge the

progress of food undergoing baking, without the need to open the oven door. Needing to open the oven door entails loss of heat, which would decrease the energy efficiency of the oven. The oven door window is a feature which consumers generally appreciate and with which they routinely interact when cooking. The window's elimination would result in the loss of a performance-related feature that provides valued utility for consumers. Another example would be the angle of access of a clothes washer. Currently, consumers have two options when purchasing clothes washers: front-loading machines and top-loading machines. Some consumers, such as the elderly, may prefer a top-loading clothes washer, because it is easier to reach the laundry without excessive bending, which is in contrast to the angle of access of a front-loading washer. A broader spectrum of consumers recognizes and appreciates the ability of a top-loading washer to readily accept additional clothing items, even after a wash cycle has begun. Other consumers, such as those with disabilities, may prefer a front-loading machine because that angle of access better suits their access needs. The two angles provided consumer utility in terms of ease of use to different consumer subgroups. Consequently, consistent with the requirements of EPCA, DOE viewed angle of access as a performance-related feature for clothes washers that cannot be eliminated from the market through adoption of an energy conservation standard.

In contrast to the examples discussed in the preceding paragraph, DOE has historically viewed a consumer's interaction with a furnace or water heater to be a simple one, whereby the user only interacts to place a call for heated air or water. After the consumer adjusts the thermostat or faucet, the user receives the requested heated air or water. There is no noticeable difference to the consumer in access or output based upon

the type of technology or venting used by the appliance. As noted previously, this had been DOE's longstanding interpretation of EPCA's "features" provision in the context of these appliances until the January 15. 2021 final interpretive rule, and for the reasons explained in the following paragraphs, DOE proposes to once again return to an interpretation that different venting methods of natural gas, propane gas, and/or oil-fired furnaces, water heaters, and similarly-situated products or equipment are not features that provide unique utility to consumers independent from such appliances' function of providing heated air or water, as applicable.

Furthermore, DOE has tentatively concluded that it gave insufficient weight to other policy arguments in development of the January 15, 2021 final interpretive rule. Most importantly, as explained in prior rulemakings, tying the concept of "feature" to a specific technology would effectively lock in the currently existing technology as the ceiling for product efficiency and eliminate DOE's ability to address technological advances that could yield significant consumer benefits in the form of lower energy costs while providing the same functionality/utility for the consumer. 81 FR 65720, 65752 (Sept. 23, 2016). Because the statute effectively accords performance-related features a protected status, the Department must take great care when making a features determination. Although DOE acknowledges that the January 15, 2021 final interpretive rule suggested that making a features determination would not impede innovation and the development of more efficient technologies, after careful reevaluation, the agency has tentatively reached a different conclusion, for the reasons explained in this proposed interpretive rule. DOE is concerned that determining features solely on product technology, rather than on how the consumer interacts with and benefits from the feature,

could undermine the Appliance Standards Program as established by EPCA. *See id.* If DOE is required to maintain separate product classes to preserve less efficient technologies, then future advancements in the energy efficiency of covered products would become largely voluntary, an outcome in conflict with Congress's purposes and goals in enacting EPCA. DOE's proposed interpretation would avoid such deleterious outcomes.

Finally, the proposed revised interpretation would maintain consideration of installation costs as part of the extensive analysis of economic justification for the adoption of any new or amended energy conservation standard, as required by EPCA, thereby avoiding what would amount to double-counting of cost considerations as arguably would occur through the January 15, 2021 final interpretive rule. In order for DOE to set an energy conservation standard, EPCA requires that such standard must be designed to achieve the maximum improvement in energy savings that is technologically feasible and economically justified. The statute further recites seven factors for use when considering economic justification.[6] (42 U.S.C. 6295(o)(2)–(3); 42 U.S.C.

[6] Specifically, at 42 U.S.C. 6295(o)(2)(B)(i) (and with essentially the same language at 42 U.S.C. 6313(a)(6)(B)(ii)), EPCA provides: In determining whether a standard is economically justified, the Secretary shall, after receiving views and comments furnished with respect to the proposed standard, determine whether the benefits of the standard exceed its burdens by, to the greatest extent practicable, considering –

(I) the economic impact of the standard on the manufacturers and on the consumers of the products subject to such standard;

(II) the savings in operating costs throughout the estimated average life of the covered product in the type (or class) compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered products which are likely to result from the imposition of the standard;

(III) the total projected amount of energy, or as applicable, water, savings likely to result directly from the imposition of the standard;

(IV) any lessening of the utility or the performance of the covered products likely to result from the imposition of the standard;

6313(a)(6)(A)-(C); 42 U.S.C. 6316(a)) DOE again notes that the statute's "features" provision makes no mention of cost as a relevant consideration. (42 U.S.C. 6295(o)(4); 42 U.S.C. 6313(a)(6)(B)(iii)(II)(aa)) As required by EPCA, DOE conducts a comprehensive economic analysis as part of each standards rulemaking. In this case, DOE originally considered the additional costs associated with installing condensing residential furnaces and condensing commercial water heaters in the rulemaking proceedings for those appliances that were withdrawn in conjunction with the January 2021 interpretive rule (*See* 81 FR 65720, 65776–65783 (Sept. 23, 2016); 81 FR 34440, 34484–34485 (May 31, 2016)) and would do so again in future rulemakings if the interpretation in this proposal were to be finalized.

The Department acknowledges that in its January 2021 final interpretive rule, it extended its view of consumer utility of furnaces and water heaters beyond those appliances' primary function of providing heated air or water, giving considerable weight to installation situations that could require the addition of new pipes or venting to the usable space of a home or business, major modifications to a utility room, or encroachment upon an existing window or patio. 86 FR 4776, 4786 (Jan. 15, 2021). However, upon further evaluation, DOE realizes that its change in interpretation was unnecessary and arguably beyond what the statute can support, because even if the Department had definitive evidence regarding the extent of difficult or impossible installation situations, loss of usable residential or commercial space, or fuel switching

(V) the impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the imposition of the standard;

(VI) the need for national energy and water conservation; and

(VII) other factors the Secretary considers relevant.

effects, DOE nonetheless had a strong statutorily-based rationale for its historic interpretation, as would support a subsequent return thereto. If consumer utility turns on the layperson's operation and interaction with the product (*i.e.*, calling for and enjoying the heated air or water which the appliance in question provides) rather than type of venting, then all furnaces and water heaters provide the same basic utility: heated air or water. While DOE acknowledges that installation of condensing products/equipment requires modifications to the installed space in some applications (*e.g.*, concealing vent pipes that pass through the living space by inclusion in a soffit), such modifications may impact the installation cost and/or complexity, but once installed, they do not impact the user's operation and interaction with the appliance. Moreover, the Department understands that there are technological solutions for most difficult installation situations and that consumers also have heating and water-heating options other than installation of a condensing appliance. Consequently, the agency tentatively finds that the matter essentially boils down to one of cost, which is a topic properly analyzed and adequately addressed under the economic justification provisions of EPCA. DOE's reasoning, which is consistent with the Department's historic interpretation, is discussed in further detail in the paragraphs that follow. However, before turning to that rationale, DOE would add furthermore that it has tentatively concluded that it gave undue weight to these arguments presented by the Gas Industry Petitioners, which were largely based upon anecdotal accounts and limited installer survey data. After reexamining the record, DOE has preliminarily determined that the qualitative arguments made by the Gas Industry Petitioners were not accompanied by sufficient evidence to establish the existence or magnitude of the alleged problem, as would support the significant change from DOE's

historic interpretation to the interpretation contained in the January 2021 final interpretive rule.

As noted previously, upon reconsideration, DOE has tentatively concluded that consumers have other options for resolving difficult installation situations – the situations that provided two of the three reasons for the January 15, 2021 final interpretive rule -- without the need for the Department to declare non-condensing technology and associated venting to be a performance-related feature under EPCA. This provides a further basis for DOE's proposed return to its historic interpretation. In short, consumers facing difficult installation situations can either: (1) utilize a technological solution to resolve their installation problem, or (2) switch to an appliance utilizing alternative technologies. Either approach would allow those consumers with potentially difficult installation situations to choose how best to avoid loss of usable space, extensive building modifications, or extreme installation costs identified in the January 15, 2021 final interpretive rule.

The first option is to use new technology to overcome identified installation problems. It has been DOE's historic position that there is a technological solution to accommodate virtually all of the difficult installation situations involving gas-fired appliances, although some might be costly (*e.g.*, requiring new venting). Although a critical piece of the Gas Industry Petitioners' argument in support of their petition was that it may be impossible to install a condensing appliance in certain replacement applications, they never provided any definitive proof as to the existence of this problem or its extent. In promulgating the January 15, 2021 final interpretive rule, DOE found

these theories persuasive, but upon further examination, there is at best weak foundational support to challenge the Appliance Standards Program's record of evidence that it is technologically feasible to install condensing appliances in virtually all replacement applications. If the consumer's affinity for gas-fueled appliances is sufficiently high to warrant their continued use, the consumer will choose to make such changes when installing the more efficient appliance, which reflects an economic decision.

Technological solutions should also resolve the specific issue of orphaned water heaters identified by the Gas Industry Petitioners. (An "orphaned water heater" refers to the situation in which a non-condensing furnace and non-condensing water heater share a common vent, but, upon replacement of the non-condensing furnace with a condensing furnace, they can no longer share that same venting due to differences in venting requirements.) DOE has, in fact, identified a newer technology for which comprehensive data are currently unavailable, but when mature, it could address the issue of orphaned appliances, allow consumers to switch from a non-condensing furnace to a condensing furnace, and permit continued use of existing common venting in a greater variety of applications.[7] 86 FR 4776, 4781 (Jan. 15, 2021). More specifically, this venting technology may allow a consumer to obtain the efficiency of a condensing furnace using

[7] In the technical support documents accompanying the proposed rules for residential furnaces, DOE referenced a study from the Oak Ridge National Laboratory that identified various approaches to address the orphaned water heater problem without the need for expensive renovations. *See* Momen, A. M., J. Munk, K. Biswas, and P. Hughes, *Condensing Furnace Venting Part 2: Evaluation of Same-Chimney Vent Systems for Condensing Furnaces and Natural Draft Water Heaters (2015)* Oak Ridge National Laboratory: Oak Ridge, TN. Report No. ORNL/TM-2014/656 (Available at: *web.ornl.gov/sci/buildings/docs/Condensing-Furnace-Venting-Part1-Report.pdf*) (Last accessed May 6, 2021).

the existing venting in a residence by sharing venting space with a water heater. It would significantly reduce the cost burden associated with installing condensing furnaces and reduce potential instances of "orphaned" water heaters. This technology could allow consumers to switch from a non-condensing furnace to a condensing furnace in a greater variety of applications, such as urban row houses. *See* 80 FR 13120, 13138 (March 12, 2015). DOE is concerned that characterizing the method of venting as a "feature" due to concerns over orphaned water heaters would limit future advancements in this technology, because establishment of separate product or equipment classes for non-condensing appliances would limit the market for such innovative devices that allow condensing and non-condensing appliances to share the same venting.[8] Consequently, DOE has reconsidered and changed its view regarding the argument put forth in the January 2021 Final Interpretation—that replacement of a non-condensing furnace with a condensing unit may result in an orphaned water heater. 86 FR 4776, 4785 (Jan. 15, 2021).

DOE would also clarify that the present case of non-condensing gas-fired residential furnaces and commercial water heaters is distinguishable from certain other products that the Department has regulated in the past, such as space-constrained central

[8] Although DOE argued in the January 15, 2021 final interpretive rule that establishment of separate product or equipment classes would not limit innovation or market trends toward condensing appliances (*see* 86 FR 4776, 4805), the Department has come to question whether such view is correct, given the potential for a substantial portion of the relevant appliance market to remain at significantly lower levels of efficiency. Even if current trends toward condensing appliances hold, the market might stall before achieving the full energy-savings benefits that EPCA might capture through adoption of an appropriate energy conservation standard(s), a result contrary to the statute's goals. The same principle holds in the context of innovative vent-sharing technologies, because in addressing difficult installations, the January 15, 2021 final interpretive rule essentially undermines a significant component of the market for such technological solutions. Rather than encourage a technological solution with a high energy-savings potential, the Department has come to see that the January 15, 2021 final interpretive rule inappropriately substituted maintenance of a *status quo* with lower energy-savings potential.

air conditioners and ventless and compact clothes dryers. DOE explained in two direct final rules that the latter products necessitated design differences related to their reduced size or ventless operation that inherently limited their energy efficiency, and the agency set separate classes on that basis. For ventless clothes dryers, DOE also found that certain consumers (*e.g.*, high-rise apartment dwellers) might not be able to have a clothes dryer at all, unless a ventless option were available. *See* 76 FR 37408, 37439-37440 (June 27, 2011); 76 FR 22454, 22485 (April 21, 2011). In contrast, there are insufficient data to show that consumers would be without furnace and water heater options in the absence of non-condensing furnaces and water heaters. Furthermore, the subject non-condensing furnaces and water heaters are not significantly different in overall footprint or size from their condensing counterparts (although the composition of the venting used may be different), and the energy efficiency differences are a result of the technology used, a design parameter that is dictated by considerations other than size.

The second option for resolving difficult installation situations would be for the consumer to replace a gas-fired furnace or water heater with an electric heat pump or water heater, thereby obviating the need for extensive changes to existing venting. Consumers routinely make such choices where they deem it appropriate, which reflects an economic decision. This option would accommodate the needs of consumers who are predominantly concerned with loss of usable space or aesthetics[9] because it would

[9] DOE notes that in the January 15, 2021 final interpretive rule, the Department clarified that in discussing "aesthetics," it sought to distinguish between purely subjective considerations (*e.g.*, even the slightest change in color or shape) and physical modifications to a dwelling or business that would be appreciably noticed by the consumer and impact the use of the living or commercial space. In that final interpretive rule, DOE explained that it would limit consideration of performance-related features to the latter group, because a proliferation of product/equipment classes was neither intended nor desired. 86 FR 4776, 4799-

obviate the need to make significant changes to the residential or commercial space. Nothing in EPCA precludes such effects, as long as DOE's standard would not eliminate the appliance of that fuel type entirely, and in this case, maintaining non-condensing and condensing units under a single class of product or equipment would not eliminate the availability of natural gas, propane, or other fuel type models from the U.S. market.

It bears noting that while EPCA recognizes that various fuel types exist in the appliance marketplace and provides certain protections, it does not directly address fuel switching or mandate that DOE take regulatory action to preclude such marketplace effects. In certain appropriate cases, Congress set statutory energy conservation standard levels for products, such as consumer water heaters (*see* 42 U.S.C. 6295(e)(1)) and consumer boilers (*see* 42 U.S.C. 6295(f)(3)), based on fuel type (*e.g.*, gas, oil, electricity). EPCA also recognizes differences in fuel type under 42 U.S.C. 6295(q)(1)(A), which provides for setting separate classes where appliances "consume a different kind of energy from that consumed by other covered products within such type (or class)." Notably, however, ECPA's "features" provision at 42 U.S.C. 6295(o)(4) does not include fuel type within its ambit. Thus, Congress structured EPCA to recognize fuel-type distinctions and to create a level playing field, while balancing the need for overall energy savings. In historically implementing the Appliance Standards Program, DOE has similarly sought to adhere to a policy of fuel neutrality, *where consistent with EPCA*. DOE develops energy conservation standards in compliance with the statutory

4800. However, in this current proposed interpretive rule, the option to replace a non-condensing, gas-fired appliance with a comparable electric appliance empowers individual consumers to make the choice of when aesthetic concerns warrant such change.

requirements of EPCA, which does not generally involve cross-class comparisons for standard setting. Although DOE typically analyzes fuel-switching effects, the agency is generally free to set an appropriate level under the applicable statutory criteria regardless of any ancillary fuel-switching effects. Thus, to the extent the January 15, 2021 final interpretive rule sought to enshrine an agency obligation to prevent fuel-switching, such action was without statutory basis. Moreover, DOE finds the Gas Industry Petitioners' arguments about potential fuel switching to be likely overstated for the reasons explained subsequently.

To start, the January 15, 2021 final interpretive rule was misguided in suggesting that any rule that would result in fuel switching violates the fuel neutrality principle, because fuel switching occurs frequently and most certainly in the context of new energy conservation standards. Fuel switching is a natural part of market operation for the subject appliances, and it may occur even in the absence of amended energy conservation standards. Installation costs may influence consumer decisions regarding fuel choice, and at any time, a segment of consumers may choose replacement products that rely on a different fuel source than that of the unit being replaced. With that said, the mere potential for fuel switching should not serve as the basis for establishment of a performance-related feature under EPCA.

The appropriate threshold for when fuel switching violates the fuel neutrality principle requires a degree of fuel switching that is much greater than typically found in DOE energy conservation standards rulemakings. Given DOE's policy of fuel neutrality and because fuel switching may be impacted by the adoption of standards, when

conducting an energy conservation standards rulemaking, the Department routinely accounts for potential fuel switching in its consumer choice model, which is one part of its full suite of analyses. In certain applications, consumers may choose to replace natural gas or propane gas products with electric products that provide the same utility in the face of changed standards. The extent to which consumers might replace natural gas or propane products with electric products is dependent in part on the stringency of the standards.[10] *See e.g.,* 81 FR 65720, 65791–65793 (Sept. 23, 2016). DOE has typically found fuel switching to occur in a small number of cases in any given rulemaking, and based upon currently available information, the Department does not expect that instances of fuel switching would be significantly different for the subject residential furnaces, commercial water heaters, and similarly-situated products or equipment.

For example, DOE notes that it was required by statute in a prior rulemaking to consider differential standards for small furnaces based upon input capacity as a means to address fuel switching. Specifically, under 42 U.S.C. 6295(f)(1)(B), Congress directed DOE to consider the appropriate standard level to be set for furnaces with an input capacity of less than 45 kBtu/h. In doing so, Congress directed DOE to consider a standard level within a specified range that was not likely to result in a significant shift from gas heating to electric resistance heating with respect to either residential construction or furnace replacement. *Id.* See also 54 FR 47916 (Nov. 17, 1989) (final rule adopting energy conservation standards for "small" furnaces). In the September

[10] For the trial standard levels evaluated in the September 2016 SNOPR, DOE estimated between 1.5 percent and 16.0 percent of customers would replace a non-weatherized gas furnace with either a heat pump or an electric furnace, depending on the stringency of the evaluated standard levels.

2016 Furnace SNOPR, DOE considered the potential for reduction of fuel-switching in proposing the capacity-based standards. 81 FR 65720, 65755 (Sept. 23, 2016). Regarding commercial water heaters, DOE initially determined that fuel switching beyond the continuation of historical trends would be unlikely due to differences in operating costs and differences in hot water delivery capacity. 81 FR 34440, 34494 (May 31, 2016). Although the Gas Industry Petitioners made vocal arguments to the contrary about fuel switching in support of their petition and in the context of various rulemaking proceedings, they did not provide data to substantiate these claims.

In this case, there is insufficient evidence that fuel switching would be greater than is typically encountered in DOE rulemakings. DOE notes that the incidence of fuel switching for the subject appliances may be mitigated further by the availability of technological solutions such as the vent-sharing device discussed previously. For all of these reasons, DOE does not find potential fuel switching alone to be a basis to support a determination that non-condensing technology and associated venting constitute a performance-related feature.

Based on the foregoing discussion, DOE proposes to revise its interpretation of EPCA's "features" provision in the context of condensing and non-condensing technology used in furnaces, water heating equipment, and similarly-situated appliances (where permitted by EPCA) along the lines discussed previously. Accordingly, DOE tentatively concludes that in the context of residential furnaces, commercial water heaters, and similarly-situated products/equipment, use of non-condensing technology

(and associated venting) is not a performance-related "feature" for the purpose of the EPCA prohibitions at 42 U.S.C. 6295(o)(4) and 42 U.S.C. 6313(a)(6)(B)(iii)(II)(aa).

III. Conclusion

DOE has initially determined that its proposed interpretation is the best reading of the language of EPCA and DOE's statutory obligation to establish energy conservation standards for covered products and equipment. Additionally, the proposed interpretation would allow DOE to consider more efficient standards for certain products and equipment.

DOE is proposing to revise its application of the "features" provisions in 42 U.S.C. 6295(o)(4) and 42 U.S.C. 6313(a)(6)(B)(iii)(II)(aa) as an interpretive rule within the meaning of the Administrative Procedure Act (APA). 5 U.S.C. 551(4); 5 U.S.C. 553(b). DOE is publishing this proposed interpretive rule to solicit comment and to provide the public with a clear and transparent explanation of DOE's view of a specific legal question, thereby following a process similar to that which resulted in the January 2021 final interpretive rule.

DOE wishes to make clear that an interpretive rule is a type of rule or regulation within the meaning of those terms in the Administrative Procedure Act, 5 U.S.C. 551(4). It is well established under the APA that agencies have the authority to issue interpretive rules, and that these rules are a valuable tool for an agency to use to advise the public

prospectively and in a clear and transparent manner of the agency's construction of a statute it administers.

Once again, it is noted that DOE withdrew its March 12, 2015 proposed rule and September 23, 2016 supplemental proposed rule for energy conservation standards for non-weatherized gas furnace and mobile home gas furnaces, as well as its May 31, 2016 proposed rule for energy conservation standards for commercial water heating equipment, for further proceedings consistent with the interpretation contained in the January 15, 2021 final interpretive rule. 86 FR 4776, 4817 (Jan. 15, 2021); *see also* 86 FR 3873 (Jan. 15, 2021). As explained in this document, DOE is once again examining its interpretation of the relevant statutory provisions in the context of residential furnaces, commercial water heating equipment, and similarly-situated products/equipment. When this proceeding is complete, DOE plans to again evaluate whether amended energy conservation standards would result in significant savings of energy, be technologically feasible, and be economically justified, consistent with its latest interpretation.

However, in any future rulemaking, DOE would make clear that the rulemakings for residential furnaces and commercial water heating equipment have been subject to multiple rounds of public comment, including public meetings, and that extensive records have been developed in the relevant dockets. (*See* Docket Number EERE-2014-BT-STD-0031 and Docket Number EERE-2014-BT-STD-0042, respectively). Consequently, DOE wishes to reassure stakeholders that the information obtained through those earlier rounds of public comment, information exchange, and data gathering have not gone to waste. Instead, DOE anticipates building upon the existing record through further notice

and comment rulemaking. Such an approach also reflects DOE's cognizance of the statutory deadlines associated with the energy conservation standards for residential furnaces and commercial water heating equipment.

Review Under Executive Order 12866

The Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) waived review of this proposed interpretive rule under Executive Order 12866, "Regulatory Planning and Review." 58 FR 51735 (Oct. 4, 1993).

IV. Public Participation

DOE invites all interested parties to submit in writing by the date listed in the **DATES** section of this document, comments and information regarding this proposed interpretive 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 document.

Submitting comments via www.regulations.gov. The *www.regulations.gov* webpage 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 *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 *www.regulations.gov* cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *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 *www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email. Comments and documents submitted via email also will be posted to *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, email 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. No telefacsimiles (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 email 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. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

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).

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notification of proposed interpretive rule.

Signing Authority

This document of the Department of Energy was signed on August 17, 2021, by Kelly Speakes-Backman, Principal Deputy Assistant Secretary and Acting Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with

requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the *Federal Register*.

Signed in Washington, DC, on August 17, 2021

X Kelly Speakes-Backman

Digitally signed by Kelly Speakes-Backman
Date: 2021.08.17 20:56:07 -04'00'

Kelly Speakes-Backman
Principal Deputy Assistant Secretary and
Acting Assistant Secretary
Energy Efficiency and Renewable Energy