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[6450-01-P]

DEPARTMENT OF ENERGY

10 CFR Part 430

EERE-2021-BT-DET-0034

**Energy Conservation Program: Proposed Determination of Miscellaneous Gas Products as a Covered Consumer Product**

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

**ACTION:** Notification of proposed determination and request for comment.

**SUMMARY:** The U.S. Department of Energy (“DOE”) has tentatively determined that miscellaneous gas products, which are comprised of decorative hearths and outdoor heaters, qualify as covered products under Part A of Title III of the Energy Policy and Conservation Act, as amended (“EPCA”). DOE has tentatively determined that coverage of miscellaneous gas products is necessary and appropriate to carry out the purposes of EPCA, and that the average U.S. household energy use for miscellaneous gas products is likely to exceed 100 kilowatt-hours per year.

**DATES:** Written comments, data, and information are requested and will be accepted on or before **[INSERT DATE 60 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–2021–BT–DET–0034, via e-mail to *CoveredGasProducts2021DET0034@ee.doe.gov*. Include docket number EERE–2021–BT–DET–0034 in the subject line of the message.

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

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 coronavirus 2019 (“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.

*Docket:* The docket, 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 web page can be found at *www.regulations.gov/docket/EERE-2021-BT-DET-0034*.

The docket web page contains instructions on how to access all documents, including public comments, in the docket. See section VI, “Public Participation,” for further information on how to submit comments through *www.regulations.gov*.

**FOR FURTHER INFORMATION CONTACT:**

Ms. Julia Hegarty, 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. E-mail: *ApplianceStandardsQuestions@ee.doe.gov*.

Mr. Peter Cochran, U.S. Department of Energy, Office of the General Counsel, GC-33, 1000 Independence Avenue, SW., Washington, DC 20585-0121. Telephone: (202) 586-9496. E-mail: *Peter.Cochran@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 e-mail: *ApplianceStandardsQuestions@ee.doe.gov*.

**SUPPLEMENTARY INFORMATION:**

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## **I. Statutory Authority**

EPCA<sup>1</sup> authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part B<sup>2</sup> of EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles, which sets forth a variety of provisions designed to improve energy efficiency for certain consumer products, referred to generally as “covered products.”<sup>3</sup> In addition to specifying a list of consumer products that are covered products, EPCA authorizes the Secretary of Energy to classify additional types of consumer products as covered products. EPCA defines a “consumer product” in relevant part as any article (other than an automobile) of a type – (A) which in

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<sup>1</sup> All references to EPCA in this document refer to the statute as amended through the Energy Act of 2020, Public Law 116-260 (Dec. 27, 2020).

<sup>2</sup> For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

<sup>3</sup> The enumerated list of covered products is at 42 U.S.C. 6292(a)(1)–(19).

operation consumes, or is designed to consume, energy; and (B) which, to any significant extent, is distributed in commerce for personal use or consumption by individuals; without regard to whether such article of such type is in fact distributed in commerce for personal use or consumption by an individual.<sup>4</sup> (42 U.S.C. 6291(a)(1)) For a given consumer product to be classified as a covered product, the Secretary must determine that:

- (1) Classifying the product as a covered product is necessary or appropriate to carry out the purposes of EPCA; and
- (2) The average annual per-household energy use by products of such type is likely to exceed 100 kilowatt-hours (“kWh”) (or its British thermal unit (“Btu”) equivalent) per year. (42 U.S.C. 6292(b)(1))<sup>5</sup>

When attempting to cover additional consumer product types, DOE must first determine whether these criteria from 42 U.S.C. 6292(b)(1) are met. Once a determination is made, the Secretary may prescribe test procedures to measure the energy efficiency or energy use of such

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<sup>4</sup> As such, in considering the potential scope of coverage, DOE does not consider whether an individual product is distributed in commerce for residential or commercial use, but whether it is *of a type* of product distributed in commerce for residential use.

<sup>5</sup> DOE has defined “household” to mean an entity consisting of either an individual, a family, or a group of unrelated individuals, who reside in a particular housing unit. For the purpose of this definition: Group quarters means living quarters that are occupied by an institutional group of 10 or more unrelated persons, such as a nursing home, military barracks, halfway house, college dormitory, fraternity or sorority house, convent, shelter, jail or correctional institution.

Housing unit means a house, an apartment, a group of rooms, or a single room occupied as separate living quarters, but does not include group quarters.

Separate living quarters means living quarters:

To which the occupants have access either:

Directly from outside of the building, or

Through a common hall that is accessible to other living quarters and that does not go through someone else's living quarters, and

Occupied by one or more persons who live and eat separately from occupant(s) of other living quarters, if any, in the same building. 10 CFR 430.2.

product. (42 U.S.C. 6293(a)(1)(B)) Furthermore, once a product is determined to be a covered product, the Secretary may set standards for such product, subject to the provisions in 42 U.S.C. 6295(o) and (p), provided that DOE determines that four additional criteria at 42 U.S.C. 6295(l) have been met. Specifically, 42 U.S.C. 6295(l) requires the Secretary to determine that:

- (1) The average household energy use of the products has exceeded 150 kWh per household for a 12-month period;
- (2) The aggregate 12-month energy use of the products has exceeded 4,200 gigawatt-hours;
- (3) Substantial improvement in energy efficiency of products of such type is technologically feasible; and
- (4) Application of a labeling rule under 42 U.S.C. 6294 is not likely to be sufficient to induce manufacturers to produce, and consumers and other persons to purchase, covered products of such type (or class) that achieve the maximum energy efficiency that is technologically feasible and economically justified. (42 U.S.C. 6295(l)(1))

## **II. Rulemaking History**

### *A. April 2010 Final Rule*

On April 16, 2010, DOE published a final rule in the Federal Register, which, in relevant part, promulgated definitions and energy conservation standards for certain direct heating equipment, i.e., vented gas hearth products. 75 FR 20112 (“April 2010 final rule”).<sup>6</sup> In the April 2010 final rule, DOE concluded that vented hearth products—which were described as

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<sup>6</sup> A correction to the April 2010 final rule was published on April 27, 2010, to correct a date that is not relevant to this discussion. 75 FR 21981.

including gas-fired products such as fireplaces, fireplace inserts, stoves, and log sets that typically include aesthetic features and that provide space heating—meet the definition of “vented home heating equipment.” *Id.* at 20128. In the April 2010 final rule, DOE also adopted a definition of “vented hearth heater” as follows:

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. Those 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.

*Id.* at 20130.

#### *B. November 2011 Final Rule*

On November 18, 2011, DOE published a final rule that amended the definition of vented hearth heater, in relevant part, by removing the maximum capacity threshold to distinguish vented hearth heaters from purely decorative heaters and adding other criteria in its place to determine such differentiation. 76 FR 71836 (“November 2011 final rule”). These criteria included specific types of hearth products, safety standard certifications, labeling, and prescriptive elements (i.e., sold without a thermostat and without a standing pilot light). *Id.* at 71859. The November 2011 final rule defined a vented hearth heater as follows:



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 and

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

(i) Certified to American National Standards Institute (“ANSI”) Z21.50,<sup>7</sup> but not to ANSI Z21.88;<sup>8</sup>

(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 January 1, 2015, not equipped with a standing pilot light or other continuously-burning ignition source.

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<sup>7</sup> ANSI Z21.50/CSA 2.22, “Vented Decorative Gas Appliances” is available at: [webstore.ansi.org/standards/csa/ansiz21502016csa22](http://webstore.ansi.org/standards/csa/ansiz21502016csa22).

<sup>8</sup> ANSI Z21.88/CSA 2.33, “Vented Gas Fireplace Heaters” is available at: [webstore.ansi.org/Standards/CSA/CSAANSIZ218819332019](http://webstore.ansi.org/Standards/CSA/CSAANSIZ218819332019).

*Id.* at 71859.

*C. February 2013 Court Decision*

The Hearth, Patio & Barbecue Association (“HPBA”) sued DOE in the United States Court of Appeals for the District of Columbia Circuit (“D.C. Circuit”) to invalidate the April 2010 final rule and November 2011 final rule as those rules 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 (D.C. Cir. filed July 1, 2010). On February 8, 2013, the D.C. Circuit issued its opinion in the HPBA case and ordered that the definition of “vented hearth heater” adopted by DOE be vacated, and remanded the matter to DOE to interpret the challenged provisions in accordance with the Court’s opinion. *Hearth, Patio & Barbecue Association v. Department of Energy, et al.*, 706 F.3d 499 (D.C. Cir. 2013). The Court held that the phrase “vented hearth heater” did not encompass decorative fireplaces as that term is traditionally understood, vacated the entire statutory definition of “vented hearth heater,” and remanded for DOE to interpret the challenged provisions consistent with the court’s opinion. *Id.* at 509. On July 29, 2014, DOE published a final rule amending the relevant portions of its regulation to reflect the Court's decision to vacate the regulatory definition of “vented hearth heater” (and by implication, the associated energy conservation standards). 79 FR 43927.

*D. December 2013 Coverage Determination*

On December 31, 2013, DOE published a proposed determination of coverage for hearth products. 78 FR 79638 (“December 2013 NOPD”). DOE described hearth products as gas-fired equipment that provide space heating and/or provide an aesthetic appeal to the living space. *Id.* at 79639. DOE proposed to define “hearth product” as a gas-fired appliance that simulates a

solid-fueled fireplace or presents a flame patterns (for aesthetics or other purpose) and that may provide space heating directly to the space in which it is installed, and provided examples of products meeting this definition, including vented decorative hearth products, vented heater hearth products, vented gas logs, gas stoves, outdoor hearth products, and ventless hearth products. Id. at 79640. DOE stated it had not previously conducted an energy conservation standards rulemaking for hearth products with the exception of the vented hearth heaters, which are no longer covered products as a result of the Court ruling. Id. On February 9, 2015, DOE published a NOPR proposing energy conservation standards for hearth products. 80 FR 7082 (“February 2015 NOPR”). On March 31, 2017, DOE withdrew the December 2013 NOPD<sup>9</sup> in the bi-annual publication of the DOE Regulatory Agenda.<sup>10</sup>

On further consideration of the Court’s opinion, DOE believes that DOE was overly broad in discussion of the Court’s holding in the context of vented hearth heaters in the withdrawn December 2013 NOPD. In that vented hearth heaters provide space heating, classifying vented hearth heaters as vented home heating equipment would be consistent with the Court’s opinion. (See the Court’s explanation that decorative fireplaces are outside the scope of direct heating equipment and that the phrase “vented hearth heater” did not encompass decorative fireplaces as that term is traditionally understood. (706 F.3d 499, 505, 509)) Therefore, although there are not currently energy conservation standards for vented hearth heaters, these products are appropriately covered as vented home heating equipment (and direct heating equipment (“DHE”)). Because vented hearth heaters are already covered as vented home heating equipment under EPCA, such products are not part of this proposed coverage

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<sup>9</sup> Withdrawal of the December 2013 NOPD also resulted in the withdrawal of the February 2015 NOPR.

<sup>10</sup> Past publications of DOE’s Regulatory Agenda can be found at: [resources.regulations.gov/public/component/main](https://www.regulations.gov/public/component/main).

determination. To the extent DOE considers energy conservation standards for venter hearth heaters, it will do so in a separate rulemaking.

### **III. Current Rulemaking Process**

This proposed determination of coverage addresses miscellaneous gas products, which are consumer products comprising: (1) those hearth products that are not DHE (*i.e.*, those hearth products that are indoor or outdoor decorative hearth products) and (2) outdoor heaters. If, after public comment, DOE issues a final determination of coverage for miscellaneous gas products, DOE may prescribe both test procedures and energy conservation standards for these products. DOE will publish a final decision on coverage as a separate notice, an action that will be completed prior to the initiation of any test procedure or energy conservation standards rulemaking. 10 CFR part 430 subpart C appendix A section 5(c). If DOE determines that coverage is warranted, DOE will proceed with its typical rulemaking process for both test procedures and standards. *Id.* DOE is not proposing test procedures or energy conservation standards as part of this proposed determination. If DOE proceeds with a rulemaking to establish energy conservation standards, DOE would determine if miscellaneous gas products satisfy the provisions of 42 U.S.C. 6295(l)(1) during the course of that rulemaking.

### **IV. Scope of Coverage**

Miscellaneous gas products as considered in this NOPD are comprised of decorative hearth products and outdoor heaters.

For the purpose of this analysis, DOE evaluated decorative hearth products that are gas-fired products that simulate a solid-fuel fireplace and/or present an aesthetic flame pattern, and

that are not designed to heat the space in which they are used. A wide range of decorative hearth products are available on the market, including, for example, gas log sets, gas fire pits, gas stoves, and gas fireplace inserts. Decorative hearth products may be used indoors or outdoors.

For the purpose of this analysis, DOE evaluated outdoor heaters that are gas-fired products that heat the area proximate to the heater and that are designed to be used outdoors.

*A. Existing Classifications in ANSI Standards*

To help inform its proposed scope of coverage, DOE reviewed existing classifications of miscellaneous gas products (i.e., hearth products and outdoor heaters) in various ANSI standards. Table III.1 presents the ANSI standards that DOE identified which cover the various types of decorative hearth products and outdoor heaters on the market.

**Table III.1 ANSI Standards Covering the Various Types of Miscellaneous Gas Products**

<b>ANSI Standard</b>	<b>Title</b>
Z21.50	Vented Decorative Gas Appliances
Z21.60	Decorative Gas Appliances for Installation in Solid-Fuel Burning Fireplaces
Z21.84	Standard for Manually Lighted, Natural Gas, Decorative Gas Appliances for Installation in Solid-Fuel Burning Fireplaces
Z21.97	Outdoor Decorative Gas Appliances
Z83.26	Gas-Fired Outdoor Infrared Patio Heaters

Issue 1: DOE requests comment on whether there are other industry standards that should be reviewed for this coverage determination for decorative hearth products and outdoor heaters.

ANSI Z21.50 covers vented decorative gas appliances with input ratings up to 400,000 Btu/h, that do not have a thermostat and are not a source of heat. In covering vented decorative

gas appliances, ANSI Z21.50 provides the following definitions relevant to defining the scope of a decorative appliance:

*Decorative gas appliance* - an appliance whose only function lies in the aesthetic effect of the flame. A vented *decorative* gas appliance may be freestanding, recessed, zero clearance, or a gas fireplace insert, and is further defined as:

*Direct vent decorative gas appliance* - a system consisting of (1) an appliance for indoor installation that allows the view of flames and provides the simulation of a solid fuel fireplace; (2) combustion air connections between the appliance and the vent-air intake terminal; (3) flue gas connections between the appliance and the vent-air intake terminal; and (4) a vent-air intake terminal for installation outdoors, constructed such that all air for combustion is obtained from the outdoor atmosphere and all flue gases are discharged to the outdoor atmosphere. All of these components are supplied by the manufacturer.

*Fan type vented decorative gas appliance* - a vented decorative gas appliance equipped with an integral circulating air fan, the operation of which is necessary for satisfactory appliance performance.

*Gas fireplace insert* - a vented decorative gas appliance designed to be fully or partially installed in a solid-fuel burning fireplace.

*Gravity vented decorative gas appliance* - a vented decorative gas appliance consisting of an appliance constructed so all air for combustion is obtained from the room in which the appliance is installed and all flue gases are discharged to the outdoor atmosphere. The discharge of flue gases is by gravity forces.

*Power vented decorative gas appliance* - a vented decorative gas appliance consisting of an appliance constructed so all air for combustion is obtained from the room in which it is installed and all flue gases are discharged to the outdoor atmosphere. The discharge of flue gases is by mechanical means.

*Gas stove* - a vented gas appliance designed to be freestanding.

ANSI Z21.60 covers decorative gas appliances for installation in solid-fuel burning fireplaces with input ratings up to 400,000 Btu/h that do not have a thermostat. ANSI Z21.60 provides the following definitions relevant to defining the scope of decorative gas appliances for installation in solid-fuel burning fireplaces:

*Decorative gas appliance* - a self-contained, free-standing, gas-burning appliance designed for installation only in a solid-fuel burning fireplace and whose primary function lies in the aesthetic effect of the flame.

*Coal basket* - an open-flame type appliance consisting of a metal basket filled with simulated coals, which gives the appearance of a coal fire when in operation.

*Gas log* - an open-flame type appliance consisting of a metal frame or base supporting simulated logs.

ANSI Z21.84 covers manually lighted, natural gas, decorative gas appliances for installation in solid-fuel burning fireplaces, that are not thermostatically controlled, and with input ratings up to 90,000 Btu/h. These appliances do not incorporate a pilot burner or an automatic gas ignition system. The main burner(s) is intended to be lighted by hand each time

the appliance is used. ANSI Z21.84 provides the following definitions relevant to defining the scope of manually lit decorative gas appliances for installation in solid-fuel burning fireplaces:

*Decorative appliance* - a self-contained, freestanding, gas-burning appliance designed for installation only in a solid-fuel burning fireplace and whose function primarily lies in the aesthetic effect of the flame.

*Coal basket* - an open flame type appliance consisting of a metal basket filled with simulated coals, which gives the appearance of a coal fire when in operation.

*Gas log* - an open flame type appliance consisting of a metal frame or base supporting simulated logs.

ANSI Z21.97 covers decorative gas appliances for outdoor installation and are classified as one of the following: portable, stationary, or built-in. Thermostatically controlled appliances are not within the scope of ANSI Z21.97. ANSI Z21.97 provides the following definitions relevant to defining the scope of decorative gas appliances for outdoor installation:

*Built-in* - appliances that are mounted or attached to a permanent structure and not intended to be moved.

*Outdoor decorative gas appliance* - an appliance for use in outdoor spaces only, which does not incorporate a venting system, and whose primary function lies in the aesthetic effect of the flame.

*Outdoor spaces* - an appliance is considered to be outdoors if installed with shelter no more inclusive than:



- a) with walls on all sides, but with no overhead cover;
- b) within a partial enclosure that includes an overhead cover and no more than two sidewalls. The sidewalls may be parallel, as in a breezeway, or at right angles to each other; or
- c) within a partial enclosure that includes an overhead cover and three sidewalls, as long as 30 percent or more of the horizontal periphery of the enclosure is permanently open.

*Stationary* - appliances that are not equipped with wheels, casters, or other means of easy movement. These appliances are only moved by lifting and carrying.

ANSI Z83.26 covers gas-fired outdoor infrared patio heaters intended for installation in and heating of residential or non-residential spaces. Infrared patio heaters may be suspended overhead, angle-mounted overhead, wall-mounted, floor-mounted, or for tabletop use. ANSI Z83.26 provides the following definitions relevant to defining the scope of infrared patio heaters:

*Infrared patio heater* - a heater which directs a substantial amount of its energy output in the form of infrared energy into the outdoor area to be heated.

*Outdoor spaces* – for the purpose of this Standard, an appliance is considered to be outdoors if installed with shelter no more inclusive than:

- a) with walls on all sides, but with no overhead cover.
- b) within a partial enclosure that includes an overhead cover and no more than two sidewalls. The sidewalls may be parallel, as in a breezeway, or at right angles to each other.

c) within a partial enclosure that includes an overhead cover and three sidewalls, as long as 30 percent or more of the horizontal periphery of the enclosure is permanently open.

*Portable infrared patio heater* - a free standing, infrared heater designed with the intent of being moved from one outdoor location to another.

### *B. Proposed Scope of Coverage*

As discussed, DOE is proposing coverage of miscellaneous gas products, which are comprised of decorative hearth products and outdoor heaters.

In considering the scope of “decorative hearth product,” DOE considered the identified ANSI standards (*i.e.*, ANSI Z21.50, ANSI Z21.60, ANSI Z21.84, ANSI Z21.97, and ANSI Z83.24), as well as DOE’s previously adopted and proposed definitions related to hearth products. The considered scope of “decorative hearth product” presented below combines pertinent elements of the previously proposed definition for “hearth product” included in the December 2013 NOPD and the February 2015 NOPR, and the definition of a “decorative gas appliance” in ANSI Z21.50 to describe a decorative hearth product for the purposes of coverage in this NOPD. DOE considered decorative hearth products to include indoor and outdoor products.

DOE notes that the scopes of the relevant ANSI standards for decorative products exclude products that are equipped with a thermostat. Consistent with the industry standards, DOE has tentatively determined that the presence of a thermostat indicates that a product is designed to provide heat rather than being purely decorative. Thus, the proposed scope of decorative hearth products excludes those products equipped with a thermostat.

The proposed definition for a “decorative hearth product” is as follows:

*Decorative hearth product* means a gas-fired appliance that:

- (1) simulates a solid-fueled fireplace or presents a flame pattern;
- (2) includes products designed for indoor use, outdoor use, or either indoor or outdoor use;
- (3) is not designed to be operated with a thermostat;
- (4) for products designed for indoor use, is not designed to provide space heating to the space in which it is installed; and
- (5) for products designed for outdoor use, is not designed to provide heat proximate to the unit.

Issue 2: DOE requests comment on whether the presence of a thermostat would indicate that a hearth product is intended to provide heat to the space in which it is installed rather than being purely decorative.

DOE also considered inclusion of outdoor heaters in the proposed scope of the coverage determination. DOE understands outdoor heaters to be products that are used for heating outdoor areas. DOE proposes the following definition:

*Outdoor heater* means a gas-fired appliance designed for use in outdoor spaces only, and which is designed to provide heat proximate to the unit.

Issue 3: DOE seeks feedback from interested parties on its proposed definition for “outdoor heater.”

Issue 4: DOE requests comment on whether outdoor hearth products exist that are designed to provide a large amount of heat as their primary function, and thus would meet the definition of outdoor heater.

Issue 5: DOE seeks feedback from interested parties on its proposed scope of coverage of miscellaneous gas products, which would include decorative hearth products and outdoor heaters.

As evaluated in this proposed coverage determination DOE considers miscellaneous gas products to include products using natural gas or liquefied petroleum gas (“propane”). As propane is a type of gas, DOE tentatively determined it is appropriate to include propane products in the scope of this proposed coverage determination.<sup>11</sup> Were DOE to finalize the coverage determination as proposed, DOE would consider whether propane fueled products warrant different treatment under test procedures and energy conservation standards, should such test procedures and standards be established.

Issue 6: DOE requests comment on whether propane-fueled decorative hearth products and outdoor heaters should be within the scope of this coverage determination.

DOE was not able to identify an ANSI standard which addresses decorative unvented gas hearth products.

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<sup>11</sup> DOE defines the term “gas” to mean either natural gas or propane. 10 CFR 430.2.

DOE requests comment on whether unvented hearth products designed for indoor installation exist that are designed to be purely decorative, or if an unvented hearth product would always provide enough heat to the space in which it is installed to be classified as an unvented heater.<sup>12</sup> If such products exist, DOE seeks information on the features or characteristics that differentiate them from unvented heaters.

## **V. Evaluation of Miscellaneous Gas Products as a Covered Product Subject to Energy Conservation Standards**

As an initial step, DOE evaluated whether miscellaneous gas products, which are comprised of decorative hearth products and outdoor heaters, are “consumer products” under EPCA. As discussed in section I of this document, a consumer product is any article (other than an automobile) of a type – (A) which in operation consumes, or is designed to consume energy; and (B) which, to any significant extent, is distributed in commerce for personal use or consumption by individuals; without regard to whether such article of such type is in fact distributed in commerce for personal use or consumption by an individual. (42 U.S.C. 6291(a)(1)) Miscellaneous gas products consume energy during operation and are distributed in commerce for personal use by individuals. Therefore, DOE has determined that miscellaneous gas products are consumer products.

The following sections describe DOE’s preliminary evaluation of whether miscellaneous gas products fulfill the criteria for being added as covered products pursuant to 42 U.S.C.

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<sup>12</sup> DOE defines an “unvented gas heater” as an unvented, self-contained, free-standing, nonrecessed gas-burning appliance which furnishes warm air by gravity or fan circulation. 10 CFR 430.2. An unvented gas heater is a type of unvented home heating equipment and covered as direct heating equipment.

6292(b)(1). As stated previously, DOE may classify a consumer product as a covered product if:

(1) Classifying products of such type as covered products is necessary or appropriate to carry out the purposes of EPCA; and

(2) The average annual per-household energy use by products of such type is likely to exceed 100 kWh (or its Btu equivalent) per year.

*A. Coverage Necessary or Appropriate to Carry Out Purposes of EPCA*

DOE has preliminarily determined that coverage of miscellaneous gas products is necessary or appropriate to carry out the purposes of EPCA, which include:

(1) To conserve energy supplies through energy conservation programs, and, where necessary, the regulation of certain energy uses; and

(2) To provide for improved energy efficiency of motor vehicles, major appliances, and certain other consumer products. (42 U.S.C. 6291(4)–(5))

DOE estimates that annual shipments of miscellaneous gas products have averaged approximately 190,000 units per year from 2016 to 2020.<sup>13</sup> DOE estimates that the aggregate national energy use of decorative hearth products is 0.0135 quadrillion British thermal units

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<sup>13</sup> This estimate was developed by scaling the hearth product shipments found on page 9-2 of Chapter 9 in the February 2015 NOPR Technical Support Document to the total gas appliance shipments from 2016 through 2020 from HPBA ([www.hpba.org/Resources/Annual-Historical-Hearth-Shipments](http://www.hpba.org/Resources/Annual-Historical-Hearth-Shipments)). Manufacturer interviews conducted for the February 2015 NOPR analysis were used to develop the market share of decorative hearths (39%) and outdoor heaters (3%) from total shipments. The market shares were assumed to remain constant from 2016–2020.

(“quads”) (4.0 Terawatt-hours (“TWh”)),<sup>14</sup> and that the aggregate national energy use of outdoor heaters is estimated to be 0.0007 quads (0.2 TWh).<sup>15</sup> DOE estimates that the aggregate national energy use of decorative hearth products and outdoor heaters, comprising miscellaneous gas products, is 0.0143 quads (4.2 TWh). Coverage of miscellaneous gas products would further the conservation of energy supplies through the regulation of energy efficiency. Therefore, DOE has tentatively determined that coverage of miscellaneous gas products is necessary and appropriate to carrying out the purposes of EPCA, thereby satisfying the provisions of 42 U.S.C. 6292(b)(1)(A).

### *B. Average Annual Per-Household Energy Use*

DOE estimated average per-household energy use for decorative hearth products based on a 2017 survey by the Lawrence Berkeley National Laboratory (“2017 hearth survey”)<sup>16,17</sup> and the technical support document from the February 2015 NOPR.<sup>18</sup> In the 2017 hearth

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<sup>14</sup> The aggregate national energy use of decorative hearths is based on energy use estimates developed in section V.B, along with historical shipments from HPBA ([www.hpba.org/Resources/Annual-Historical-Hearth-Shipments](http://www.hpba.org/Resources/Annual-Historical-Hearth-Shipments)) and the 2015 NOPR National Impact Analysis, of which 39 percent are assumed to be decorative hearths, and a 15-year hearth lifetime which was used for all products in the 2015 Hearth Products NOPR (U.S. Department of Energy. Technical Support Document: Energy Conservation Programs for Consumer Products, Energy Conservation Standards for Hearth Products. Chapter 8: Life-Cycle-Cost Analysis. January 30, 2015. Available at: [www.regulations.gov/document/EERE-2014-BT-STD-0036-0002](http://www.regulations.gov/document/EERE-2014-BT-STD-0036-0002))

<sup>15</sup> The aggregate national energy use of outdoor heaters is based on energy use estimates developed in section V.B of this document, along with historical shipments from the 2015 NOPR National Impact Analysis, which assumed that ratio of patio heaters shipments to HPBA hearth shipments was 3 percent, and a 15-year hearth lifetime which was used for all products in the 2015 Hearth Products NOPR (U.S. Department of Energy. Technical Support Document: Energy Conservation Programs for Consumer Products, Energy Conservation Standards for Hearth Products. Chapter 8: Life-Cycle-Cost Analysis. January 30, 2015. Available at: [www.regulations.gov/document/EERE-2014-BT-STD-0036-0002](http://www.regulations.gov/document/EERE-2014-BT-STD-0036-0002).)

<sup>16</sup> Siap, David. Willem, Henry. Price, Sarah. Yang, Hung-Chia. Lekov, Alex. Survey of Hearth Products in U.S. Homes. Energy Analysis and Environmental Impacts Division, Lawrence Berkeley National Laboratory. June 2017. [eta.lbl.gov/publications/survey-hearth-products-us-homes](http://eta.lbl.gov/publications/survey-hearth-products-us-homes)

<sup>17</sup> In the 2017 Hearth Survey, hearths were defined as: gas or electric fireplaces, gas log sets, stoves, and outdoor units. DOE assumed the substantive majority of outdoor units were “outdoor decorative hearths” as proposed to be defined in section IV.B of this document.

<sup>18</sup> U.S. Department of Energy. Technical Support Document: Energy Conservation Programs for Consumer Products, Energy Conservation Standards for Hearth Products. Chapter 7: Energy Use Analysis. January 30, 2015. [www.regulations.gov/document/EERE-2014-BT-STD-0036-0002](http://www.regulations.gov/document/EERE-2014-BT-STD-0036-0002).

survey, products that were identified as “decorative only” represented 6 percent of the surveyed installations, with the main burner operating for 17 hours per year and the standing pilot operating for 4,919 hours per year. Products identified as “mostly decorative” represented 32 percent of installations, with the main burner operating for 50 hours per year and the standing pilot operating for 3,500 hours per year.<sup>19</sup> The identification of a product as “decorative only” or “mostly decorative” was based on the respondents’ answer to a survey question about whether the product was for decorative or heating purposes; it did not necessarily reflect the manufacturer’s design.<sup>20</sup>

For this NOPD, DOE assumed that the operating characteristics of “decorative only” and “mostly decorative” products from the 2017 survey would represent the market for decorative hearth products as proposed to be defined. Ignition systems in hearth products are typically either standing pilots, where the pilot flame is continuously lit unless turned off by the user; intermittent systems, where the pilot is lit using an electric starter only when there is a need for a flame; or match lit, when the main burner is lit by a match. To account for the energy use of the various ignition systems of decorative hearths, DOE relied on market share data of the ignition systems for gas fireplaces and gas log sets from the 2017 hearth survey: 71 percent of fireplaces and log sets use a standing pilot, 18 percent use intermittent ignition, and 12 percent are match lit.<sup>21</sup> In the February 2015 NOPR, DOE used an input capacity of 35,000 Btu/h to represent decorative fireplace main burners and 1,000 Btu/h to represent standing pilot light input capacity,

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<sup>19</sup> Siap, David. Willem, Henry. Price, Sarah. Yang, Hung-Chia. Lekov, Alex. Survey of Hearth Products in U.S. Homes. Energy Analysis and Environmental Impacts Division, Lawrence Berkeley National Laboratory. June 2017. [eta.lbl.gov/publications/survey-hearth-products-us-homes](http://eta.lbl.gov/publications/survey-hearth-products-us-homes).

<sup>20</sup> The decorative only and mostly decorative product categories include both indoor and outdoor units.

<sup>21</sup> Siap, David. Willem, Henry. Price, Sarah. Yang, Hung-Chia. Lekov, Alex. Survey of Hearth Products in U.S. Homes. Energy Analysis and Environmental Impacts Division, Lawrence Berkeley National Laboratory. June 2017. [eta.lbl.gov/publications/survey-hearth-products-us-homes](http://eta.lbl.gov/publications/survey-hearth-products-us-homes).



and calculated annual national intermittent ignition electricity use to be 29 kWh/yr.<sup>22</sup> For this NOPD, DOE calculated the per-household weighted average ignition energy use to be 2.7 million British thermal units per year (“MMBtu/yr”)<sup>23</sup> and the weighted main burner energy use to be 1.5 MMBtu/yr, for a total decorative hearth energy use per household of 4.2 MMBtu/yr (1,230 kWh/yr).

The 2017 hearth survey did not provide the operating characteristics of outdoor heaters and DOE was unable to find other data sources for the operating characteristics of outdoor heaters. In lieu of such data, DOE estimates that the burner operating hours for outdoor heaters would be the same as those for decorative hearths (both indoor and outdoor).<sup>24</sup> DOE notes that in the December 2013 coverage determination, the burner operating hours were the same for indoor decorative products and outdoor decorative products and outdoor heaters. 78 FR 79638, 79640.

Issue 7: DOE requests comment on the assumption that burner operating hours for outdoor heaters are similar to the main burner operating hours of decorative hearths. In addition, DOE requests any data available regarding the operating hours of outdoor heaters.

The 2017 hearth survey provided a breakdown of the ignition systems used in outdoor units, as well as the breakdown of standing pilot operation: 48 percent use a standing pilot, 15 percent use intermittent ignition, and 37 percent are match lit. Of the standing pilots, 54 percent

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<sup>22</sup> U.S. Department of Energy. Technical Support Document: Energy Conservation Programs for Consumer Products, Energy Conservation Standards for Hearth Products. Chapter 7: Energy Use Analysis. January 30, 2015. [www.regulations.gov/document/EERE-2014-BT-STD-0036-0002](http://www.regulations.gov/document/EERE-2014-BT-STD-0036-0002)

<sup>23</sup> Decorative hearths with match lit ignition were assumed to use zero ignition energy.

<sup>24</sup> The 2017 survey did provide the operating characteristics for hearth heaters; however, DOE believes the outdoor heaters would not operate in the same manner as indoor units providing primary or secondary space heating.

remain on all-year, 5 percent are turned off throughout the summer, and 41 percent are turned off when not in use.

As outdoor heaters are different products than outdoor decorative hearths, DOE assumed that there would be less standing pilot use for outdoor heaters. An outdoor heater is likely used only in colder weather to provide warmth to people outside rather than across all seasons like a decorative outdoor hearth; therefore, DOE reduced the share of standing pilots as well as the amount of time a standing pilot would operate in a year. DOE adjusted the above percentages so that standing pilot usage in heaters was 50 percent that of outdoor units in the 2017 hearth survey. The breakdown of outdoor heater ignition systems was calculated to be 24 percent standing pilot, 29 percent intermittent ignition, and 47 percent match lit. DOE also reduced the amount of standing pilots that operate all year by 50 percent for outdoor heaters. Of the standing pilots for outdoor heaters, DOE estimated 27 percent remain on all year, 11 percent are turned off throughout the summer, and 62 percent are off when not in use.

Issue 8: DOE requests feedback on the breakdown of ignition systems for outdoor heaters as well as any data on standing pilot operating hours for outdoor heaters.

In the February 2015 NOPR, DOE used an input capacity of 50,000 Btu/h to represent the main burners of outdoor products<sup>25</sup> and 1,000 Btu/h to represent the standing pilots, and calculated annual national intermittent ignition electricity use to be 29 kWh/yr.<sup>26</sup> For this NOPD, DOE calculated the per-household weighted average ignition energy of use of outdoor

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<sup>25</sup> The outdoor products addressed in the February 2015 NOPR were outdoor fireplaces, outdoor fireplace inserts, outdoor fire pits, outdoor gas lamps, and patio heaters.

<sup>26</sup> U.S. Department of Energy. Technical Support Document: Energy Conservation Programs for Consumer Products, Energy Conservation Standards for Hearth Products. Chapter 7: Energy Use Analysis. January 30, 2015. [www.regulations.gov/document/EERE-2014-BT-STD-0036-0002](http://www.regulations.gov/document/EERE-2014-BT-STD-0036-0002)

heaters to be 0.7 MMBtu/yr and the weighted burner energy use to be 2.2 MMBtu/yr, for total outdoor heater household energy use of 2.9 MMBtu/yr (859 kWh/yr). While DOE recognizes that the operation of outdoor heaters may vary from that of decorative and outdoor units from the 2017 hearth survey and outdoor products in the February 2015 NOPR, the conservative energy use estimate for outdoor heaters is well above the coverage threshold.

DOE estimates that decorative hearths account for 93 percent of the miscellaneous gas product market and that outdoor heaters account for 7 percent. DOE calculated the weighted average per-household energy use of a miscellaneous gas product to be 4.1 MMBtu/yr (1,211 kWh/yr). Therefore, DOE has tentatively determined that the average annual per-household energy use for miscellaneous gas products is likely to exceed 100 kWh/yr, thereby satisfying the provisions of 42 U.S.C. 6292(b)(1)(B).

Based on the above, DOE has tentatively determined that miscellaneous gas products (comprised of decorative hearth products and outdoor heaters) qualify as a covered product under Part A of Title III of the EPCA, as amended.

### *C. Proposed Determination*

Based on the foregoing, DOE has tentatively determined that classifying miscellaneous gas products, which are comprised of decorative hearths and outdoor heaters, as proposed to be defined in section IV.B of this document, is necessary and appropriate to carry out the purposes of EPCA; and the average annual per-household energy use is likely to exceed 100 kWh (or its Btu equivalent) per year for miscellaneous gas products. As such, DOE is proposing to determine to classify miscellaneous gas products as a covered product under Part A of Title III of EPCA, as amended.

Issue 9: DOE requests comment on whether classifying miscellaneous gas products as a covered product is necessary or appropriate to carry out the purposes of EPCA.

## **VI. Procedural Issues and Regulatory Review**

### *A. Review Under Executive Order 12866*

This proposed determination has been determined to be not significant for purposes of Executive Order (“E.O.”) 12866, “Regulatory Planning and Review,” 58 FR 51735 (Oct. 4, 1993). As a result, the Office of Management and Budget (“OMB”) did not review this proposed determination.

### *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 proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by E.O. 13272, “Proper Consideration of Small Entities in Agency Rulemaking” 67 FR 53461 (Aug. 16, 2002), DOE published procedures and policies on February 19, 2003 to ensure that the potential impact 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 website ([energy.gov/gc/office-general-counsel](http://energy.gov/gc/office-general-counsel)).

This proposed determination would not establish test procedures or energy conservation standards for miscellaneous gas products. If adopted, the proposed determination would only positively determine that future standards may be warranted and should be explored in an energy

conservation standards and test procedure rulemaking. Economic impacts on small entities would be considered in the context of such rulemakings. Therefore, DOE initially concludes that the impacts of the proposed determination would not have a “significant economic impact on a substantial number of small entities,” and that the preparation of an IRFA is not warranted. DOE will transmit this certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

### *C. Review Under the Paperwork Reduction Act*

Manufacturers of covered products must certify to DOE that their products comply with any applicable energy conservation standards. To certify compliance, manufacturers must first obtain test data for their products according to the DOE test procedures, 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. (See generally 10 CFR part 429.) The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (“PRA”). This requirement has been approved by OMB under OMB control number 1910-1400. Public reporting burden for the certification is estimated to average 35 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. As noted previously, this proposed determination, if made final, would not establish any testing requirements or energy conservation standards for miscellaneous gas products.

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

DOE is analyzing this proposed regulation in accordance with the National Environmental Policy Act (“NEPA”) and DOE’s NEPA implementing regulations (10 CFR part 1021). DOE’s regulations include a categorical exclusion for rulemakings that are strictly procedural. 10 CFR part 1021, subpart D, appendix A6. DOE anticipates that this rulemaking qualifies for categorical exclusion A6 because it is a strictly procedural rulemaking and otherwise meets the requirements for application of a categorical exclusion. See 10 CFR Part 1021.410. DOE will complete its NEPA review before issuing the final rule.

*E. Review Under Executive Order 13132*

E.O. 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 that it will follow in the development of such regulations. 65 FR 13735. DOE has examined this proposed determination and has tentatively determined

that it would not have a substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this proposed determination. 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) Therefore, no further action is required by E.O. 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 E.O. 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, (3) provide a clear legal standard for affected conduct rather than a general standard, and (4) promote simplification and burden reduction. 61 FR 4729 (Feb. 7, 1996). Regarding the review required by section 3(a), section 3(b) of E.O. 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 sections 3(a) and 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 determination meets the relevant standards of E.O. 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 proposed 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 them. 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 [www.energy.gov/sites/prod/files/gcprod/documents/umra\\_97.pdf](http://www.energy.gov/sites/prod/files/gcprod/documents/umra_97.pdf).

DOE examined this proposed determination according to UMRA and its statement of policy and determined that the proposed determination does not contain a Federal intergovernmental mandate, nor is it expected to require expenditures of \$100 million or more in



any one year by State, local, and Tribal governments, in the aggregate, or by the private sector. As a result, the analytical requirements of UMRA do not apply.

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

Section 654 of the Treasury and General Government Appropriations Act of 1999 (Public Law 105-277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This proposed determination 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*

Pursuant to E.O. 12630, “Governmental Actions and Interference with Constitutionally Protected Property Rights,” 53 FR 8859 (Mar. 15, 1988), DOE has determined that this proposed determination 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 of 2001*

Section 515 of the Treasury and General Government Appropriation Act, 2001 (44 U.S.C. 3516, note) provides for Federal agencies to review most disseminations of information to the public under information quality 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). Pursuant to OMB Memorandum M-19-15, Improving Implementation of the Information Quality Act (April 24, 2019), DOE published updated guidelines which are available at

[www.energy.gov/sites/prod/files/2019/12/f70/DOE%20Final%20Updated%20IQA%20Guidelines%20Dec%202019.pdf](http://www.energy.gov/sites/prod/files/2019/12/f70/DOE%20Final%20Updated%20IQA%20Guidelines%20Dec%202019.pdf). DOE has reviewed this NOPD 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*

E.O. 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 the Office of Information and Regulatory Affairs (“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 Executive 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.

This proposed regulatory action to classify miscellaneous gas products as covered products is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as such by the Administrator of OIRA. Accordingly, DOE has not prepared a Statement of Energy Effects.

#### *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. DOE has determined that the analyses conducted for this rulemaking do not constitute “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.” 70 FR 2667 (Jan. 14, 2005). The analyses were subject to pre-dissemination review prior to issuance of this rulemaking.

## **VII. Public Participation**

### *A. Submission of Comments*

DOE will accept comments, data, and information regarding this notification of proposed determination no later than the date provided in the **DATES** section at the beginning of this document. 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](http://www.regulations.gov).* The [www.regulations.gov](http://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 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. With this instruction followed, 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 faxes will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, 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 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).

*B. Issues on Which DOE Seeks Comments*

DOE welcomes comments on all aspects of this proposed determination. DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

- Issue 1:** DOE requests comment on whether there are other industry standards that should be reviewed for this coverage determination for decorative hearth products and outdoor heaters.
- Issue 2:** DOE requests comment on whether the presence of a thermostat would indicate that a hearth product is intended to provide heat to the space in which it is installed rather than being purely decorative.
- Issue 3:** DOE seeks feedback from interested parties on its proposed definition for “outdoor heater.”
- Issue 4:** DOE requests comment on whether outdoor hearth products exist that are designed to provide a large amount of heat as their primary function, and thus would meet the definition of outdoor heater.
- Issue 5:** DOE seeks feedback from interested parties on its proposed scope of coverage of miscellaneous gas products, which would include decorative hearth products and outdoor heaters.

- Issue 6:** DOE requests comment on whether propane-fueled decorative hearth products and outdoor heaters should be within the scope of this coverage determination.
- Issue 7:** DOE requests comment on whether unvented hearth products designed for indoor installation exist that are designed to be purely decorative, or if an unvented hearth product would always provide enough heat to the space in which it is installed to be classified as an unvented heater. If such products exist, DOE seeks information on the features or characteristics that differentiate them from unvented heaters.
- Issue 8:** DOE requests comment on the assumption that burner operating hours for outdoor heaters are similar to the main burner operating hours of decorative hearths. In addition, DOE requests any data available regarding the operating hours of outdoor heaters.
- Issue 9:** DOE requests feedback on the breakdown of ignition systems for outdoor heaters as well as any data on standing pilot operating hours for outdoor heaters.
- Issue 10:** DOE requests comment on whether classifying miscellaneous gas products as a covered product is necessary or appropriate to carry out the purposes of EPCA.

DOE is interested in receiving views concerning other relevant issues that participants believe would affect its ability to establish test procedures and energy conservation standards for miscellaneous gas products, which include decorative hearths and outdoor heaters.

After the expiration of the period for submitting written statements, DOE will consider all comments and additional information that is obtained from interested parties or through further analyses, and it will prepare a final determination.

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

The Secretary of Energy has approved publication of this notification of proposed determination.

### **Signing Authority**

This document of the Department of Energy was signed on January 31, 2022, by Kelly J. Speakes-Backman, Principal Deputy 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 January 31, 2022.

Kelly Speakes-  
X Backman

Digitally signed by Kelly Speakes-  
Backman  
Date: 2022.01.31 20:36:06 -05'00'

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