

For the reasons set forth in the preamble, AMS proposes to amend 7 CFR part 205 as follows:

## PART 205—NATIONAL ORGANIC PROGRAM

■ 1. The authority citation for 7 CFR part 205 is revised to read as follows:

**Authority:** 7 U.S.C. 6501–6524.

- 2. Amend § 205.601 by:
- a. Revising paragraph (a)(2)(iv);
  - b. Adding paragraph (a)(2)(v); and
  - c. Revising paragraph (k).

The revisions and addition to read as follows:

### § 205.601 Synthetic substances allowed for use in organic crop production.

\* \* \* \* \*

(a) \* \* \*

(2) \* \* \*

(iv) Potassium hypochlorite—not allowed for edible sprout production.

(v) Sodium hypochlorite.

\* \* \* \* \*

(k) As plant growth regulators.

(1) Ethylene gas—for regulation of pineapple flowering.

(2) Fatty alcohols (C<sub>6</sub>, C<sub>8</sub>, C<sub>10</sub>, and/or C<sub>12</sub>)—for sucker control in organic tobacco production.

\* \* \* \* \*

### § 205.605 [Amended]

■ 3. In § 205.605, amend paragraph (a) by removing the words “Dairy cultures”.

**Bruce Summers,**

*Administrator, Agricultural Marketing Service.*

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## DEPARTMENT OF ENERGY

### 10 CFR Part 430

[EERE–2019–BT–STD–0036]

RIN 1904–AE82

### Energy Conservation Program: Energy Conservation Standards for Consumer Products; Early Assessment Review; Boilers

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

**ACTION:** Request for information.

**SUMMARY:** The U.S. Department of Energy (DOE) is undertaking an early assessment review for consumer boilers to determine whether to amend the applicable energy conservation standards for this product. Specifically,

through this request for information (RFI), DOE seeks data and information to evaluate whether amended energy conservation standards would result in significant savings of energy, be technologically feasible, and be economically justified. DOE welcomes written comments from the public on any subject within the scope of this document (including those topics not specifically raised in this RFI), as well as the submission of data and other relevant information concerning this early assessment review.

**DATES:** Written comments and information are requested and will be accepted on or before April 26, 2021.

**ADDRESSES:** Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at <http://www.regulations.gov>. Follow the instructions for submitting comments. Alternatively, interested persons may submit comments by email to the following address: *Email: ConsumerBoilers2019STD0036@ee.doe.gov*. Include “Consumer Boilers RFI” and docket number EERE–2019–BT–STD–0036 and/or RIN 1904–AE82 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 accepting only electronic submissions at this time. 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 III of this document (Submission of Comments).

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

[www.regulations.gov](http://www.regulations.gov) index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

The docket web page can be found at: <http://www.regulations.gov/#!docketDetail;D=EERE-2019-BT-STD-0036>. The docket web page contains instructions on how to access all documents, including public comments, in the docket. See section III of this document for information on how to submit comments through <http://www.regulations.gov>.

### 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](mailto: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](mailto: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](mailto:ApplianceStandardsQuestions@ee.doe.gov).

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#### I. Introduction

DOE has established an early assessment review process to conduct a more focused analysis to evaluate, based on statutory criteria, whether a new or amended energy conservation standard is warranted. Based on the information received in response to the RFI and DOE’s own analysis, DOE will determine whether to proceed with a rulemaking for a new or amended energy conservation standard. If DOE makes an initial determination that a new or amended energy conservation standard would satisfy the applicable statutory criteria or DOE’s analysis is inconclusive, DOE would undertake the

preliminary stages of a rulemaking to issue a new or amended energy conservation standard. Otherwise, if DOE makes an initial determination based upon available evidence that a new or amended energy conservation standard would not meet the applicable statutory criteria, DOE would engage in notice and comment rulemaking before issuing a final determination that new or amended energy conservation standards are not warranted.

#### A. Authority

The Energy Policy and Conservation Act, as amended (EPCA),<sup>1</sup> among other things, 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. These products include consumer boilers, the subject of this document. (42 U.S.C. 6292(a)(5))

Under EPCA, DOE's energy conservation program consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA specifically include definitions (42 U.S.C. 6291), test procedures (42 U.S.C. 6293), labeling provisions (42 U.S.C. 6294), energy conservation standards (42 U.S.C. 6295), and the authority to require information and reports from manufacturers (42 U.S.C. 6296).

Federal energy efficiency requirements for covered products established under EPCA generally supersede State laws and regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6297(a)–(c)) DOE may, however, grant waivers of Federal preemption in limited instances for particular State laws or regulations, in accordance with the procedures and other provisions set forth under EPCA. (42 U.S.C. 6297(d))

DOE must follow specific statutory criteria for prescribing new or amended standards for covered products. EPCA requires that any new or amended energy conservation standard prescribed by the Secretary of Energy (Secretary) be designed to achieve the maximum improvement in energy or water efficiency that is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) The Secretary may not prescribe an amended or new

standard that will not result in significant conservation of energy or is not technologically feasible or economically justified. (42 U.S.C. 6295(o)(3))

EPCA requires that, no later than six years after the issuance of any final rule establishing or amending a standard, DOE evaluate the energy conservation standards for each type of covered product, including those at issue here, and publish either a notice of determination that the standards do not need to be amended, or a notice of proposed rulemaking (NOPR) that includes new proposed energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6295(m)(1)) DOE must make the analysis on which its notice if based publicly available and provide an opportunity for written comment. (42 U.S.C. 6295(m)(2)) DOE is issuing this early assessment review pursuant to the requirements of 42 U.S.C. 6295(m)(1).

#### B. Rulemaking History

EPCA established energy conservation standards for consumer furnaces and boilers in terms of the Annual Fuel Utilization Efficiency (AFUE) (42 U.S.C. 6295(f)(1)–(3)) and directed DOE to conduct a series of rulemakings to determine whether to amend these standards (42 U.S.C. 6295(f)(4); *see also* 42 U.S.C. 6295(m)). DOE completed the most recent rulemaking cycle to amend the standards for consumer boilers by publishing a final rule in the **Federal Register** on January 15, 2016 (January 2016 final rule), as required under 42 U.S.C. 6295(f)(4)(C). 81 FR 2320. The January 2016 final rule adopted new standby mode and off mode standards for consumer boilers in addition to amended AFUE energy conservation standards. *Id.* Compliance with the new and amended standards for consumer boilers is required beginning January 15, 2021. *Id.* The current energy conservation standards for consumer boilers are located at title 10 of the Code of Federal Regulations (CFR) part 430, subpart C, section 32(e)(2). 10 CFR 430.32(e)(2). The currently applicable DOE test procedures for consumer boilers appear at 10 CFR part 430, subpart B, appendix N (Appendix N).

## II. Request for Information and Comments

DOE is publishing this RFI to collect data and information during the early assessment review to inform its decision, consistent with its obligations under EPCA, as to whether the Department should proceed with an energy conservation standards rulemaking. Below DOE has identified

certain topics for which information and data are requested to assist in the evaluation of the potential for amended energy conservation standards. DOE also welcomes comments on other issues relevant to its early assessment that may not specifically be identified in this document.

#### A. Product Classes

When evaluating and establishing energy conservation standards, DOE may divide covered products into product classes by the type of energy used, or by capacity or other performance-related features that justify a different standard. (42 U.S.C. 6295(q)). In making a determination whether capacity or another performance-related feature justifies a different standard, DOE must consider such factors as the utility of the feature to the consumer and other factors DOE deems appropriate. (*Id.*)

On January 15, 2021, DOE published 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. Consumer boilers are similarly-situated products given that there are consumer boilers currently on the market which employ non-condensing technology (and the associated venting). In considering whether to amend the energy conservation standards for consumer boilers, DOE seeks information that would allow the agency to evaluate non-condensing technology (and the associated venting) consistent with the final interpretive rule, and whether a separate product class is warranted under 42 U.S.C. 6295(q)(1).

On this topic, DOE is particularly interested in comments, information, and data on the following:

*Issue 1:* DOE requests feedback on the current consumer boiler product classes and whether changes to these individual product classes and their descriptions should be made or whether certain classes should be separated or merged. Specifically, with regard to consumer boilers that use condensing technology, DOE requests information and data on potential impacts as compared to consumer boilers that use non-condensing technology, such as, but not limited to, the complexity/cost of installation, changes to a home's living/storage space, and the potential for fuel switching.

<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.

*Issue 2:* DOE also requests comment on other instances where it may be appropriate to separate or combine any of the existing product classes and whether such potential changes would impact product utility by eliminating any performance-related features or reduce any compliance burdens.

### B. Significant Savings of Energy

On January 15, 2016, DOE established an energy conservation standard for consumer boilers that is expected to result in 0.14 quadrillion British thermal units (quads) of site energy savings over a 30-year period.<sup>3</sup> 81 FR 2320, 2396. The adopted levels can be met by consumer boilers using either condensing or noncondensing technology. Additionally, in the January 2016 final rule, DOE estimated that an energy conservation standard established at an energy efficiency level equivalent to that achieved using the maximum available technology (max-tech) would have resulted in 1.295 additional quads of site energy savings over a 30-year period. *Id.* For gas-fired hot water boilers and oil-fired hot water boilers, energy conservation standards at the max-tech levels analyzed in the January 2016 final rule could only be met by consumer boilers utilizing condensing technology (96 percent AFUE and 91 percent AFUE, respectively). 81 FR 2320, 2381 (Jan. 15, 2016). The majority of the additional potential energy savings were from the gas-fired hot water boiler product class.

Currently, based on information from the DOE Compliance Certification Management System (CCMS) certification database, non-condensing gas-fired hot water boilers range in AFUE from 84.0 percent to 86.1 percent, and condensing gas-fired hot water boilers range in AFUE from 88.3 percent to 96.8 percent. Based on the CCMS certification database, oil-fired hot water boilers currently on the market are non-condensing and range in AFUE from 86.0 to 88.2 percent. All gas-fired steam and oil-fired steam boilers in the CCMS certification database are non-condensing, ranging in AFUE from 82.0 to 83.4 and 85.0 to 86.5 percent, respectively.

While DOE's request for information is not limited to the following issues,

DOE is particularly interested in comment, information, and data on the issues discussed in the following paragraphs.

As part of the rulemaking process, DOE conducts an energy use analysis to identify how products are used by consumers, which then allows the Department to determine the energy savings potential of energy efficiency improvements. The purpose of the energy use analysis is to determine the annual energy consumption of consumer boilers at different efficiencies in representative U.S. single-family homes, manufactured housing, multi-family residences, and commercial buildings, and to assess the energy savings potential of increased consumer boiler efficiency. The energy use analysis estimates the range of energy use of consumer boilers in the field (*i.e.*, as they are actually used by consumers). Furthermore, the energy use analysis provides the basis for other analyses DOE performs, particularly assessments of the energy savings and the savings in consumer operating costs that could result from adoption of amended or new standards, including the life-cycle cost (LCC) and payback period (PBP) analysis and the national impact analysis (NIA). DOE will estimate the annual energy consumption of consumer boilers at specified energy efficiency levels across a range of applications, house or building types, and climate zones. Similar to the January 2016 final rule, DOE intends to determine the annual energy consumption, including the use of natural gas, liquefied petroleum gas (LPG), oil, or electricity for space and water heating,<sup>4</sup> as well as use of electricity for any auxiliary components.

*Issue 3:* DOE requests feedback on the levels of energy savings that could be expected from the adoption of a more-stringent standard for consumer boilers. Specifically, with regard to potential product class changes discussed in section II.A of this RFI, DOE requests information and data on the potential change in energy savings if certain classes are split or merged.

*Issue 4:* DOE seeks input and sources of data or recommendations to support sizing of consumer boilers typical in

consumer space heating and water heating applications.

*Issue 5:* DOE requests comment on the fraction of installations and classes of consumer boilers that are used in commercial applications.

*Issue 6:* DOE seeks field data and input on representative space heating usage, space heating load profile, and representative return water temperatures for consumer boilers used in various consumer and commercial space heating applications.

*Issue 7:* DOE requests comment on the fraction of installations by consumer boiler product classes used for different space heating applications include radiant heating (in-floor, radiant panels, radiators, baseboards) and forced air using fan coils or central air handlers.

*Issue 8:* DOE seeks input on adjusting AFUE for different return water temperatures, for automatic means for adjusting water temperature, and for jacket losses. DOE seeks input on any other adjustments to AFUE to better capture field conditions. DOE also seeks data on the relationship between return water temperature and AFUE to more accurately calculate the return water temperature adjustment.

*Issue 9:* DOE seeks additional data on the fraction of boiler shipments that go to installations that serve both space heating and water heating by product class, by efficiency level or boiler technology type (*e.g.*, non-condensing and condensing), and type of water heating (*e.g.*, indirect tank water heating, combination products, and tankless coil).

### C. Technological Feasibility

DOE considers technologies incorporated in commercially-available products or in working prototypes to be technologically feasible. 10 CFR part 430, subpart C, appendix A, sections 6(c)(3)(i) and 7(b)(1). In the rulemaking proceeding leading to the January 2016 final rule, DOE considered a number of technology options that manufacturers could use to reduce energy consumption in consumer boilers. 81 FR 2320, 2340–2341 (Jan. 15, 2016). Table II.1 shows the technologies previously considered for the January 2016 final rule.

<sup>3</sup> This estimate of 0.14 quads reflects site energy savings, which for natural gas and oil are considered equal to the primary energy savings because they are supplied to the user without transformation from another form of energy. The January 2016 final rule presented the 30-year energy savings estimate as 0.16 quads, reflecting full-fuel-cycle (FFC) energy savings. The FFC measure includes point-of-use (site) energy; the energy losses

associated with generation, transmission, and distribution of electricity; and the energy consumed in extracting, processing, and transporting or distributing primary fuels. For purposes of its consideration of significant energy savings, DOE has calculated its estimate of potential site energy savings from the estimate of FFC energy savings in the January 2016 final rule.

<sup>4</sup> Space heating applications for consumer boilers include radiant heating (*e.g.*, in-floor, radiant panels, radiators, baseboard) and forced air using fan coils or central air handlers. Domestic water heating applications for consumer boilers include indirect water heating, combination products, and tankless coil.

TABLE II.1—TECHNOLOGY OPTIONS FOR CONSUMER BOILERS CONSIDERED IN THE DEVELOPMENT OF THE JANUARY 2016 FINAL RULE

Heat exchanger improvements.  
 Modulating operation.  
 Dampers.†  
 Direct vent.  
 Pulse combustion.\*  
 Premix burners.  
 Burner derating.\*  
 Delayed-action oil pump solenoid valve.  
 Electronic ignition.†  
 Low-pressure air-atomized oil burner.  
 Transformer improvements (standby mode and off mode).  
 Control relay for models with brushless permanent magnet motors (standby mode and off mode).\*  
 Switching mode power supply (standby mode and off mode).

† Technology already in baseline units, so not considered further.

\* Screened-out technology.

DOE seeks comment on any changes to these technology options that could affect DOE's evaluation of whether energy conservation standards need to be amended. DOE also seeks comment on whether there are any other technology options that DOE should consider in its analysis.

While DOE's request for information is not limited to the following issues, DOE is particularly interested in comment, information, and data on the following:

*Issue 10:* DOE seeks information on technologies that may impact the efficiency of consumer boilers as measured according to the DOE test procedure. DOE also seeks information on how these technologies may have changed since they were considered in the January 2016 final rule analysis. Specifically, DOE seeks information on the range of efficiencies or performance characteristics that are currently available for each technology option.

*Issue 11:* DOE seeks comment on other technology options that it should consider for inclusion in its analysis and whether these technologies would be expected to impact product features or consumer utility of consumer boilers.

DOE defines the max-tech efficiency level to represent the theoretical maximum possible efficiency if all available design options are incorporated in a model. In the January 2016 final rule, the max-tech efficiency levels for AFUE corresponded to the maximum available AFUE levels in products on the market at the time of the analysis (except for oil-fired hot water boilers for which the max-tech level was slightly below the maximum available level).<sup>5</sup> For standby mode and

off mode energy consumption, the max-tech efficiency levels (*i.e.*, the levels with the lowest amount of energy consumption) were determined by starting with the baseline design and implementing design options based on cost-effectiveness until all available technologies were employed.<sup>6</sup> At the time this RFI was drafted, based on data from the CCMS database, the maximum available AFUE efficiency levels currently on the market for the subject products are as follows: 86.1 percent for non-condensing gas-fired hot water boilers, 96.8 percent for condensing gas-fired hot water boilers, 88.2 percent for oil-fired hot water boilers (which are all non-condensing), 83.4 percent for gas-fired steam boilers (which are all non-condensing), and 86.5 percent oil-fired steam boilers (which are all non-condensing). In the January 2016 final rule, DOE identified the max-tech level for standby mode and off mode consumption as follows: 9 watts for gas-fired hot water boilers; 8 watts for gas-fired steam, electric hot water, and electric steam boilers; and 11 watts for oil-fired hot water and oil-fired steam boilers. 81 FR 2320, 2345–2346 (Jan. 15, 2016).

*Issue 12:* DOE seeks input on whether the maximum available AFUE efficiency levels are appropriate and technologically feasible for potential consideration as possible energy conservation standards—and if not, why not. DOE also seeks feedback on the design options incorporated at max-tech efficiency levels. As part of this request, DOE also seeks information as to whether there are limitations on the use of certain combinations of design options.

*Issue 13:* DOE seeks input on the max-tech standby mode and off mode efficiency levels. In particular, are more-stringent (*i.e.*, lower) standby mode and off mode efficiency levels technologically feasible that are appropriate for consideration as possible energy conservation standards, and if so, what are the design options incorporated at those levels. DOE also seeks information as to whether there are limitations on the use of certain combinations of design options.

#### D. Economic Justification

In determining whether a proposed energy conservation standard is economically justified, DOE analyzes, among other things, the potential economic impact on consumers, manufacturers, and the Nation. DOE seeks comment on whether there are economic barriers to the adoption of more-stringent energy conservation standards for consumer boilers. DOE also seeks comment and data on any other aspects of its economic justification analysis from the January 2016 final rule that may indicate whether a more-stringent energy conservation standard would be economically justified or cost-effective.

While DOE's request for information is not limited to the following issues, DOE is particularly interested in comment, information, and data on the issues discussed in the following paragraphs.

In its analysis, DOE intends to take into account consumer prices from locations where ultra-low-NO<sub>x</sub> gas-fired hot water and steam boilers would be required by the compliance date for any amended standards, such as the Bay Area Air Quality Management District (AQMD) (Regulation 9, Rule 6),<sup>7</sup>

<sup>5</sup> See the technical support document for the January 2016 final rule, Chapter 3, section 3.2.9 and chapter 5, section 5.4.4. Available at: <https://www.regulations.gov/document/EERE-2012-BT-STD-0047-0070>.

<sup>6</sup> See the technical support document for the January 2016 final rule, chapter 5, section 5.4.2. Available at: <https://www.regulations.gov/document/EERE-2012-BT-STD-0047-0070>.

<sup>7</sup> Bay Area Air Quality Management District, Regulation 9: Inorganic Gaseous Pollutants; Rule 6:

Sacramento Metropolitan AQMD (Rule 414),<sup>8</sup> San Joaquin Valley Air Pollution Control District (APCD) (Rule 4308),<sup>9</sup> Santa Barbara County APCD (Rule 360),<sup>10</sup> South Coast AQMD (Rule 1146.2),<sup>11</sup> and Ventura County AQMD (Rule 74–11.1).<sup>12</sup>

*Issue 14:* DOE seeks input on whether there are additional jurisdictions requiring ultra-low-NO<sub>x</sub> gas-fired hot water and steam boilers.

In the January 2016 final rule, to determine the venting installation costs for consumer boilers, DOE considered vent categories as defined in the National Fuel Gas Code.<sup>13</sup> 81 FR 2320, 2359–2361 (Jan. 15, 2016). In its analysis, DOE determined that all natural draft boilers and a fraction of mechanical draft boilers would be vented as a Category I appliance (negative pressure vent system with high temperature flue gases). DOE determined that the remaining fraction of mechanical draft boilers would be vented as a Category III appliance (positive pressure vent system with high temperature flue gases). DOE determined that very few non-condensing models would be installed as a Category II appliance (negative pressure vent system with low temperature flue gases) or a Category IV

appliance (positive pressure vent system with low flue gases temperatures). However, DOE determined that all condensing installations would be vented as a Category IV appliance. For non-condensing boilers, DOE accounted for both commonly-vented consumer boilers (together with a water heater) and isolated consumer boilers (separately vented). For replacements, DOE added any costs associated with updating or repairing existing flue venting including vent resizing, chimney relining, and updating of flue vent connectors. DOE also accounted for additional labor costs associated with larger boilers, replacing a larger drain pan, and potential space-constraint issues when the original boiler location is too small to accommodate the replacement boiler. For efficiency levels that include electronic ignition, power vent, or condensing design, DOE added the cost of installing an electrical outlet, a new venting system, any additional cost for condensate disposal, any additional costs for secondary and primary piping, and cost of a Y-strainer, if required for a fraction of installations.

In the January 2016 final rule, DOE also included installation adders for new construction, as well as for new owner installations for hot water gas-fired boilers. 81 FR 2320, 2361 (Jan. 15, 2016). For non-condensing boilers, the only adder would be a new metal flue vent (including a fraction with stainless steel venting) and condensate withdrawal for a fraction of category III models. For condensing gas boilers, the additional costs for new construction installations related to potential amended standards would include a new flue vent, combustion air venting for direct vent installations and accounting for a commonly-vented water heater, and condensate withdrawal.

*Issue 15:* DOE seeks input on issues and costs associated with venting of flue gases of boilers, in particular regarding retrofit issues related to installing a new vent system for higher-efficiency consumer boilers, disconnecting the existing consumer boiler from a non-condensing common venting system, and upgrading existing non-condensing venting (chimney relining or vent resizing). DOE also seeks input on how often and in what applications direct venting or sealed combustion are used or required.

*Issue 16:* DOE seeks input on issues and costs associated with condensate disposal for higher-efficiency consumer boilers, specifically how often and in what applications a condensate filter or a condensate pump is installed.

*Issue 17:* DOE seeks input on issues and costs associated with installing consumer boilers in multi-family buildings.

DOE measures LCC and PBP impacts of potential standard levels relative to a no-new-standards case that reflects the likely market in the absence of amended standards. Similar to the 2016 final rule, DOE plans to develop market-share efficiency data (*i.e.*, the distribution of product shipments by efficiency) for the product classes DOE is considering, for the year in which compliance with any potential amended standards would be required. For the 2016 final rule, DOE developed market shares of different consumer boiler energy efficiency levels in the no-new-standards case, using historical shipments data provided by stakeholders, data from the Air-Conditioning, Heating and Refrigeration Institute (AHRI) contractor survey, and ENERGY STAR unit shipment data for residential boilers.<sup>14</sup> 81 FR 2320, 2364–2366 (Jan. 15, 2016). If DOE determines that a rulemaking is necessary, DOE intends to use the most recent data available from these sources, together with any more current data that may be provided by stakeholders. Also similar to the January 2016 final rule, because these data may not cover all of the energy efficiency levels under consideration, DOE intends to use most the recent data on the number of water heater models at different energy efficiency levels, as reported in DOE's compliance certification database,<sup>15</sup> the AHRI directory of certified product performance,<sup>16</sup> the California Energy Commission appliance efficiency database,<sup>17</sup> and the ENERGY STAR certified boiler directory.<sup>18</sup>

*Issue 18:* DOE requests shipments data for consumer boilers, broken down by product class, that show current

Nitrogen Oxides Emissions from Natural Gas-Fired Boilers and Water Heaters (Available at: <https://www3.arb.ca.gov/drdb/ba/curhtml/r9-6.pdf>) (Last accessed October 30, 2019).

<sup>8</sup> Sacramento Metropolitan Air Quality Management District, Rule 414: Water Heaters, Boilers and Process Heaters Rated Less Than 1,000,000 BTU PER HOUR Adopted 08–01–96 (Amended 03–25–10) (Available at: <http://www.airquality.org/ProgramCoordination/Documents/rule414.pdf>) (Last accessed October 30, 2019).

<sup>9</sup> San Joaquin Valley Air Pollution Control District, Rule 4308: Boilers, Steam Generators, and Process Heaters—0.075 MMBtu/hr to less than 2.0 MMBtu/hr (Adopted October 20, 2005, amended December 17, 2009, Amended November 14, 2013) (Available at: [https://www.valleyair.org/rules/currntules/03-4308\\_CleanRule.pdf](https://www.valleyair.org/rules/currntules/03-4308_CleanRule.pdf)) (Last accessed October 30, 2019).

<sup>10</sup> Santa Barbara County Air Pollution Control District, Rule 360: Boilers, Steam Generators, and Process Heaters (0.075–2 MMBtu/hr) (Adopted 10/17/2002, revised 3/15/2018) (Available at: <https://www.ourair.org/wp-content/uploads/rule360.pdf>) (Last accessed October 30, 2019).

<sup>11</sup> South Coast Air Quality Management District, Rule 1146.2: Emissions of Oxides of Nitrogen from Large Water Heaters and Small Boilers and Process Heaters (Adopted January 9, 1998, amended January 7, 2005, amended May 5, 2006, amended December 7, 2018) (Available at: <http://www.aqmd.gov/docs/default-source/rule-book/reg-xi/rule-1146-2.pdf?sfvrsn=17>) (Last accessed October 30, 2019).

<sup>12</sup> Ventura County Air Quality Management District, Rule 74–11.1: Large Water Heaters and Small Boilers (Adopted 9/14/99, revised 9/11/12) (Available at: <http://vcapcd.org/Rulebook/Reg4/RULE%2074.11.1.pdf>) (Last accessed October 30, 2019).

<sup>13</sup> Available at: <https://catalog.nfpa.org/NFPA-54ANSI-Z2231-National-Fuel-Gas-Code-P1184.aspx> (Last accessed March 5, 2021).

<sup>14</sup> ENERGY STAR, Unit Shipments data (Available at: [http://www.energystar.gov/index.cfm?c=partners.unit\\_shipment\\_data](http://www.energystar.gov/index.cfm?c=partners.unit_shipment_data)) (Last accessed October 30, 2019).

<sup>15</sup> U.S. Department of Energy, Compliance Certification Database (Available at: [https://www.regulations.doe.gov/certification-data/#q=Product\\_Group\\_s%3A\\*](https://www.regulations.doe.gov/certification-data/#q=Product_Group_s%3A*)) (Last accessed October 30, 2019).

<sup>16</sup> Air-Conditioning Heating and Refrigeration Institute, Directory of Certified Product Performance for Residential Boilers (Available at: <https://www.ahridirectory.org/NewSearch?programId=25&searchTypeId=3>) (Last accessed October 30, 2019).

<sup>17</sup> California Energy Commission (CEC), Appliance Efficiency Database. (Available at: <https://cacertappliances.energy.ca.gov/Pages/ApplianceSearch.aspx>) (Last accessed October 30, 2019).

<sup>18</sup> ENERGY STAR, ENERGY STAR Certified Boilers Directory (Available at: <https://www.energystar.gov/productfinder/product/certified-boilers/results>) (Last accessed October 30, 2019).

market shares by efficiency level. DOE also seeks input on similar historic data from 2016–2020.

*Issue 19:* DOE also requests information on expected future trends in efficiency for consumer boiler product classes, including the relative market shares of condensing versus non-condensing products in the market for gas-fired and oil-fired hot water boilers in the absence of amended efficiency standards.

*Issue 20:* DOE requests 2016–2020 data on the fraction of sales in the residential and commercial sector for consumer boilers.

*Issue 21:* DOE requests comment on the anticipated future market share of higher-efficiency products, such as condensing gas-fired and oil-fired hot water boilers, as compared to less-efficient products for each consumer boiler product class.

### III. Submission of Comments

DOE invites all interested parties to submit in writing by the date specified under the **DATES** heading of this document, comments and information on matters addressed in this RFI and on other matters relevant to DOE's early assessment of whether more-stringent energy conservation standards are warranted for consumer boilers.

*Submitting comments via <http://www.regulations.gov>* The <http://www.regulations.gov> web page requires 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. If this instruction is followed, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to <http://www.regulations.gov> information for

which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through <http://www.regulations.gov> cannot be claimed as CBI. Comments received through the 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 <http://www.regulations.gov> before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that <http://www.regulations.gov> provides after you have successfully uploaded your comment.

*Submitting comments via email.* Comments and documents submitted via email also will be posted to <http://www.regulations.gov>. If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information in a cover letter. Include your first and last names, 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. Telefacsimiles (faxes) will not 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, written in English, and 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).

DOE considers public participation to be a very important part of the process for developing test procedures and energy conservation standards. DOE actively encourages the participation and interaction of the public during the comment period in each stage of this process. Interactions with and between members of the public provide a balanced discussion of the issues and assist DOE in the process. Anyone who wishes to be added to the DOE mailing list to receive future notices and information about this process should contact Appliance and Equipment Standards Program staff at (202) 287–1445 or via email at [ApplianceStandardsQuestions@ee.doe.gov](mailto:ApplianceStandardsQuestions@ee.doe.gov).

### Signing Authority

This document of the Department of Energy was signed on March 18, 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 March 19, 2021.

**Treena V. Garrett,**

*Federal Register Liaison Officer, U.S. Department of Energy.*

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## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Chapter II

[Release Nos. 33-10934; 34-91344; 39-2537; IA-5698; IC-34225; File No. S7-02-21]

### List of Rules To Be Reviewed Pursuant to the Regulatory Flexibility Act

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Publication of list of rules scheduled for review.

**SUMMARY:** The Securities and Exchange Commission is publishing a list of rules to be reviewed pursuant to Section 610 of the Regulatory Flexibility Act. The list is published to provide the public with notice that these rules are scheduled for review by the agency and to invite public comment on whether the rules should be continued without change, or should be amended or rescinded to minimize any significant economic impact of the rules upon a substantial number of small entities.

**DATES:** Comments should be submitted by April 26, 2021.

**ADDRESSES:** Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/submitcomments.htm>); or

#### *Paper Comments*

- Send paper comments to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number S7-02-21. We will post all submitted comments, requests, other submissions and other materials on our internet website (<http://www.sec.gov/rules/other.shtml>). Typically, comments are also available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Due to pandemic conditions, however, access to the Commission's public reference room is

not permitted at this time. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information. You should submit only information that you wish to make available publicly.

**FOR FURTHER INFORMATION CONTACT:** Leila Bham, Senior Special Counsel, Office of the General Counsel, 202-551-5532.

**SUPPLEMENTARY INFORMATION:** The Regulatory Flexibility Act ("RFA"), codified at 5 U.S.C. 601-612, requires an agency to review its rules that have a significant economic impact upon a substantial number of small entities within ten years of the publication of such rules as final rules. 5 U.S.C. 610(a). The purpose of the review is "to determine whether such rules should be continued without change, or should be amended or rescinded . . . to minimize any significant economic impact of the rules upon a substantial number of such small entities." 5 U.S.C. 610(a). The RFA sets forth specific considerations that must be addressed in the review of each rule:

- The continued need for the rule;
- the nature of complaints or comments received concerning the rule from the public;
- the complexity of the rule;
- the extent to which the rule overlaps, duplicates or conflicts with other federal rules, and, to the extent feasible, with state and local governmental rules; and
- the length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule. 5 U.S.C. 610(b).

The list below includes rules adopted in 2011 that may have a significant economic impact on a substantial number of small entities (but excludes rules that have been substantially changed since adoption, rules that are minor amendments to previously adopted rules, and rules that are ministerial, procedural, or technical in nature). Where the Commission has previously made a determination of a rule's impact on small businesses, the determination is noted on the list.

The Commission particularly solicits public comment on whether the rules listed below affect small businesses in new or different ways than when they were first adopted. The rules and forms listed below are scheduled for review by staff of the Commission.

*Title:* Mine Safety Disclosure.

*Citation:* 17 CFR 229.104, 17 CFR 229.601, 17 CFR 249.308, 17 CFR

249.308a, 17 CFR 249.310, 17 CFR 249.220f, 17 CFR 249.240f, and 17 CFR 239.13.

*Authority:* 15 U.S.C. 77g, 77j, 77s(a), 78l, 78m, 78o, 78w; and Section 1503 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act").

*Description:* The Commission adopted rule amendments to implement Section 1503 of the Dodd-Frank Act. Section 1503(a) of the Dodd-Frank Act requires issuers that are operators, or that have a subsidiary that is an operator, of a coal or other mine to disclose in their periodic reports filed with the Commission information regarding specified health and safety violations, orders and citations, related assessments and legal actions, and mining-related fatalities. Section 1503(b) of the Dodd-Frank Act mandates the filing of a Form 8-K disclosing the receipt of certain orders and notices from the Mine Safety and Health Administration.

*Prior RFA Analysis:* When the Commission adopted the rule amendments on December 21, 2011, it published a Final Regulatory Flexibility Analysis in the adopting release, Release No. 33-9286, available at: <https://www.federalregister.gov/documents/2011/12/28/2011-33148/mine-safety-disclosure>. The Commission received no comments on the Initial Regulatory Flexibility Analysis published in the proposing release, Release No. 33-9164 (Dec. 15, 2010), available at: <https://www.federalregister.gov/documents/2010/12/22/2010-31941/mine-safety-disclosure>.

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*Title:* Reporting by Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors on Form PF; Joint Final Rule.

*Citation:* 17 CFR 275.204(b)-1 and 17 CFR 279.9.

*Authority:* 15 U.S.C. 80b-4 and 80b-11.

*Description:* The Commodity Futures Trading Commission and the Securities and Exchange Commission adopted new rules under the Commodity Exchange Act and the Investment Advisers Act of 1940 ("Advisers Act") to implement provisions of Title IV of the Dodd-Frank Act. The rule adopted by the SEC, Rule 204(b)-1, requires investment advisers registered with the SEC that advise one or more private funds and have at least \$150 million in private fund assets under management to file Form PF with the SEC. Advisers must file Form PF electronically, on a confidential basis. The information contained in Form PF