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Signed in Washington, DC, on April 29, 2022.

**Trenea V. Garrett,**  
Federal Register Liaison Officer, U.S.  
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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 Boilers

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

**ACTION:** Notification of availability of preliminary technical support document and request for comment.

**SUMMARY:** The U.S. Department of Energy (“DOE” or “the Department”) announces the availability of the preliminary analysis it has conducted for purposes of evaluating the need for amended energy conservation standards for consumer boilers, which is set forth in the Department’s preliminary technical support document (“TSD”) for this rulemaking. DOE will hold a public meeting via webinar to discuss and receive comment on its preliminary analysis. The meeting will cover the analytical framework, models, and tools used to evaluate potential standards; the results of preliminary analyses performed; potential energy conservation standard levels derived from these analyses (if DOE determines that proposed amendments are necessary); and any other relevant issues. In addition, DOE encourages written comments on these subjects.

#### DATES:

**Comments:** Written comments and information will be accepted on or before, July 5, 2022.

**Meeting:** DOE will hold a public meeting webinar on Thursday, June 16, 2022, from 1:00 p.m. to 4:00 p.m. See section IV, “Public Participation,” for webinar registration information, participant instructions, and information about the capabilities available to webinar participants.

**ADDRESSES:** Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov). Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE-2019-BT-STD-0036 and/or RIN 1904-AE82, by any of the following methods:

1. **Federal eRulemaking Portal:** [www.regulations.gov](http://www.regulations.gov). Follow the instructions for submitting comments.

2. **Email:** *ConsumerBoilers* [2019STD0036@ee.doe.gov](mailto:2019STD0036@ee.doe.gov). Include docket number EERE-2019-BT-STD-0036 and/or RIN 1904-AE82 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 (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.

To inform interested parties and to facilitate this rulemaking process, DOE has prepared an agenda, a preliminary TSD, and briefing materials, which are available on the DOE website at: [www1.eere.energy.gov/buildings/appliance\\_standards/standards.aspx?productid=32](http://www1.eere.energy.gov/buildings/appliance_standards/standards.aspx?productid=32).

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

not all documents listed in the index may be publicly available, such as those containing information that is exempt from public disclosure.

The docket web page can be found at [www.regulations.gov/](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 IV for information on how to submit comments through [www.regulations.gov](http://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. Telephone: (240) 597-6737. 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, review other public comments and the docket, or participate in the public meeting webinar, 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

### A. Authority

The Energy Policy and Conservation Act, as amended (“EPCA”),<sup>1</sup> Public Law 94–163 (42 U.S.C. 6291–6317, as codified), authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. Title III, Part B<sup>2</sup> of EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles. (42 U.S.C. 6291–6309) These products include consumer boilers, the subject of this document. (42 U.S.C. 6292(a)(5))<sup>3</sup>

EPCA prescribed energy conservation standards for these products (42 U.S.C. 6295(f)(3)), and the statute directed DOE to conduct future rulemakings to determine whether to amend these standards. (42 U.S.C. 6295(f)(4)(C)) EPCA further provides that, not later than 6 years after the issuance of any final rule establishing or amending a standard, DOE must publish either a notification of determination that standards for the product do not need to be amended, or a notice of proposed rulemaking (“NOPR”) including new proposed energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6295(m)(1)) Not later than three years after issuance of a final determination not to amend standards, DOE must publish either a notice of determination that standards for the product do not need to be amended, or a NOPR including new proposed energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6295(m)(3)(B))

Pursuant to EPCA, any new or amended energy conservation standard must be designed to achieve the maximum improvement in energy efficiency that DOE determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) Furthermore, the new or amended standard must result in a significant conservation of energy. (42 U.S.C. 6295(o)(3)(B))

DOE is publishing this preliminary analysis to collect data and information

<sup>1</sup> All references to EPCA in this document refer to the statute as amended through the Infrastructure Investment and Jobs Act, Public Law 117–58 (Nov. 15, 2021).

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

<sup>3</sup> DOE notes that consumer boilers are defined as a subcategory of covered consumer furnaces (see 42 U.S.C. 6291(23)).

to inform its decision consistent with its obligations under EPCA.

### B. Rulemaking Process

DOE must follow specific statutory criteria for prescribing new or amended standards for covered products, including consumer boilers. As noted, 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 efficiency (or water efficiency for certain products specified by EPCA) that is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) Furthermore, DOE may not adopt any standard that would not result in the significant conservation of energy. (42 U.S.C. 6295(o)(3)(B))

Particularly in light of the climate crisis, the significance of energy savings offered by a new or amended energy conservation standard cannot be determined without knowledge of the specific circumstances surrounding a given rulemaking.<sup>4</sup> For example, the United States has now rejoined the Paris Agreement on February 19, 2021. As part of that agreement, the United States has committed to reducing greenhouse gas (“GHG”) emissions in order to limit the rise in mean global temperature. As such, energy savings that reduce GHG emissions have taken on greater importance. Additionally, some covered products and equipment have most of their energy consumption occur during periods of peak energy demand. The impacts of these products on the U.S. energy infrastructure can be more pronounced than those of products with relatively constant demand. In evaluating the significance of energy savings, DOE considers differences in not only site energy use, but also primary energy and full-fuel-cycle (“FFC”) effects for different covered products and equipment when determining whether energy savings are significant. Primary energy and FFC effects include the energy consumed in electricity production (depending on load shape), in distribution and transmission, and in extracting, processing, and transporting primary fuels (*i.e.*, coal, natural gas, petroleum fuels), and, thus, present a more complete picture of the impacts of

<sup>4</sup> See 86 FR 70892, 70901 (Dec. 13, 2021).

energy conservation standards.<sup>5</sup>

Accordingly, DOE evaluates the significance of energy savings on a case-by-case basis.

The preliminary TSD details DOE’s analyses to estimate the amount of FFC energy savings which would be anticipated to result from technologically feasible improvements to consumer boiler efficiencies. Based on the amount of FFC savings, the corresponding reduction in emissions, and need to confront the global climate crisis, DOE has initially determined the energy savings estimated for the efficiency levels considered in this preliminary analysis are “significant” within the meaning of 42 U.S.C. 6295(o)(3)(B).

To determine whether a proposed new or amended energy conservation standard is economically justified, EPCA requires that DOE determine whether the benefits of the standard exceed its burdens by considering, to the greatest extent practicable, the following seven factors:

- (1) The economic impact of the standard on the manufacturers and consumers of the products subject to the standard;
- (2) The savings in operating costs throughout the estimated average life of the covered products in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses for the covered products that are likely to result from the standard;
- (3) The total projected amount of energy (or as applicable, water) savings likely to result directly from the standard;
- (4) Any lessening of the utility or the performance of the products likely to result from the standard;
- (5) The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the standard;
- (6) The need for national energy and water conservation; and
- (7) Other factors the Secretary of Energy considers relevant.

(42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII))

DOE fulfills these and other applicable requirements by conducting a series of analyses throughout the rulemaking process. Table I.1 shows the individual analyses that are performed to satisfy each of the requirements within EPCA.

<sup>5</sup> The FFC metric is discussed in DOE’s statement of policy and notice of policy amendment. 76 FR 51281 (August 18, 2011), as amended at 77 FR 49701 (August 17, 2012).

TABLE I.1—EPCA REQUIREMENTS AND CORRESPONDING DOE ANALYSIS

EPCA requirement	Corresponding DOE analysis
Significant Energy Savings .....	<ul style="list-style-type: none"> <li>• Shipments Analysis.</li> <li>• National Impact Analysis.</li> <li>• Energy Use Analysis.</li> <li>• Market and Technology Assessment.</li> <li>• Screening Analysis.</li> <li>• Engineering Analysis.</li> </ul>
Technological Feasibility .....	<ul style="list-style-type: none"> <li>• Manufacturer Impact Analysis.</li> <li>• Life-Cycle Cost and Payback Period Analysis.</li> <li>• Life-Cycle Cost Subgroup Analysis.</li> <li>• Shipments Analysis.</li> <li>• Markups for Product Price Analysis.</li> </ul>
Economic Justification: <ol style="list-style-type: none"> <li>1. Economic impact on manufacturers and consumers .....</li> <li>2. Lifetime operating cost savings compared to increased cost for the product.</li> <li>3. Total projected energy savings .....</li> <li>4. Impact on utility or performance .....</li> <li>5. Impact of any lessening of competition .....</li> <li>6. Need for national energy conservation .....</li> <li>7. Other factors the Secretary considers relevant .....</li> </ol>	<ul style="list-style-type: none"> <li>• Energy Analysis.</li> <li>• Life-Cycle Cost and Payback Period Analysis.</li> <li>• Shipments Analysis.</li> <li>• National Impact Analysis.</li> <li>• Screening Analysis.</li> <li>• Engineering Analysis.</li> <li>• Manufacturer Impact Analysis.</li> <li>• Shipments Analysis.</li> <li>• National Impact Analysis.</li> <li>• Employment Impact Analysis.</li> <li>• Utility Impact Analysis.</li> <li>• Emissions Analysis.</li> <li>• Monetization of Emission Reductions Benefits.<sup>6</sup></li> <li>• Regulatory Impact Analysis.</li> </ul>

Further, EPCA establishes a rebuttable presumption that a standard is economically justified if the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure. (42 U.S.C. 6295(o)(2)(B)(iii))

EPCA also contains what is known as an “anti-backsliding” provision, which prevents the Secretary from prescribing any amended standard that either increases the maximum allowable energy use or decreases the minimum required energy efficiency of a covered product. (42 U.S.C. 6295(o)(1)) Also, the

Secretary may not prescribe an amended or new standard if interested persons have established by a preponderance of the evidence that the standard is likely to result in the unavailability in the United States in any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States. (42 U.S.C. 6295(o)(4))

Additionally, EPCA specifies requirements when promulgating an energy conservation standard for a covered product that has two or more subcategories. DOE must specify a different standard level for a type or class of product that has the same function or intended use, if DOE determines that products within such group: (A) Consume a different kind of energy from that consumed by other covered products within such type (or class); or (B) have a capacity or other performance-related feature which other products within such type (or class) do not have and such feature justifies a higher or lower standard. (42 U.S.C. 6295(q)(1)) In determining whether a performance-related feature justifies a different standard for a group of products, DOE must consider such factors as the utility to the consumer of the feature and other factors DOE deems appropriate. *Id.* Any rule prescribing such a standard must include an explanation of the basis on which such

higher or lower level was established. (42 U.S.C. 6295(q)(2))

Finally, pursuant to the amendments to EPCA contained in the Energy Independence and Security Act of 2007 (“EISA 2007”), Public Law 110–140, any final rule for new or amended energy conservation standards promulgated after July 1, 2010, is required to address standby mode and off mode energy use. (42 U.S.C. 6295(gg)(3))

Specifically, when DOE adopts a standard for a covered product after that date, it must, if justified by the criteria for adoption of standards under EPCA (42 U.S.C. 6295(o)), incorporate standby mode and off mode energy use into a single standard, or, if that is not feasible, adopt a separate standard for such energy use for that product. (42 U.S.C. 6295(gg)(3)(A)-(B)) DOE’s current test procedures for consumer boilers address standby mode and off mode energy use. In this rulemaking, DOE intends to consider such energy use in any amended energy conservation standards it adopts in the final rule.

Before proposing a standard, DOE typically seeks public input on the analytical framework, models, and tools that DOE intends to use to evaluate potential standards for the product at issue and the results of preliminary analyses DOE performed for the product.

DOE is examining whether to amend the current energy conservation standards for consumer boilers pursuant

<sup>6</sup> On March 16, 2022, the Fifth Circuit Court of Appeals (No. 22-30087) granted the Federal government’s emergency motion for stay pending appeal of the February 11, 2022, preliminary injunction issued in *Louisiana v. Biden*, No. 21-cv-1074-JDC-KK (W.D. La.). As a result of the Fifth Circuit’s order, the preliminary injunction is no longer in effect, pending resolution of the federal government’s appeal of that injunction or a further court order. Among other things, the preliminary injunction enjoined the defendants in that case from “adopting, employing, treating as binding, or relying upon” the interim estimates of the social cost of greenhouse gases—which were issued by the Interagency Working Group on the Social Cost of Greenhouse Gases on February 26, 2021—to monetize the benefits of reducing greenhouse gas emissions. In the absence of further intervening court orders, DOE will revert to its approach prior to the injunction and present monetized benefits where appropriate and permissible under law.

to its obligations under EPCA. This document announces the availability of the preliminary TSD, which details the preliminary analyses and summarizes the preliminary results of DOE's analyses. In addition, DOE is announcing a public meeting webinar to solicit feedback from interested parties on its analytical framework, models, and preliminary results.

#### C. Deviations From Appendix A

In accordance with section 3(a) of 10 CFR part 430, subpart C, appendix A ("appendix A"), "Procedures, Interpretations, and Policies for Consideration of New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Certain Commercial/Industrial Equipment," DOE notes that it is deviating from the provision in appendix A regarding the pre-NOPR stages for an energy conservation standards rulemaking. See 86 FR 70892 (Dec. 13, 2021). Section 6(a)(2) of appendix A states that if the Department determines it is appropriate to proceed with a rulemaking, the preliminary stages of a rulemaking to issue or amend an energy conservation standard that DOE will undertake will be a framework document and preliminary analysis, or an advance notice of proposed rulemaking.

DOE is opting to deviate from this step by publishing a preliminary analysis without a framework document. A framework document is intended to introduce and summarize the various analyses DOE conducts

during the rulemaking process and requests initial feedback from interested parties. As discussed further in section II.B of this document, prior to this notification of the preliminary analysis, DOE published an early assessment review and request for information ("RFI") in the **Federal Register** in which DOE identified and sought comment on the analyses conducted in support of the most recent energy conservation standards rulemakings for consumer boilers. 86 FR 15804 (March 25, 2021; "March 2021 Early Assessment Review RFI"). In the March 2021 Early Assessment Review RFI, DOE sought data and information as to whether any new or amended rule would be cost-effective, economically justified, technologically feasible, or would result in a significant savings of energy. *Id.* DOE sought such data and information to assist in its consideration of whether (and if so, how) to amend the standards for consumer boilers. *Id.* Further, DOE provided an overview of the analysis it would use to evaluate new or amended energy conservation standards, including references to and requests for comment on the analyses conducted as part of the most recent energy conservation standards rulemakings. *Id.* As DOE is intending to rely on substantively the same analytical methods as in the most recent rulemaking, publication of a framework document would be largely redundant with the published March 2021 Early Assessment Review RFI. As such, DOE is not publishing a framework document.

Section 6(d)(2) of appendix A provides that the length of the public comment period for pre-NOPR rulemaking documents will vary depending upon the circumstances of the particular rulemaking, but will not be less than 75 calendar days. For this preliminary analysis, DOE has opted to provide a 60-day comment period. As stated, DOE requested comment in the March 2021 Early Assessment Review RFI on the previous energy conservation standards analyses. For this preliminary analysis, DOE has relied on many of the same analytical assumptions and approaches as used in the previous rulemaking and has determined that a 60-day comment period in conjunction with the prior comment period for the March 2021 Early Assessment Review RFI provides sufficient time for interested parties to review the preliminary analysis and develop comments.

## II. Background

### A. Current Standards

In a final rule published in the **Federal Register** on January 15, 2016 ("January 2016 Final Rule"), DOE prescribed the current energy conservation standards for consumer boilers, which are applicable to such products manufactured on and after January 15, 2021. 81 FR 2320, 2416–2417. These standards are set forth in the Code of Federal Regulations (CFR) at 10 CFR 430.32(e)(2) and are repeated here in Table II.1.

TABLE II.1—FEDERAL ENERGY CONSERVATION STANDARDS FOR CONSUMER BOILERS \*

Product class	AFUE (percent) **	P <sub>W,SB</sub> (watts) †	P <sub>W,OFF</sub> (watts) †	Design requirements
Gas-fired Hot Water ...	84	9	9	Constant-burning pilot not permitted. Automatic means for adjusting water temperature required (except for boilers equipped with tankless domestic water heating coils).
Gas-fired Steam .....	82	8	8	Constant-burning pilot not permitted.
Oil-fired Hot Water .....	86	11	11	Automatic means for adjusting temperature required (except for boilers equipped with tankless domestic water heating coils).
Oil-fired Steam .....	85	11	11	None.
Electric Hot Water .....	None	8	8	Automatic means for adjusting temperature required (except for boilers equipped with tankless domestic water heating coils).
Electric Steam .....	None	8	8	None.

\* A boiler that is manufactured to operate without any need for electricity or any electric connection, electric gauges, electric pumps, electric wires, or electric devices is not required to meet the AFUE or design requirements. Instead, such boilers must meet a minimum AFUE of 80 percent (for all classes except gas steam), and 75 percent for gas steam.

\*\* AFUE stands for Annual Fuel Utilization Efficiency, as determined in 10 CFR 430.23(n)(2).

† P<sub>W,SB</sub> and P<sub>W,OFF</sub> stand for standby mode power consumption and off mode power consumption, respectively.

### B. Current Process

On March 25, 2021, DOE published a notice in the **Federal Register** through a request for information (RFI) that it was initiating an early assessment review to determine whether any new or amended

standards would satisfy the relevant requirements of EPCA for a new or amended energy conservation standard for consumer boilers. 86 FR 15804. Specifically, through the published notice and RFI, DOE sought data and

information that could enable the agency to determine whether DOE should propose a "no new standard" determination because a more-stringent standard: (1) Would not result in a significant savings of energy; (2) is not

technologically feasible; (3) is not economically justified; or (4) any combination of foregoing. *Id.*

Comments received to date as part of the current process have helped DOE identify and resolve issues related to development of the preliminary analyses. Chapter 2 of the preliminary TSD summarizes and addresses the comments received.

### III. Summary of the Analyses Performed by DOE

For the products covered in this preliminary analysis, DOE conducted in-depth technical analyses in the following areas: (1) Engineering; (2) markups to determine product price; (3) energy use; (4) life-cycle cost (“LCC”) and payback period (“PBP”); and (5) national impacts. The preliminary TSD that presents the methodology and results of each of these analyses is available at: [www1.eere.energy.gov/buildings/appliance\\_standards/standards.aspx?productid=45](http://www1.eere.energy.gov/buildings/appliance_standards/standards.aspx?productid=45).

DOE also conducted, and has included in the preliminary TSD, several other analyses that support the major analyses or are preliminary analyses that will be expanded if DOE determines that a NOPR is warranted to propose amended energy conservation standards. These analyses include: (1) The market and technology assessment; (2) the screening analysis, which contributes to the engineering analysis; and (3) the shipments analysis, which contributes to the LCC and PBP analysis and the national impact analysis (“NIA”). In addition to these analyses, DOE has begun preliminary work on the manufacturer impact analysis and has identified the methods to be used for the consumer subgroup analysis, the emissions analysis, the employment impact analysis, the regulatory impact analysis, and the utility impact analysis. DOE will expand on these analyses in the NOPR, should one be issued.

#### A. Market and Technology Assessment

DOE develops information in the market and technology assessment that provides an overall picture of the market for the products concerned, including general characteristics of the products, the industry structure, manufacturers, market characteristics, and technologies used in the products. This activity includes both quantitative and qualitative assessments, based primarily on publicly-available information. The subjects addressed in the market and technology assessment include: (1) A determination of the scope of the rulemaking and product classes, (2) manufacturers and industry structure, (3) existing efficiency

programs, (4) shipments information, (5) market and industry trends, and (6) technologies or design options that could improve the energy efficiency of the product.

DOE would note here a number of recent statutory interpretations that had bearing on the market and technology assessment for consumer boilers. On January 15, 2021, in response to a petition for rulemaking<sup>7</sup> submitted by the American Public Gas Association, Spire, Inc., the Natural Gas Supply Association, the American Gas Association, and the National Propane Gas Association, DOE published a final interpretive rule (“the January 2021 Final Interpretive Rule”) in the **Federal Register** which determined that, in the context of residential furnaces, commercial water heaters, and similarly-situated products/equipment (which would include consumer boilers), use of non-condensing technology (and associated venting) constitute a performance-related “feature” under EPCA that cannot be eliminated through adoption of an energy conservation standard. 86 FR 4776.

In the March 2021 RFI, DOE sought information that would allow the agency to evaluate non-condensing technology (and the associated venting) consistent with the January 2021 Final Interpretive Rule, and whether separate product classes for non-condensing and condensing boilers is warranted. 86 FR 15804, 15805–15806 (March 25, 2021).

However, DOE has subsequently published a final interpretive rule that returns to the previous and long-standing interpretation (in effect prior to the January 15, 2021, final interpretive rule), under which the technology used to supply heated air or hot water is not a performance-related “feature” that provides a distinct consumer utility under EPCA. 86 FR 73947 (Dec. 29, 2021).

Accordingly, in conducting this preliminary analysis, DOE did not consider condensing technology to constitute a separate product class for consumer boilers.

See chapter 3 of the preliminary TSD for further discussion of the market and technology assessment.

#### B. Screening Analysis

DOE uses the following five screening criteria to determine which technology options are suitable for further consideration in an energy conservation standards rulemaking:

#### (1) Technological feasibility.

Technologies that are not incorporated in commercial products or in working prototypes will not be considered further.

(2) *Practicability to manufacture, install, and service.* If it is determined that mass production and reliable installation and servicing of a technology in commercial products could not be achieved on the scale necessary to serve the relevant market at the time of the projected compliance date of the standard, then that technology will not be considered further.

(3) *Impacts on product utility or product availability.* If it is determined that a technology would have a significant adverse impact on the utility of the product for significant subgroups of consumers or would result in the unavailability of any covered product type with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as products generally available in the United States at the time, it will not be considered further.

(4) *Adverse impacts on health or safety.* If it is determined that a technology would have significant adverse impacts on health or safety, it will not be considered further.

(5) *Unique-pathway proprietary technologies.* If a design option utilizes proprietary technology that represents a unique pathway to achieving a given efficiency level, that technology will not be considered further due to the potential for monopolistic concerns.

10 CFR part 430, subpart C, appendix A, sections 6(b)(3) and 7(b).

If DOE determines that a technology, or a combination of technologies, fails to meet one or more of the listed five criteria, it will be excluded from further consideration in the engineering analysis.

See chapter 4 of the preliminary TSD for further discussion of the screening analysis.

#### C. Engineering Analysis

The purpose of the engineering analysis is to establish the relationship between the efficiency and cost of consumer boilers. There are two elements to consider in the engineering analysis: (1) The selection of efficiency levels to analyze (*i.e.*, the “efficiency analysis”) and (2) the determination of product cost at each efficiency level (*i.e.*, the “cost analysis”). In determining the performance of higher-efficiency products, DOE considers technologies and design option combinations not eliminated by the screening analysis.

<sup>7</sup> After receipt, DOE published the petition for rulemaking in the **Federal Register** for public comment. See 83 FR 54883 (Nov. 1, 2018).

For each product class, DOE estimates the manufacturer production cost (“MPC”) for the baseline, as well as higher efficiency levels. The output of the engineering analysis is a set of cost-efficiency “curves” that are used in downstream analyses (*i.e.*, the LCC and PBP analyses and the NIA).

DOE converts the MPC to the manufacturer selling price (“MSP”) by applying a manufacturer markup. The MSP is the price the manufacturer charges its first customer when selling into the consumer boilers distribution channels. The manufacturer markup accounts for manufacturer non-production costs and profit margin. DOE developed the manufacturer markup by examining publicly-available financial information for manufacturers of the covered product.

See chapter 5 of the preliminary TSD for additional detail on the engineering analysis. See chapter 12 of the preliminary TSD for additional detail on the manufacturer markup.

#### D. Markups Analysis

The markups analysis develops appropriate markups (*e.g.*, retailer markups, distributor markups, contractor markups) in the distribution chain and sales taxes to convert MSP estimates derived in the engineering analysis to consumer prices, which are then used in the LCC and PBP analysis. At each step in the distribution channel, companies mark up the price of the product to cover business costs and profit margin.

DOE developed baseline and incremental markups for each actor in the distribution chain for consumer boilers. Baseline markups are applied to the price of products with baseline efficiency, while incremental markups are applied to the difference in price between baseline and higher-efficiency models (the incremental cost increase). The incremental markup is typically less than the baseline markup and is designed to maintain similar per-unit operating profit before and after new or amended standards.<sup>8</sup>

Chapter 6 of the preliminary TSD provides details on DOE’s development of markups for consumer boilers.

#### E. Energy Use Analysis

The purpose of the energy use analysis is to determine the annual

<sup>8</sup>Because the projected price of standards-compliant products is typically higher than the price of baseline products, using the same markup for the incremental cost and the baseline cost would result in higher per-unit operating profit. While such an outcome is possible, DOE maintains that in markets that are reasonably competitive, it is unlikely that standards would lead to a sustainable increase in profitability in the long run.

energy consumption of consumer boilers at different efficiencies in representative U.S. single-family homes, 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). In addition, the energy use analysis provides the basis for other analyses DOE performed, particularly assessments of the energy savings and the savings in consumer operating costs that could result from adoption of amended or new energy conservation standards.

Chapter 7 of the preliminary TSD addresses the energy use analysis.

#### F. Life-Cycle Cost and Payback Period Analyses

The effect of new or amended energy conservation standards on individual consumers usually involves a reduction in operating cost and an increase in purchase cost. DOE used the following two metrics to measure consumer impacts:

- The LCC is the total consumer expense of an appliance or product over the life of that product, consisting of total installed cost (manufacturer selling price, distribution chain markups, sales tax, and installation costs) plus operating costs (expenses for energy use, maintenance, and repair). To compute the operating costs, DOE discounts future operating costs to the time of purchase and sums them over the lifetime of the product.

- The PBP is the estimated amount of time (in years) it takes consumers to recover the increased purchase cost (including installation) of a more-efficient product through lower operating costs. DOE calculates the PBP by dividing the change in purchase cost at higher efficiency levels by the change in annual operating cost for the year that amended or new standards are assumed to take effect.

Chapter 8 of the preliminary TSD addresses the LCC and PBP analyses.

#### G. National Impact Analysis

The NIA estimates the national energy savings (“NES”) and the net present value (“NPV”) of total consumer costs and savings expected to result from amended standards at specific efficiency levels.<sup>9</sup> DOE calculates the NES and NPV for the potential standard levels considered based on projections of annual product shipments, along with

<sup>9</sup>The NIA accounts for impacts in the 50 States and U.S. territories.

the annual energy consumption and total installed cost data from the energy use and LCC analyses. For the present analysis, DOE projected the energy savings, operating cost savings, product costs, and NPV of consumer benefits over the lifetime of consumer boilers sold from 2030 through 2059.

DOE evaluates the impacts of new or amended standards by comparing a case without such standards (“no-new-standards case”) with standards-case projections. The no-new-standards case characterizes energy use and consumer costs for each product class in the absence of new or amended energy conservation standards. For this projection, DOE considers historical trends in efficiency and various forces that are likely to affect the mix of efficiencies over time. DOE compares the no-new-standards case with projections characterizing the market for each product class if DOE adopted new or amended standards at specific energy efficiency levels for that class. For each efficiency level, DOE considers how a given standard would likely affect the market shares of product with efficiencies greater than the standard.

For the NIA, DOE uses a spreadsheet model to calculate the energy savings and the national consumer costs and savings from each efficiency level. Interested parties can review DOE’s analyses by changing various input quantities within the spreadsheet. The NIA spreadsheet model uses typical values (as opposed to probability distributions) as inputs. Critical inputs to this analysis include shipments projections, estimated product lifetimes, product installed costs and operating costs, product annual energy consumption, the base case efficiency projection, and discount rates.

DOE estimates a combined total of approximately 0.70 quads of potential full-fuel-cycle (FFC) energy savings at the max-tech efficiency levels for consumer boilers. Combined potential FFC energy savings at Efficiency Level (EL) 1 for all consumer boiler product classes analyzed are estimated to be approximately 0.09 quads.

Chapter 10 of the preliminary TSD addresses the NIA.

#### IV. Public Participation

DOE invites public engagement in this process through participation in the webinar and submission of written comments, data, and information. After the webinar and the closing of the comment period, DOE will consider all timely-submitted comments and additional information obtained from interested parties, as well as information obtained through further analyses.

Following such consideration, the Department will publish either a determination that the energy conservation standards for consumer boilers need not be amended or a NOPR proposing to amend those standards. The NOPR, should one be issued, would include proposed energy conservation standards for the products covered by this rulemaking, and members of the public would be given an opportunity to submit written and oral comments on the proposed standards.

#### *A. Participation in the Public Meeting Webinar*

The time and date for the webinar meeting are listed in the **DATES** section at the beginning of this document. Webinar registration information, participant instructions, and information about the capabilities available to webinar participants will be published on DOE's website: [www1.eere.energy.gov/buildings/appliance\\_standards/standards.aspx?productid=45](http://www1.eere.energy.gov/buildings/appliance_standards/standards.aspx?productid=45). Participants are responsible for ensuring their systems are compatible with the webinar software.

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

Any person who has an interest in the topics addressed in this document, or who is representative of a group or class of persons that has an interest in these issues, may request an opportunity to make an oral presentation at the public meeting webinar. Such persons may submit requests to speak via email to the Appliance and Equipment Standards Program:

*ApplianceStandardsQuestions@ee.doe.gov*. Persons who wish to speak should include with their request a computer file in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format that briefly describes the nature of their interest in this rulemaking and the topics they wish to discuss. Such persons should also provide a daytime telephone number where they can be reached.

Persons requesting to speak should briefly describe the nature of their interest in this rulemaking and provide a telephone number for contact. DOE requests persons selected to make an oral presentation to submit an advance copy of their statements at least two weeks before the public meeting webinar. At its discretion, DOE may permit persons who cannot supply an advance copy of their statement to participate, if those persons have made advance alternative arrangements with the Building Technologies Office. As necessary, requests to give an oral

presentation should ask for such alternative arrangements.

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

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

The public meeting webinar will be conducted in an informal, conference style. DOE will present a general overview of the topics addressed in this rulemaking, allow time for prepared general statements by participants, and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant will be allowed to make a general statement (within time limits determined by DOE), before the discussion of specific topics. DOE will allow, as time permits, other participants to comment briefly on any general statements.

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

A transcript of the public meeting webinar will be included in the docket, which can be viewed as described in the *Docket* section at the beginning of this document. In addition, any person may

buy a copy of the transcript from the transcribing reporter.

#### *D. Submission of Comments*

DOE invites all interested parties, regardless of whether they participate in the public meeting webinar, to submit in writing no later than the date provided in the **DATES** section at the beginning of this document, comments, data, and information on matters addressed in this notification and on other matters relevant to DOE's consideration of potential amended energy conservations standards for consumer boilers. Interested parties may submit comments, data, and other information using any of the methods described in the **ADDRESSES** section at the beginning of this document.

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

However, your contact information will be publicly viewable if you include it in the comment itself or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. 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 [www.regulations.gov](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 [www.regulations.gov](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 [www.regulations.gov](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 [www.regulations.gov](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 [www.regulations.gov](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. No telefacsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, that are written in English, and that are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

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

**Confidential Business Information.** Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email two well-marked copies: One copy of the document marked "confidential" including all the information believed to be confidential, and one copy of the document marked "non-confidential" with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information

provided in the comments (except information deemed to be exempt from public disclosure).

#### V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notification of availability of the preliminary technical support document and request for comment.

#### Signing Authority

This document of the Department of Energy was signed on April 29, 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 April 29, 2022.

**Trenea V. Garrett,**

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

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Parts 1162 and 1166

[Docket Nos. FDA-2021-N-1349 and FDA-2021-N-1309]

#### Proposed Regulations To Establish Tobacco Product Standards for Menthol in Cigarettes and Characterizing Flavors in Cigars: Listening Sessions; Public Meeting; Request for Comments

**AGENCY:** Food and Drug Administration, Department of Health and Human Services (HHS).

**ACTION:** Notification of public meeting; request for comments.

**SUMMARY:** The Food and Drug Administration (FDA, the Agency, or we) is announcing the following virtual listening sessions entitled "Proposed Regulations to Establish Tobacco

Product Standards for Menthol in Cigarettes and Characterizing Flavors in Cigars: Listening Sessions." The purpose of the listening sessions is to discuss two proposed regulations that are published elsewhere in this issue of the **Federal Register**, a tobacco product standard that would prohibit menthol as a characterizing flavor in cigarettes ("Tobacco Product Standard for Menthol in Cigarettes"; Docket No. FDA-2021-N-1349) and a tobacco product standard that would prohibit characterizing flavors (other than tobacco) in all cigars ("Tobacco Product Standard for Characterizing Flavors in Cigars"; Docket No. FDA-2021-N-1309). FDA will provide information on the proposed rules to the public and provide the public an opportunity to provide open public comment.

**DATES:** The listening sessions will be held on two separate days on June 13 and 15, 2022. All requests to make open public comment must be received by June 6, 2022, at 11:59 p.m. Eastern Time.

FDA reminds the public that, in addition to providing comments through these meetings, commenters may submit either electronic or written comments on one or both of the proposed rules set out in the **SUMMARY** by July 5, 2022. See the **SUPPLEMENTARY INFORMATION** section for registration date and information.

**ADDRESSES:** Additional details, such as the time of the listening sessions and registration information, will be posted soon at <https://www.fda.gov/tobacco-products>. The listening sessions will be held virtually and more information will be posted here: <https://www.fda.gov/tobacco-products>.

You may submit written comments as follows. Please note that late, untimely filed comments will not be considered. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of July 5, 2022. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

#### Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your