DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket Number EERE–2011–BT–STD–0047]

RIN 1904–AC56

Energy Conservation Program: Energy Conservation Standards for Direct Heating Equipment

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

ACTION: Final rule.

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

DATES: The effective date of this rule is December 19, 2011. Compliance with the amended standards established for direct heating equipment in today's final rule is required on April 16, 2013, except for the exclusion criterion related to the elimination of a standing pilot light or other continuously-burning ignition source, which has a compliance date of January 1, 2015. The incorporation by reference of certain publications in the rule is approved by the Director of the Federal Register as of December 19, 2011.

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

A link to the docket Web page can be found at: *http://www.regulations.gov.* The *http://www.regulations.gov* Web page contains simple instructions on how to access all documents, including public comments, in the docket.

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SUPPLEMENTARY INFORMATION: This final rule incorporates by reference into part 430, the following industry standards:

(1) ANSI Z21.50–2007 (CSA 2.22–2007), (''ANSI Z21.50''), ''Vented Gas Fireplaces,'' Approved February 22, 2007.

(2) ANSI Z21.88–2009 (CSA 2.33–2009), (''ANSI Z21.88''), Vented Gas Fireplace Heaters,'' Approved March 26, 2009.

Copies of these standards are available from the American National Standards Institute, 11 West 42nd Street, New York, New York 10036, (212) 642–4936, or at *http://webstore.ansi.org/.* You can also view copies of these standards at the U.S. Department of Energy, Resource Room of the Building Technologies Program, 950 L'Enfant Plaza SW., 6th Floor, Washington, DC 20024, (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

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I. Summary of the Final Rule and Its Benefits

Title III, Part B [1] of the Energy Policy and Conservation Act of 1975 (EPCA or the Act), Public Law 94–163 (42 U.S.C. 6291–6309, as codified), established the Energy Conservation Program for Consumer Products Other Than Automobiles, which includes the types of direct heating equipment that are the subject of this rulemaking. (42 U.S.C. 6292(a)(9)) Pursuant to EPCA, any new or amended energy conservation standard that DOE prescribes for certain products, such as direct heating equipment, shall 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 significant conservation of energy. (42 U.S.C. 6295(o)(3)(B)) On April 16, 2010 DOE published a final rule (hereafter

[1] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

referred to as the April 2010 final rule) in accordance with these and other statutory provisions discussed in that final rule, which, in relevant part, promulgated definitions and energy conservation standards for vented gas hearth direct heating equipment. 75 FR 20112.

In establishing the definitions pertaining to direct heating equipment in the April 2010 final rule, DOE recognized the aesthetic appeal of certain gas hearth products and included a provision in its definition of ''vented hearth heater'' that considered certain gas hearth products to be primarily decorative in nature, and excluded them from having to comply with DOE's minimum energy conservation standard otherwise applicable to vented gas hearth direct heating equipment. The April 2010 final rule did not address vented gas log sets. DOE clarified its position on vented gas log sets in a document published on DOE's Web site titled ''*Frequently Asked Questions: 'Vented Hearth Heater' Definition.*'' [2] However, based upon manufacturer concerns expressed subsequent to the publication of the April 2010 final rule, DOE commenced the current rulemaking to consider changes to the scope of the exclusion in order to achieve greater energy savings, promote consumer product choice, and ease manufacturer burdens.

Accordingly, in this final rule, DOE further amends its definitions pertaining to direct heating equipment. Specifically, DOE is amending its definition of ''vented hearth heater'' to modify the conditions contained in the existing definition for the subset of such products to be considered primarily decorative in nature and, therefore, not subject to the DOE's minimum energy conservation standards for vented hearth heaters. As an initial matter, DOE is providing clarification that vented gas log sets are included in the definition of ''vented hearth heater''; DOE has reached this conclusion because of the similarities between vented gas log sets and other types of gas hearth products. Vented gas log sets and other vented hearth products provide heat for consumers, and they have certain similar characteristics, such as the presence of a flame and ceramic logs. These products may also have an aesthetic appeal. However, due to ambiguity in the gathered data for vented gas log sets indentified by stakeholders at the public meeting for this rulemaking and in subsequent written comments, DOE has decided not to subject vented gas log sets to the energy conservation standards for vented hearth heaters at this time. Commenters also suggested that further consideration would need to be given to the applicability of the test procedure for vented home heating equipment and the potential for test procedure provisions tailored to vented gas log sets. Consequently, DOE has determined that additional analysis would be necessary to address vented gas log sets, a topic which DOE may address in a new proceeding in the context of a future rulemaking.

Turning to the matter of vented hearth products, the definition of ''vented hearth heater'' in the April 2010 final rule stated that ''[t]hose heaters with a maximum input capacity less than or equal to 9,000 British thermal units per hour (Btu/h), as measured using DOE's test procedure for vented home heating equipment (10 CFR part 430, subpart B, appendix O), are considered purely decorative and are excluded from DOE's regulations.'' 75 FR 20112, 20234 (April 16, 2010). In this final rule, DOE is amending the definition for ''vented hearth heater'' to explicitly provide that vented gas log sets are not being made subject to standards at this time, and to base the exclusion for primarily decorative vented hearth products on several criteria, including the American National Standards Institute (ANSI) standard to which the product is certified. The amended definition at 10 CFR 430.2 being adopted by today's final rule is set forth in the regulatory text. More specifically, the amended definition states that the standards for vented hearth heaters are not applicable to vented gas log sets at this time. It also provides that vented hearth products are excluded from the vented hearth heat standards if they are: (1) Certified to ANSI Standard Z21.50, but not to ANSI Standard Z21.88; (2) sold without a thermostat and with a warranty provision expressly voiding all manufacturer warranties in the event the product is used with a thermostat; (3) expressly and conspicuously identified on its rating plate and in all manufacturer's advertising and product literature as a ''Decorative Product: Not For Use As A Heating Appliance''; and (4) with respect to products sold after January 1, 2015, not equipped with a standing pilot light or other continuously-burning ignition source.

DOE believes the amended definition of ''vented hearth heater'' will provide benefits to both consumers and the gas hearth products industry in terms of energy savings and product choice, by allowing manufacturers to continue to offer primarily decorative hearth products across a broad range of input ratings, rather than limiting primarily decorative hearth products to input ratings below the current limitation of 9,000 Btu/h. By eliminating the use of standing pilot lights in all primarily decorative vented gas hearth products under the exclusion beginning on January 1, 2015, DOE believes the amended definition will result in a significant increase in overall energy savings, including for those types of units eligible for the primarily decorative products exclusion. At the same time, this rule will lessen the impacts and burden on manufacturers of vented hearth heaters, while promoting a variety of available models for consumers. For vented gas log sets, the amended definition classifies this product as a type of vented hearth heater because of the similarities to other vented hearth products (primarily because they provide some amount of heat to the living space). However, the amended definition does not require manufacturers of vented gas log sets to meet a minimum energy conservation standard at this time or to meet any criteria to qualify for exclusion from the standards for gas hearth direct heating equipment (*i.e.,* vented hearth heaters). DOE estimates that the elimination of standing pilot lights in primarily decorative vented hearth heater products would result in an additional 0.04 quads of additional energy savings over the 30-year period from 2015 through 2044, beyond those savings already achieved by the April 2010 final rule. (See section III.C for details on DOE's energy savings estimates.) Manufacturers of vented hearth products who choose not to avail themselves of the exclusion will be subject to the energy conservation standards for vented hearth heaters promulgated in the April 2010 final rule. (As noted above, these amendments clarify that manufacturers of vented gas log sets will not be subject to the energy conservation standards for vented hearth heaters promulgated in the April 2010 final rule.)

Therefore, DOE has concluded that the amended definition of ''vented hearth heater'' will improve the existing definitions pertaining to direct heating equipment and will further clarify the scope of the current exclusion from the energy conservation standards for those vented hearth heaters that are primarily decorative hearth products. In addition, the rule will result in significant additional energy savings, preserve consumer choice, and reduce the

[2] This document is available on DOE's Web site at: *http://www1.eere.energy.gov/buildings/appliance_standards/residential/pdfs/htgp_finalrule_faq.pdf.*

burden on industry. For these reasons, DOE has concluded that the amendments to DOE's definition of ''vented hearth heater'' provide substantial benefits that outweigh the burden of the new requirements for products to be considered primarily decorative hearth products, and accordingly, DOE adopts them in this rule. DOE's rationale is presented in further detail immediately below.

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

Prior to being amended in 1987, EPCA included home heating equipment as covered products. The amendments to EPCA effected by the National Appliance Energy Conservation Act of 1987 (NAECA; Pub. L. 100–12) included replacing the term ''home heating equipment'' with ''direct heating equipment,'' establishing standards for the direct heating equipment, and requiring that DOE determine whether these standards should be amended. (42 U.S.C. 6295(e)(3)–(4)) Nowhere in the statute is the term ''direct heating equipment'' defined. DOE amended the statutorily-prescribed standards for direct heating equipment for the first time in the April 2010 final rule by prescribing the current energy conservation standards for direct heating equipment manufactured on or after April 16, 2013. 75 FR 20112 (April 16, 2010). Of particular relevance here, the April 2010 final rule created a definition for ''vented hearth heater,'' established product classes for gas hearth direct heating equipment (*i.e.,* vented hearth heaters), and amended the minimum standards for direct heating equipment, including gas hearth direct heating equipment. The April 2010 final rule defined ''vented hearth heater'' as currently set out in 10 CFR 430.2. The definition adopted in the April 2010 final rule provided a description of the characteristics of vented hearth heaters, and also provided that vented hearth products with a maximum input capacity less than or equal to 9,000 British thermal units per hour would be excluded from DOE's regulations due to their primarily decorative nature.

In addition, the April 2010 final rule amended the definition of ''vented home heating equipment or vented heater'' to include vented hearth heaters, along with the other types of heaters (*i.e.,* vented wall furnace, vented floor furnace, and vented room heater) that were already defined as vented home heating equipment. *Id.*

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

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

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

* Annual Fuel Utilization Efficiency.

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

DOE commenced this latest round of rulemaking for residential direct heating equipment on July 22, 2011 by publishing in the **Federal Register** a notice of public rulemaking (NOPR) and announcement of a public meeting to discuss the document. The NOPR proposed to amend the definition of ''vented hearth heater'' to clarify that vented gas log sets are covered products, and to specify a set of criteria for vented hearth products and vented gas log sets that would allow them to be considered primarily decorative units and thereby excluded from having to comply with the standards for gas hearth direct heating equipment adopted in the April 2010 final rule. DOE held a public meeting on September 1, 2011, in which it: (1) Presented the contents of the NOPR; (2) sought comments from interested parties on these subjects; and (3) in general, sought to inform interested parties about, and facilitate their involvement in, the rulemaking. Major issues discussed at the public meeting included: (1) The proposed exclusion requirements for gas log sets; (2) the physical and performance differences between gas log sets and other vented hearth heaters; (3) the compliance date for the energy conservation standards set forth in the April 2010 final rule; (4) the proposed compliance date for eliminating standing pilot lights under the proposed exclusion; (5) DOE's authority to cover primarily decorative hearth products; and (6) DOE's national energy savings (NES) analysis. At the meeting and during the comment period on the NOPR, DOE received many comments that helped it identify and resolve issues pertaining to the direct heating equipment relevant to this rulemaking. The comments received and DOE's responses are discussed in the section immediately below.

III. Discussion

A. Scope of Coverage of Vented Hearth Products

1. Description of Vented Hearth Products

Vented hearth products include gas-fired products such as fireplaces, fireplace inserts, stoves, and log sets that typically include aesthetic features (*e.g.,* yellow flame, large flame) and that provide space heating. Vented hearth products such as fireplaces, fireplace inserts, and stoves typically consist of ceramic logs and a gas burner that is surrounded by an enclosure, whereas vented gas log sets consist only of ceramic logs and a gas burner intended for installation in an existing masonry fireplace. Vented hearth products generally have a dual heating and aesthetic function, as consumers derive benefit from both the heat provided and the aesthetic appeal of a product that simulates a wood-burning appliance. Characteristic of this duality of purpose, units intended for use as a heating appliance and those units intended

primarily to be used as a decorative product often share very similar external appearances, unit construction, and input capacities, thereby making it difficult to differentiate between the two types of hearth products. DOE notes that the primary difference between the two types of vented hearth heaters is that primarily decorative units focus on ambiance and aesthetic utility associated with a solid fuel (*e.g.,* wood-burning) fireplace in addition to heat output to the living space, whereas heating hearth products tend to focus on providing heat to the living space, but also provide some amount of ambiance not provided by a utilitarian heating device. Products intended for use as a heater are often shipped with or designed to be easily retrofitted with additional accessories that primarily decorative products do not have, such as thermostats to control the heat output. However, DOE research has shown that such accessories are typically optional and, thus, not definitive in distinguishing between heaters and primarily decorative units. In the July 2011 NOPR, DOE concluded that all vented hearth products constitute direct heating equipment where a gas-consuming device that generates a flame and gives off heat is inserted into the residential living space. 76 FR 43941, 43944–45 (July 22, 2011). Many interested parties have noted that decorative products are intended primarily for aesthetic use (as discussed in section III). However, DOE believes that regardless of whether the product is intended to provide only aesthetic appeal, by design, the product will generate heat due to the presence of the flame, and some of that heat will be transferred to the space. Indeed (as discussed further in section III), many interested parties have conceded that vented hearth products intended primarily for decorative use and vented gas log sets are an effective supplemental or emergency heat source, providing further justification for their inclusion as a type of covered direct heating equipment.

In response to DOE's interpretation of its authority under EPCA regarding direct heating equipment, several interested parties stated that decorative hearth products and vented gas log sets are outside the scope of DOE's authority under EPCA. DOE's interpretation of its authority under EPCA, as well as the comments on DOE's authority as it pertains to EPCA's and DOE's definitions related to direct heating equipment, are discussed in the sections that immediately follow.

2. Definitions for ''Direct Heating Equipment''

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

Prior to the April 2010 final rule, DOE had previously defined ''home heating equipment'' and related terms in its regulations, which can be found at 10 CFR 430.2. In the April 2010 final rule, DOE added a new definition of ''direct heating equipment,'' defining the term in the same manner that it had previously defined ''home heating equipment.'' 75 FR 20112, 20128, 20234 (April 16, 2010). DOE defines both ''home heating equipment'' and ''direct heating equipment'' as meaning ''vented home heating equipment and unvented home heating equipment.'' In its definitions at 10 CFR 430.2, DOE goes on to define both ''vented home heating equipment'' and ''unvented home heating equipment.'' Prior to being amended in the April 2010 final rule, the definition of ''vented home heating equipment,'' relevant here, read as set out in 10 CFR, parts 200–499, revised as of January 1, 2010, and did not explicitly include vented hearth heaters.

In the April 2010 final rule, DOE concluded that vented hearth products (*i.e.,* gas-fired products such as fireplaces, fireplace inserts, and stoves) meet its definition of ''vented home heating equipment,'' because their designs furnish heat to the living space of a residence. DOE also concluded, therefore, that they are covered products under EPCA and are properly classified as direct heating equipment. 75 FR 20112, 20128 (April 16, 2011). Accordingly, DOE adopted a new definition of ''vented hearth heater'' and amended its definition of ''vented home heating equipment or vented heater'' at 10 CFR 430.2 to explicitly include vented hearth heaters, reading as currently set out in 10 CFR 430.2.

In the April 2010 final rule, DOE did not specifically address vented gas log sets under the broader classification of direct heating equipment. However, given their primarily decorative nature, DOE published a document on DOE's Web site titled ''Frequently Asked Questions: 'Vented Hearth Heater' Definition.'' [3] In that document, DOE stated that because gas log sets are not constructed as part of an entire enclosure (*i.e.,* there is no surrounding box or viewing pane) or a sealed system, they do not provide the same heating function as gas fireplaces, gas fireplace inserts, and gas stoves, which are constructed as enclosed systems. Due to these differences, DOE stated that vented gas log sets are intended to be installed for primarily decorative purposes, and as a result, are not subject to the standards for vented hearth heaters. Upon reconsidering the definitions of ''direct heating equipment,'' ''vented home heating equipment,'' and ''vented hearth heater,'' DOE determined in the July 2011 NOPR that vented gas log sets are heating appliances and proposed to explicitly include them under DOE's definitions. 76 FR 43941, 43945 (July 22, 2011). DOE noted in the July 2011 NOPR that this approach is consistent with DOE's treatment of vented hearth products that provide both heat and aesthetic appeal. *Id.*

Further, in the July 2011 NOPR, DOE noted that the terminology ''designed to furnish warmed air'' in the definition of ''vented home heating equipment'' is not limited to furnishing warmed air through mechanical means by expelling or discharging such air, but can also refer to furnishing heat which warms the living space air through any method of heat transfer. Because of the very nature of hearth products (*i.e.,* the presence of a flame), all hearth products create heat, and hearth products provide some amount of that heat to the surrounding living space, including radiant heat. As a result, DOE concluded that all vented hearth products and vented gas log sets are designed to furnish heat, regardless of whether they have a mechanical means for furnishing the air (such as a blower) or grills through which the warm air can be circulated via natural convection. Because vented gas log sets and primarily decorative vented hearth products will provide some amount of heat to the living space, DOE concluded in the July 2011 NOPR that all primarily

[3] This document is available on DOE's Web site at: *http://www1.eere.energy.gov/buildings/appliance_standards/residential/pdfs/htgp_finalrule_faq.pdf.*

decorative vented hearth products and vented gas log sets are designed to furnish heat and, thus, are a subset of vented hearth heaters. 76 FR 42941, 43944–45 (July 22, 2011).

DOE received several comments related to its authority to cover hearth products as direct heating equipment under EPCA. Lennox stated that it did not believe DOE has established its statutory authority to regulate decorative gas fireplaces, and requested that DOE substantiate its authority. (Lennox, No. 6 at p. 1) The National Propane Gas Association (NPGA) stated that decorative hearth products existed at the time both EPCA and NAECA were enacted, and these products were not intended to be covered. Further, NPGA stated that EPCA specifically identifies which products are within the scope of the term ''direct heating equipment'' and that neither decorative hearth products nor decorative gas log sets are within the scope, and the commenter asserted EPCA only provided DOE with the authority to amend the current standards and not to impose standards on decorative gas log sets. (NPGA, No. 209 at pp. 1–3) The American Public Gas Association (APGA) concurred with NPGA's statements. (APGA, No. 223 at p. 1) Similarly, HPBA stated that DOE cannot lawfully categorize decorative hearth products as direct heating equipment because at the time these categorizations were made, fireplaces and gas log sets existed but were recognized as entirely different categories of products. HPBA commented that when interpreting a statute, DOE must give effect to the unambiguously expressed intent of Congress, and that the suggestion that the definition of ''direct heating equipment'' should be open to accommodate future technological changes in the marketplace does not apply here, since both decorative vented gas fireplaces and gas log sets existed at the time Congress addressed direct heating equipment in the statute. (HPBA, No. 201 at pp. 12–14) The American Gas Association (AGA) also stated that they did not believe that decorative hearth products and gas log sets were included in the original intent of Congress when establishing authority for direct heating equipment products designed to furnish warm air. (AGA, Public Meeting Transcript, No. 14 at pp. 85–86) AGA elaborated that decorative products were not included in the negotiations and discussions for amending the standards for direct heating equipment at the time leading up to the enactment of NAECA. (AGA, Public Meeting Transcript, No. 14 at pp. 94–95) The Air-conditioning, Heating, and Refrigeration Institute (AHRI) stated that even though there was not a formal definition created for ''direct heating equipment'' in NAECA, decorative hearth products and gas log sets were purposefully not identified as being a part of the direct heating equipment standards, even though the products existed at the time. (AHRI, Public Meeting Transcript, No. 14 at pp. 91–92)

In contrast, the Natural Resources Defense Council (NRDC) and EarthJustice stated that EPCA does not define the term ''direct heating equipment,'' although it directs DOE to regulate the efficiency of such equipment, and that EPCA's silence on the precise meaning of the term leaves it to DOE's discretion to interpret the scope of products that constitute direct heating equipment. Further, NRDC and EarthJustice commented that there is no basis in the language of EPCA for asserting that Congress intended to restrict DOE's authority when applying standards to vented hearth heaters. (NRDC and EarthJustice, No. 216 at p. 1)

DOE cannot attempt to interpret the intent of Congress based on unsubstantiated assertions of what individual parties may have believed. Rather, DOE must interpret its authority with respect to direct heating equipment under EPCA based on what is written in the statute. As discussed above, EPCA does not define the term ''direct heating equipment.'' Thus, the statute is ambiguous regarding what Congress may have intended to include as direct heating equipment. DOE had previously defined ''direct heating equipment'' as a class of home heating equipment that is designed to furnish warmed air to the living space of a residence. Given the lack of a statutory definition for ''direct heating equipment'' in EPCA, DOE provided its interpretation in the April 2010 final rule and established its authority to cover hearth products as direct heating equipment (*i.e.,* as a class of home heating equipment that is designed to furnish warmed air to the living space of a residence). 75 FR 20112, 20128–30 (April 16, 2010). To restate its earlier conclusion, because virtually all hearth products (including those identified as ''decorative'' by industry) supply some amount of heat to the living space, DOE believes it is eminently reasonable to conclude that these products are direct heating equipment under EPCA. As a result, DOE maintains its position that these are covered products.

DOE also received several comments from interested parties in response to the July 2011 NOPR regarding the definitions of ''direct heating equipment'' as they apply to primarily decorative hearth products and vented gas log sets based on the characteristics and use of those products.

HPBA stated that DOE's proposed interpretation that decorative vented hearth products are direct heating equipment is unreasonable, because they are not heating products and their appeal is aesthetic. Furthermore, HPBA contended that the NOPR's statement that it is ''difficult to differentiate between'' the two is misleading. HPBA pointed to the fact that heating hearth products are designed and sold as aesthetically-appealing products that can also serve as efficient utilitarian heating appliances. HPBA elaborated that these products are designed for heating efficiency, are heater-rated, and are sold on the basis of heating efficiency as well as aesthetic appeal. The commenter stated decorative hearth products, on the other hand, are designed and sold for aesthetic appeal and not for heating efficiency. HPBA stated that many such products—including both gas log sets and decorative vented gas fireplaces—are not a significant source of heat and would not be effective for utilitarian heating use. Additionally, HPBA asserted DOE's statement that products are to be classified as direct heating equipment if they ''provide some amount of heat to the living space'' is confusing, since many products (such as kitchen ovens, refrigerators, and desktop computers) provide heat but are not considered direct heating equipment, and that classifying gas logs as such is particularly unreasonable since it conflicts with DOE's prior interpretation. (HPBA, No. 201 at pp. 17–18) R.H. Peterson stated that their gas log sets are designed to provide a realistic simulation of a wood burning fire in a wood burning fireplace, not to provide heat. (R.H. Peterson, Public Meeting Transcript, No. 14 at p. 39) Similarly, a number of other interested parties commented that decorative hearth products should not be considered heating products because they are designed for ambiance and/or their primary purpose is not to provide heat. (Small Business Administration (SBA), No. 96 at p. 2; Big Woods, No. 3 at p. 1; Lennox Hearth Products, No. 6 at p. 1; Homefires, No. 10 at p. 1; Advantage, No. 13 at p. 1; Empire, Public Meeting Transcript, No. 14 at p. 60 and No. 221 at p. 2; Crick-IT, No. 15 at p. 1; Sun Dance Leisure, No. 17 at pp. 1–2; Mazzeos, No. 16 at p. 1; Dealers LP Equipment, No. 20 at p. 1; Creekside Hearth and Patio, No. 21 at p. 1; Barbara Jenkins, No. 22 at p. 1; Fairview, No. 25

at p. 1; HWAM, No. 43 at p. 1; American Gas Log, No. 49 at p. 1; LF Pugh and Associates, No. 76 at p. 1; Siouxland No. 85 at p. 1; Thompson Gas, No. 95 at p. 1; Percy Guidry Hearth and Patio, No. 18 at p. 1; Perfection, No. 115 at p. 2; Penn Valley, No. 116 at p. 2; Sheldon Skolnick Associates, No. 118 at p. 1; Hearth & Home, Inc., No. 144 at p. 2, Gas-fired Products, No. 155 at p. 1; Oahu Gas Service, No. 166 at p. 1; Short's Stoves, No. 174 at p. 1; Thompson Gas, No. 191 at p. 1; Plumbing-Heating-Cooling Contractors Association (PHCC), No. 199 at p. 1; Hearth & Home Technologies, No. 204 at p. 3; Hearth and Home Shoppe, No. 207 at p. 1; Rasmussen, No. 208 at p. 1; Golden Blount, No. 210 at p. 1; Independence Marketing, No. 214 at p. 1; Hearth and Home Technologies, No. 204 at p. 3; Mike Rogers, No. 225 at p. 1; Fred Pierce, No. 219 at p. 1; Form Letter Comments; [4] Jack's Butane Service, No. 23 at p. 1; NPGA, Public Meeting Transcript, No. 14 at pp. 30–31) AGA stated that the current statutory provisions for direct heating equipment do not cover hearth products as vented hearth heaters, because the primary purpose of hearth products is ambiance. (AGA, No. 217 at p. 1) Firelight Services, Top Hat Chimney Sweeps, and East Texas Brick Company stated that vented gas log sets are not sold or advertised as heaters and should not be treated as such. (East Texas Brick Co., No. 135 at p. 1; Top Hat, No. 168 at p. 1; Firelight, No. 206 at p. 1; Arizona Gas, No. 98 at p. 3)

Empire stated that it is not reasonable for DOE to assume that because a product uses energy and has heat as a byproduct, that it can be regulated the same as another product which is designed, certified, and currently regulated as a direct heating product. (Empire, Public Meeting Transcript, No. 14 at p. 60) Similarly, HPBA stated that decorative hearth products cannot be classified as direct heating equipment simply because such units provide some amount of heat to the living space, because many other products such as kitchen stoves, refrigerators, and incandescent light bulbs also provide some amount of heat to the living space, and clearly, they are not direct heating equipment. (HPBA, Public Meeting Transcript, No. 14 at p. 19) Heritage Propane commented that decorative hearth products produce heat indirectly like blenders or refrigerators that produce incidental heat by their operation. (Heritage Propane, No. 33 at p. 1) HPBA stated that DOE's interpretation that a product may be classified as direct heating equipment independent of the manufacturer's principle intention in designing, manufacturing, and marketing the product, is irrational in the context of efficiency regulation because, by definition, the efficiency of a product can be determined only in reference to how efficiently it serves its intended purpose. (HPBA, Public Meeting Transcript, No. 14 at p. 19)

Specifically regarding vented gas log sets, Jeff Simmons stated that vented gas logs should not be considered direct heating equipment, because they do not generate a net gain of heat since any heat produced by the fire is balanced by the heat going up the vent or chimney (Simmons, No. 24 at p. 1) Big Woods stated that vented gas log sets cannot be made to be an efficient heater. (Big Woods, No. 3 at p. 1) Rasmussen stated that gas log sets should not be categorized as gas fireplace appliances, a term which encompasses heater-rated and decorative fireplaces, because gas log sets have the distinguishing characteristic of not being constructed as part of an entire enclosure with a surrounding box, viewing pane, or sealed system, as noted by DOE in the Frequently Asked Questions (FAQ) published for hearth products after the April 2010 final rule. (Rasmussen, Public Meeting Transcript, No. 14 at p. 68) U.S. Congresswoman Grace Napolitano stated that DOE was correct in the April 2010 rulemaking that interpreted the definition of vented hearth heater as not covering vented gas log sets. (Grace Napolitano, No. 224 at p. 1) NRDC and EarthJustice stated that there is no rational basis for treating gas log sets differently than vented gas fireplace, because both types of products are designed to furnish warmed air to the living space of a residence, and noted that during the September 1, 2011 hearing, manufacturers of gas log sets conceded that one of the functions of their products was to convey heat to the living space. (NRDC and EarthJustice, No. 216 at pp.1–2)

DOE also received a number of comments describing the heating aspect of primarily decorative hearth products and vented gas log sets. Intertek commented that primarily decorative hearth products are designed for ambiance and produce heat indirectly, and explained that although primarily decorative products are usually designed to produce as little heat as possible, some customers do use primarily decorative products as secondary or back-up heat sources. (Intertek, No. 198 at p. 2) Intertek stated that gas log sets designed to be installed in wood burning fireplaces produce low but highly variable net heat output, which depends on the specific fireplace geometry, materials, chimney and damper, duration of operation, and outdoor temperature. (Intertek, No. 198 at p. 2) Rasmussen stated that the heat emitted by gas log sets is not solely under the control of the manufacturer, but also depends on the efficiency of the fireplace in which it is installed, the ambient temperature inside and outside the house, the level at which the consumer burns the gas log, and the height of the flame. (Rasmussen, Public Meeting Transcript, No. 14 at p. 75) Rasmussen also stated that consumers use gas log sets in vented wood-burning fireplaces as appliances for ambiance with a secondary function of warmth, and that gas log sets can be used as a source of emergency warmth in case of power outages, which disable electric heat pumps. (Rasmussen, Public Meeting Transcript, No. 14 at p. 76) Rasmussen stated that the residual heat benefit is an extra feature that sometimes helps out in times of power outages during ice storms, but that people are not going to use these feature as the primary means of warming. (Rasmussen, Public Meeting Transcript, No. 14 at p. 160) Bradley Hughes of AmeriGas stated that primarily decorative vented gas appliances are for ambiance and only used as supplements for the main heat source in the home. (Bradley Hughes, No. 117 at p. 2) Similarly, Don Leonard of AmeriGas remarked that many customers used primarily decorative direct vent fireplaces to augment other sources of heating, and that primarily decorative fireplaces work nicely as an area heater. (Don Leonard, No. 52 at p. 1) C.J. Ellson of AmeriGas commented that thousands of Arizonans use gas log sets and fireplaces to offset their primary furnaces. (C.J. Ellson, No. 47 at p. 1) Titan commented that primarily decorative hearth products are useful as a back-up source of heat in the case of power outages. (Titan Propane, No. 220 at p. 1)

NRDC and EarthJustice stated that it may be appropriate for DOE to recognize an exclusion from the standards for direct heating products that are designed and marketed to provide a decorative amenity; however, the

[4] DOE received a large number of comments from AmeriGas and Ferrellgas employees, which DOE refers to collectively as the ''Form Letter Comments.'' Although each comment was slightly different, these comments generally expressed the same ideas. Therefore, DOE cites them all together, when the same thought is contained in more than one comment. If a commenter from AmeriGas or Ferrellgas made a point that was unique to their comment, DOE cited that comment individually.

existence of this decorative aspect does not eliminate the fact that these products also serve a heating function and are accordingly classified as direct heating equipment. (NRDC and EarthJustice, No. 216 at pp. 1–2) The Appliance Standards Awareness Project (ASAP) stated that with the exclusion criteria, DOE is trying to close loopholes in which non-decorative products could qualify for the exclusion. (ASAP, Public Meeting Transcript, No. 14 at p. 113) EarthJustice stated that since DOE already had an efficiency standard in place for vented hearth heaters, it needed to find a way to distinguish units that should follow those standards versus primarily decorative ones that are not required to follow the standards. (EarthJustice, Public Meeting Transcript, No. 14 at pp. 96–97)

As noted previously, DOE recognizes that certain vented hearth products may be intended to be primarily decorative in nature. However, DOE also believes that intended product use is not a dispositive factor in determining whether the product is direct heating equipment. By their nature, all gas hearth products have a flame and are installed in the living space. As a result, they will give off heat to the living space, meaning they meet the applicable definitions for ''direct heating equipment'' and qualify as direct heating equipment under the statute regardless of the duality of function (*i.e.,* providing an aesthetic aspect in addition to a heating benefit). As noted by several interested parties within the industry, products such as vented gas log sets and primarily decorative hearth products are often used by consumers as a supplemental, secondary, or emergency heat source. Regarding assertions that other products in the living space (such as refrigerators, light bulbs, *etc.*) provide heat to the space, but are not regulated as direct heating equipment, DOE notes that many of these products are already regulated for energy efficiency under EPCA, and offer ready metrics for quantifying energy efficiency. Further, DOE notes that none of the ''analogous'' products seek to avoid regulation as heating equipment, while claiming to simulate a product (wood-burning fireplace) that is itself a heater (even if not regulated).

As noted above, a manufacturer's stated intent for the use of a product is not dispositive in determining whether that product is a covered product under EPCA. Even if such intent were to be considered, DOE examined the marketing literature for these products and, contrary to HPBA's assertions, found that it is often ambiguous about whether a product is intended for use as a heater or is solely decorative equipment. For example, DOE found that Rasmussen markets a line of gas log sets named the *Chillbuster ''Heat Effect'' Gas Log Heaters* under the trade name ''Nice and Warm.'' [5] DOE found that the product literature for this particular product indicates that these gas log sets can be used either as an unvented or vented gas log set. In unvented gas log sets, most of the heat will go into the space in which the product is installed (because none of the heat is vented up the flue as with vented products), while vented gas log sets are recognized as more decorative in nature because some percentage of the heat energy escapes through the flue; however, the product literature and installation manual do not clearly indicate that the gas log set will only provide a heating function when it is used as an unvented set, and is not achieved when the product is used as a vented gas log set. The literature points out that the product is a good source of supplemental heat and seems to suggest a potential method to configure the damper of the chimney, to allow it to maximize the maintenance of heat when operating in a vented mode. Further, DOE notes that the installation manual for this product refers to it as a ''heater'' when providing instructions for both vented and unvented installation.[6] DOE also reviewed the product literature for the *Mantis* by Empire Comfort Systems, which is a high-efficiency hearth heater and is obviously intended to be used as a heater.[7] In fact, the manufacturer promotes the fact that this product has an annual fuel utilization efficiency applicable to other types of vented home heating equipment. However, DOE found that this product is marketed similarly to many ''decorative'' products, in that the product literature shows the product installed in the living space, with many optional decorative features such as a mantle surround or copper metallic wall surround. Moreover, the marketing materials for this heating product made direct statements about the ''ambiance'' that the unit achieves. Such ambiguities in product marketing literature make it difficult to determine whether the hearth products are intended for heating or are intended to be used for ambiance. Further, given that both ''heating'' and ''decorative'' vented hearth products are capable of providing both heat and ambiance, it is often difficult to determine which function is primary and which is secondary when reviewing manufacturer literature.

DOE's proposed definition provides a clear distinction that will allow manufacturers and consumers to differentiate between products that are primarily heaters and products that are primarily decorative. Due to the fact that even those products deemed ''decorative'' by industry (including vented gas log sets) often generate enough heat to be considered as a secondary heat source (as explained above), and are typically marketed by the manufacturers to promote that fact, DOE believes they are appropriately categorized as direct heating equipment. However, in recognizing the primarily decorative nature of certain products that are intended to be used primarily as a decorative product rather than a heating product, DOE provided the exclusion in the April 2010 final rule to identify the primarily decorative products that should not be subject to the standards for vented hearth heaters. Today's notice, while recognizing that hearth heating products have a duality of purpose, improves the previous definition by providing a clear, objective distinction between those hearth heating products that are primarily decorative and those that are primarily used for utilitarian heating (both of which are direct heating equipment under EPCA) and allows manufacturers of primarily decorative hearth products to continue manufacturing primarily decorative products that would not be subject to the standards for direct heating equipment.

In addition, DOE believes that the exclusion being adopted in today's notice improves upon the previous exclusion adopted in the April 2010 final rule, because that exclusion may have allowed heater-type products to qualify for the decorative inclusion. For example, Empire's *Mantis,* which is intended for use as a space heater, is available in a configuration where it can be operated with an input rating of 9,000 Btu/h. If this was the only operational mode, this unit would have qualified for the exclusion in the April 2010 final rule, even though it is clearly intended to be a heater. (DOE notes that the Mantis demonstrates that manufacturers possess the technological capability to produce vented hearth products at relatively low gas input levels (*i.e.,* below 9,000 Btu/h) which are also aesthetically pleasing.) Under the new exclusion criteria, this product

[5] For more information, see: *http://www.rasmussen.biz/logs/chill.html* (last accessed 11/8/2011).

[6] For more information, see: *http://www.rasmussen.biz/logs/pdf/C1.DFC1.203.pdf* (last accessed 11/8/2011).

[7] For more information, see: *http://www.empirecomfort.com/empirecomfort/Fireplaces/mantis.asp* and *http://www.mantisbyempire.com/assets/MANTIS/brochures/Mantis_Brochure.pdf* (last accessed 11/8/2011).

would not qualify for the exclusion unless it met the four criteria, which would clearly identify it as a decorative product.

B. Amended Definition for ''Vented Hearth Heater''

DOE is amending the definition for ''vented hearth heater'' to read as set forth in the regulatory text of this final rule. Specifically, the amended definition explicitly states that the energy conservation standards for vented hearth heaters are not applicable for vented gas log sets at this time. The amended definition also provides that vented gas hearth products are excluded from the energy conservation standards for vented hearth heaters if they are: (1) Certified to ANSI Standard Z21.50, but not to ANSI Standard Z21.88; (2) sold without a thermostat and with a warranty provision expressly voiding all manufacturer warranties in the event the product is used with a thermostat; (3) expressly and conspicuously identified on its rating plate and in all manufacturer's advertising and product literature as a ''Decorative Product: Not For Use As A Heating Appliance''; and (4) with respect to products sold after January 1, 2015, not equipped with a standing pilot light or other continuously-burning ignition source.

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

First, DOE has determined that the definitions of direct heating equipment are inclusive of vented gas log sets, given the fact that these are gas-burning appliances that generate heat, and some of that heat is transferred to the living space. Under DOE's previous interpretation, these products were not subject to standards for direct heating equipment; however, as noted in section III.A.2, DOE now clarifies that these products should be classified as vented hearth products. As noted by interested parties, despite their decorative nature, vented gas log sets can be used by consumers as a secondary heat source, demonstrating that they are appropriately categorized as direct heating equipment. However, DOE is excluding vented gas log sets from being subject to the energy conservation standards for vented hearth heaters at this time. Based on the comments received on the proposed exclusion criteria for vented gas log sets contained in the NOPR (which are summarized below) DOE believes that additional research and subsequent rulemaking are warranted on these products prior to adopting standards or exclusion criteria.

Second, DOE is adopting a specific set of criteria (rather than the 9,000 Btu/h input rating limitation) for establishing whether a vented hearth product should be excluded from the energy conservation standards because such product is primarily decorative in nature. DOE believes that the conditions outlined in the definition for classifying a vented hearth product as decorative will create a clear, objective division between vented hearth products, which will be subject to DOE's standards for gas hearth direct heating equipment, and those vented hearth products that focus primarily on providing ambiance and aesthetic utility, which will not be subject to DOE's standards. DOE also expects that the amendments to the definition will lessen the burden on manufacturers and allow DOE to achieve greater energy savings than under the previous definition, while still achieving the energy efficiency mandate of EPCA, primarily through elimination of standing pilot lights or other continuously-burning ignition sources. DOE's analysis suggests that amendments associated with the amended definition will result in significant energy savings that will be greater than the savings under the definition adopted in the April 2010 final rule, both overall as well as for the types of units eligible for the exclusion. (See section III.C of this notice for details on the estimated energy savings.)

1. Description of Criteria for Classification as Decorative Vented Hearth Products

As noted above, DOE's amendments to the definition of ''vented hearth heater'' provides an exclusion clause for products that are primarily decorative in nature, provided that they are either a vented gas log set, or meet the four criteria to be considered primarily decorative that are outlined in the definition. In the July 2011 NOPR, DOE proposed that both vented gas log sets and primarily decorative hearth products meet a set of four criteria to be considered as primarily decorative products that are not subject to the standards for gas hearth DHE. 76 FR 43941, 43945–46 (July 22, 2011). The criteria, as well as public comments received on the proposed NOPR criteria, are explained below.

DOE also received a number of comments that stated generally that the exclusion criteria are unnecessary and not justifiable on the basis of energy savings. These interested parties also stated that there is no need for an exclusion, because heating efficiency standards should not apply to primarily decorative products. (Form Letter Comments; Creekside Hearth and Patio, No. 21 at p. 1; American Gas Log, No. 49 at p. 2; Hearth and Home, Inc., No. 144 at p. 2; Crik-IT, No. 15 at p. 3; Dealers LP Equipment, No. 20 at p. 2; Sun Dance Leisure, No. 17 at p. 3; Hearth and Home Shoppe, No. 207 at p. 1; Sheldon Skolnick Associates, No. 118 at p. 1; Penn Valley, No. 116 at p. 2; Perfection, No. 115 at p. 2; Heritage Propane, No. 33 at p. 1)

In response, DOE believes that the exclusion criteria are an essential part of setting energy conservation standards for ''heating'' type hearth products in order to clearly and effectively differentiate them from primarily ''decorative'' type products that are not subject to standards. This distinction will allow manufacturers of primarily decorative products to continue to manufacture their products, and allow consumers to continue to utilize them for both their ambiance and heating properties.

In the sections that follow, DOE discusses the exclusion criteria for vented gas log sets and decorative vented hearth products, and the comments received regarding the exclusion criteria for each type of product. Where an interested party raised an issue for both vented gas log sets and decorative vented hearth products, that issue is summarized and addressed separately for each type of product.

a. Vented Gas Log Sets

In the NOPR, DOE proposed exclusion criteria for vented gas log sets similar to the criteria proposed (and being adopted in this notice) for primarily decorative hearth products. 76 FR 43941, 43945–46 (July 22, 2011). In response to the proposed criteria, DOE received the following comments for vented gas log sets. After considering the comments, DOE believes additional research is warranted, and as a result, is not adopting at this time any criteria for these products to meet in order to be excluded from the direct heating equipment standards. Because DOE is not adopting any such criteria in this

rulemaking, comments raising issues with the proposed criteria are no longer at issue; however, for completeness DOE presents the comments below.

In the July 2011 NOPR, DOE proposed that gas log sets certify to ANSI Z21.60 in order to be considered primarily decorative equipment and, therefore, exempt for an efficiency standard. 76 FR 43941, 43953 (July 22, 2011) Many stakeholders submitted comments opposing the proposed certification requirement, because not all gas log sets are currently certified or able to certify to ANSI Z21.60. (NPGA, No. 209 at p. 8; Creekside Hearth and Patio, No. 21 at p. 1; Crik-IT, No, 15 at p. 3; Sun Dance Leisure, No. 17 at p. 3; Hearth & Home, No. 144 at p. 2; American Gas Log, No. 146 at p. 2; American Gas Log, No. 49 at p. 2; Heritage Propane, No. 33 at p. 1; Form Letter Comments; Perfection, No. 115 at p. 2; Sheldon Skolnick, No. 118 at p. 1; Dealers LP Equipment, No. 20 at p. 2; Penn Valley, No. 116 at p. 2; HPBA, Public Meeting Transcript, No. 14 at pp. 20–21; Hearth and Home Shoppe, No. 207 at p. 1) R.H. Peterson stated that there is no universal certification for gas log sets and that they are regulated differently by different cities and States. R.H. Peterson also commented that only 21 percent of their products are certified to ANSI Z21.60, compared to over 75 percent that are certified to another standard or left uncertified. (R.H. Peterson, Public Meeting Transcript, No. 14 at pp. 49–50) Further, R.H. Peterson stated that ANSI Z21.60 only covers gas log burners up to 30 inches, but they sell larger sizes to accommodate large wood burning fireplaces. (R.H. Peterson, Public Meeting Transcript, No. 14 at p. 51) R.H. Peterson also commented that DOE's requirement of ANSI Z21.60 certification would eliminate custom units because they are, by definition, not certified to any particular standard. (R.H. Peterson, No. 218 at p. 3) AGA stated that the proposed certification requirement for gas log sets would prohibit thermostats except for fireplaces installed in bedrooms or bedsitting rooms in Canada, thereby preventing the Canadian and U.S. standards from aligning. (AGA, No. 217 at p. 2) Rasmussen stated that many gas log sets are not certified because their size or design is not covered by an existing standard or because not enough sets are sold to justify the cost of testing, certification, and listing. Rasmussen also explained that this does not mean the unit is unsafe, because uncertified sets are built to the same standard of quality as their certified sets. Rasmussen estimated that ANSI Z21.60 accounts for less than 20 percent of total gas log sales, and recommended this provision to either be struck from the exclusion or the provision be broadened to include other standards and uncertified sets. (Rasmussen, Public Meeting Transcript, No. 14 at pp. 72–74) AGA and NPGA commented that manufacturers that do not comply with ANSI Z21.60 or manufacturers that certify to another standard would not be excluded from the direct heating equipment standards, yet would not be able to demonstrate compliance with the current test procedures. (AGA, No. 217 at p. 2; NPGA, No. 209 at p. 7)

Manufacturers were also concerned because match lit gas log sets would not be able to certify to ANSI Z21.60 and achieving that certification for such units would be unduly burdensome for manufacturers. HPBA stated that forcing gas log sets to be certified to ANSI Z21.60 would result in match light systems, which do not use a standing pilot light, being outlawed. (HBPA, Public Meeting Transcript, No. 14 at p. 23) R.H. Peterson commented that 50 percent of all vented gas log sets are sold as match lit systems, and match lit systems cannot be certified to ANSI Z21.60 because the standard requires a pre-assembled pilot on the gas log burner. Additionally, R.H. Peterson noted that only 20 percent of the current market is certified to ANSI Z21.60. (R.H. Peterson, No. 218 at pp. 2–3; Public Meeting Transcript, No. 14 at pp. 51–52) R.H. Peterson stated that the certification requirements (*e.g.,* a gas regulator, warning and rating plates) would increase the cost of gas log sets by three times the current amount. (R.H. Peterson No. 218 at p. 3) SBA stated that most gas log sets are not currently certified to ANSI Z21.60, and that match lit sets (which are a large percentage of log sets sold) cannot be certified under ANSI Z21.60, thereby eliminating the market for match lit log sets. (SBA, No. 96 at p. 45) NRDC and EarthJustice commented that the ANSI standard for gas log sets is unwarranted, and if manufacturers do not have to certify to ANSI Z21.60, then match light systems can be used instead of standing pilot lights. (NRDC and EarthJustice, No. 216 at p. 2) Rasmussen noted that match-lighted sets do not fall under the requirements of the ANSI Z21.60 certification that require gas logs to be equipped with a safety system to shut down the flow of gas to the burner in the event of an interruption of the gas supply or a flame out. (Rasmussen, Public Meeting Transcript, No. 14 at p. 74)

The second criterion DOE proposed was that gas log sets must be sold without a thermostat and with a warranty provision expressly voiding all manufacturer warranties in the event the product is used with a thermostat. 76 FR 43941, 43953 (July 22, 2011) DOE received comments from Rasmussen and R.H. Peterson specifically about thermostats on gas log sets. Rasmussen described consumer use of gas logs with and without a thermostat as follows: using a thermostat, the consumer sets a temperature at which the gas log set cuts off the flame; without a thermostat, consumers usually set the unit too high for a short period of time, then lower the flame height and leave it at the lower setting for the duration of the evening. (Rasmussen, Public Meeting Transcript, No. 14 at p. 75) Rasmussen stated that having a thermostat on a gas log set is a minor feature and does not mean that the product is designed to supply heat, and further stated that thermostats are used with a very small proportion gas log set products. Rasmussen pointed out that a thermostat helps the elderly turn the gas log set on and off without having to reach down into the fireplace to do so. (Rasmussen, Public Meeting Transcript, No. 14 at pp. 116–117) Rasmussen concluded that, although the thermostat provision may not impact a big part of the gas log set market, its elimination would limit consumer choice, especially for less-mobile elderly; therefore, Rasmussen recommended the thermostat provision be stricken from the final rule for gas log sets. (Rasmussen, Public Meeting Transcript, No. 14 at p. 77) R.H. Peterson commented that they do not sell gas log sets with thermostats. (R.H. Peterson, Public Meeting Transcript, No. 14 at p. 119)

The third criterion is that the product must expressly and conspicuously be identified on its rating plate and in all manufacturer advertising and product literature as a ''Decorative Product: Not For Use As A Heating Appliance.'' DOE received comments from R.H. Peterson and Rasmussen about labeling requirements for gas log sets. R.H. Peterson commented that labeling would impose few additional costs and is a more efficient way of reducing the small energy usage from the low BTU standing pilots used in vented gas logs. R.H. Peterson suggested that rather than triple the cost of vented gas logs products, DOE could achieve very similar energy savings, however limited they are, by simply adopting labeling requirements. (R.H. Peterson, No. 218 at p. 10) Rasmussen commented that all warnings and labels are printed on stickers which are applied to a metal plate that accompanies the gas log set,

and more stickers may require a larger plate. (Rasmussen, No. 208 at p. 5) Further, Rasmussen objected to DOE's proposal to categorize gas log sets as a ''decorative product, not for use as a heating appliance.'' Rasmussen stated that classifying the products as vented hearth heaters, but stating they are not heating appliances, is confusing and that the label will likely be ignored by consumers. (Rasmussen, Public Meeting Transcript, No. 14 at p. 77)

The final criterion DOE proposed was that products manufactured on or after July 1, 2014 must not be equipped with a standing pilot light or other continuously-burning ignition source in order to qualify for exclusion from the energy conservation standards for vented hearth heaters.

DOE received comments from stakeholders opposing this restriction. Intertek commented that most gas log sets are manually lit and do not have an automatic ignition system, and that banning standing pilot lights would eliminate the lowest-cost, safe alternative. Further, Intertek stated that eliminating pilot lights would be problematic for gas log systems that are dual certified and can be used as either a vented or unvented appliance and require an oxygen depletion safety shutoff, which is a specialized form of a standing pilot. (Intertek, No. 198 at pp. 4–5) Similarly, Homefires stated that banning a safety control like the standing pilot light is a bad idea because it could lead to consumers using match light systems, which do not have a safety control. (Homefires, No. 10 at p. 1) R.H. Peterson stated that customers do not want intermittent ignition systems because: (1) It will triple the cost of the most common gas log set sizes; (2) there is no significant savings; and (3) they are difficult to install (due to lack of space). (R.H. Peterson, Public Meeting Transcript, No. 14 at pp. 47–48) Empire did not agree with the exclusion criterion for gas log sets, because they would have to incorporate an ignition system that would double the cost of the gas log set. (Empire, No. 221 at p. 2) Mr. Simmons commented that matchless ignition should be required for decorative gas logs that have standing pilots because typically, customers with matchless ignition turn off the pilot when the log set is not in use for long periods of time. (Mr. Simmons, No. 24 at p. 1) NPGA commented that DOE cannot exclude decorative log sets from coverage of the performance standard as not being intended as heating appliances and then ban standing pilot lights because EPCA does not provide DOE with the authority to impose design requirements for direct heating equipment under 42 U.S.C. 6291(6). (NPGA, No. 209 at p. 5)

Many stakeholders had concerns that elimination of standing gas pilot lights would significantly increase the cost of gas log sets. R.H. Peterson calculated that DOE's proposal would add $600 per unit to the cost of a gas log set. (R.H. Peterson, Public Meeting Transcript, No. 14 at p. 47) San Bernardino Fireplace & Woodstove stated that the certification requirements and the mandatory electronic ignition system would increase gas log prices from $300–$500 to $800–$1000, and that less than 1 percent of their current sales include piloted or remote ready systems because the high cost. (San Bernardino, No. 11 at p. 1) Percy Guidry Hearth & Patio noted that propane and liquefied petroleum vented gas logs are required to have safety pilot light kits and that requiring manufacturers to have a more advanced starter system would increase the cost of the product. (Percy Guidry Hearth & Patio, No. 18 at p. 3) SBA remarked that eliminating standing gas pilot lights would be costly to the industry because the majority of gas log sets have standing gas pilot lights and would have to be redesigned and recertified if this feature were eliminated; SBA stated that using electronic ignition systems as an alternative to standing gas pilot lights would increase the average price from $400 to over $1,000, thereby reducing sales and profit margin for small businesses or even eliminating the market if consumers choose not to purchase sets. (SBA, No. 96 at p. 6) Rasmussen stated that if match lit sets and standing pilots are prohibited, it leaves only the option of electronic ignition systems, which Rasmussen argued might eliminate gas log sets from the marketplace entirely, since electronic ignition systems add more than $650 to the retail price of match lit sets. Further, Rasmussen stated that propane is used in rural areas and requires a safety shutdown because it is a more dangerous fuel than natural gas, and that mandating electronic ignitions for those sets could make gas log sets unaffordable for the rural poor. (Rasmussen, Public Meeting Transcript, No. 14 at p. 79) NPGA commented that banning standing gas pilots in propane units would require redesign for over 95 percent of propane units, which would be burdensome and costly. (NPGA, No. 209 at p. 8)

Several stakeholders also opposed eliminating standing pilot lights from gas log sets because of installation limitations associated with this product. Rasmussen commented that gas log sets with electronic ignition systems are hard to install because gas logs do not have side and under floor spaces to hide the electronic ignition components. Rasmussen further explained that the majority of gas log set installations are not new construction or extensive remodels, meaning electronic ignition components must be installed in the existing firebox. Given that electronic ignition components are greater in number and size than standing pilots and are more heat-sensitive, Rasmussen stated that improper location can lead to heat damage, which poses a safety hazard. Rasmussen noted that since most fireplaces do not have a power source nearby, the electronic ignition system must rely on batteries which are very heat sensitive. Rasmussen stated that the size of electronic ignition systems means the gas log set must usually be downsized in order to accommodate the necessary control, which can detract from the aesthetic appeal. (Rasmussen, Public Meeting Transcript, No. 14 at pp. 80–81) American Gas Log commented that gas log sets with electronic ignition are hard to install, because most gas log sets are retrofitted into wood-burning fireplaces, and typical wood-burning fireplaces do not have compartments to shield the electrical components from the heat. American Gas Log stated that it has not been able to develop a safe and reliable retrofit gas log set with electronic ignition. (American Gas Log, No. 49 at p. 2)

Stakeholders also commented about the compliance dates for vented gas log sets related to both the April 2010 final rule and the July 1, 2014 proposed date by which manufacturers would have had to equip their products with non-continuously-burning ignition systems. Rasmussen stated that component manufacturers of electronic ignition systems will have difficulty adjusting within three years to the new demands of gas log set manufacturers, which include no standing pilot, battery operation, and small BTU footprint. (Rasmussen, Public Meeting Transcript, No. 14 at p. 107) NPGA commented that the April 2010 final rule did not apply to gas log sets, so therefore, the compliance dates from that rule cannot apply to gas log sets, and asserted that the standards applicable to gas log sets would have to be at least five years from date of promulgation of a standard for gas log sets. (NPGA, No. 209 at p. 6) R.H. Peterson argued that the statute requires DOE to give manufactures three years from any final rule and asserted that to make the ANSI certification requirement applicable in April 2013 is wrong, because before this rulemaking,

DOE had considered gas log sets not to be vented hearth heaters subject to this requirement. (R.H. Peterson, Public Meeting Transcript, No. 14 at pp. 55–56) HBPA stated that the current proposed compliance dates are illegal and non-achievable, and elaborated that since the April 16, 2010 final rule did not apply to gas log sets, the April 2013 deadline should not apply. (HBPA, Public Meeting Transcript, No. 14 at pp. 19–20)

As previously stated, DOE is not adopting any exclusion criteria for vented gas log sets at this time. Rather, in light of the comments received, DOE has determined that it must conduct additional research into the gas log set market prior to adopting any specific criteria for exclusion from the direct heating equipment standard, which would be done through subsequent rulemaking. DOE appreciates the comments received from the interested parties, as they raised significant issues for DOE to address and lead DOE to exclude all vented gas log sets from the standard. As a result, DOE is not addressing each comment in detail.

b. Vented Hearth Products

For vented hearth products (other than vented gas log sets), the first criterion that a product must meet to be considered a primarily decorative vented hearth product is that it must be certified to a certain ANSI standard. 76 FR 43941, 43953 (July 22, 2011) Specifically, for vented hearth products, it must be certified to ANSI Standard Z21.50–2007, *Vented Gas Fireplaces,* but not be certified to ANSI Standard Z21.88–2009, *Vented Gas Fireplace Heaters.* (A unit could not be certified to both standards and still qualify for the exclusion.) DOE is incorporating by reference both of these standards into the DOE's definitions at 10 CFR 430.2 and the incorporation by reference provisions at 10 CFR 430.3. DOE recognizes that the hearth products industry has attempted to distinguish between heater and primarily decorative products using the certification under one of these standards as the criterion for classification into one category or the other. However, although this is a general practice in industry, DOE notes that not all manufacturers apply this criterion consistently to differentiate their heating hearth products from their primarily decorative products. As such, DOE has determined that this criteria, although an important part of DOE's definition, cannot be used alone to differentiate between the two types of products. In addition, ANSI Standard Z21.88 contains provisions that allow the main burners to be thermostatically-controlled, which ANSI Standard Z21.50 does not allow. Therefore, DOE believes this criterion will be helpful in differentiating, at least in part, between vented hearth heaters and vented hearth products that are primarily decorative in nature.

In response to this proposed criterion in the NOPR, DOE received comments from several stakeholders. HPBA stated that there are decorative gas fireplaces that are not certified to ANSI Z21.50 (the standard covering decorative gas fireplaces) and that it has submitted this information to DOE. (HPBA, Public Meeting Transcript, No. 14 at pp. 20–21) AGA remarked that ANSI Z21.50 prohibits thermostats except for fireplaces installed in bedrooms or bedsitting rooms in Canada, and this rulemaking would prevent alignment of Canadian and U.S. standards. However, Rasmussen agreed with DOE that ANSI Z21.88 and ANSI Z21.50 differentiate decorative and heater-rated fireplaces, but noted that not all jurisdictions on the eastern seaboard require ANSI Z21.88 or ANSI Z21.50 certification. (Rasmussen, Public Meeting Transcript, No. 14 at p. 72)

In response, DOE notes that although Canadian and U.S. standards may not align, DOE believes that this criterion provides an important and necessary means of distinguishing vented hearth heaters and vented hearth products that are primarily decorative in nature, because it is the method of differentiation that industry has traditionally used. However, as provided by HPBA, DOE found that some products asserted to be primarily decorative were certified to the heater standard and some products were certified to both ANSI standards. In response to HPBA's concerns about products that are not certified to ANSI Z21.50, DOE believes that the burden manufacturers incur by certifying that small subset of products would be less than burdens that would have been incurred under the conditions of the April 2010 final rule. As a result, DOE believes that the first exclusion criterion is reasonable and essential in differentiating between primarily decorative and heating hearth products.

The second criterion in the definition is that the product must be sold without a thermostat and with a warranty provision expressly voiding all manufacturer warranties in the event the product is used with a thermostat. 76 FR 43941, 43953 (July 22, 2011) Hearth products intended for heating sometimes use thermostats to automatically turn on and off based on the temperature of the surrounding space. Often, thermostats are optional equipment that may be installed in the field. DOE believes that products intended to be used primarily for decorative purposes would not need to employ a thermostat. A thermostat cycles the appliance on and off based on the temperature of the room. If a consumer is concerned with ambiance (which should be the case for primarily decorative appliances), then there is no reason why a thermostat would be required to automatically control the operation based on the room temperature. DOE believes that a provision in the warranty that voids it if a thermostat is installed will discourage the misuse of vented hearth products that are intended primarily to be decorative and discourage the evasion of energy conservation standards by those who purchase primarily decorative products and seek to use them as heaters.

In response to DOE's proposal of this criterion in the NOPR, DOE received several comments from interested parties. Intertek remarked that primarily decorative gas appliances are not allowed, under applicable codes and safety standards, to be supplied or installed to operate under thermostatic control, and that such products are supplied with an on/off control which may be a knob or valve of the appliance. Intertek stated that DOE has correctly identified thermostatic control as a key distinguishing feature of heating appliances. (Intertek, No. 0198 at pp. 2–3) Rasmussen stated that it does not take issue with removing thermostats, but noted that the issue of banning thermostats on primarily decorative fireplaces was confusing, since the thermostat acts as an automatic shutoff device that prevents the consumer from over-using a primarily decorative appliance for heating purposes. Rasmussen asserted that DOE has focused too much on the startup function of thermostats rather than on the shut-down of the flame. (Rasmussen, Public Meeting Transcript, No. 14 at p. 120; Rasmussen, Public Meeting Transcript, No. 14 at p. 75) Many stakeholders opposed banning thermostats for safety reasons. AmeriGas, Heritage Propane, Siouxland, Penn Valley, Gas-Fired Products, and Gresham Petroleum commented that eliminating thermostats would decrease safety and increase energy consumption because the decorative products would not have a trigger for automatic shutoff and would be left on by the consumer. (Form Letter Comments; Heritage Propane; No. 33 at p. 1; Siouxland, No. 85 at p. 1; Penn Valley, No. 116 at p. 1; Gas-Fired Products, No. 155 at p. 1; Gresham Petroleum, No. 165 at p. 1)

In response, DOE believes that this criterion is important to help differentiate between primarily decorative and heating appliances, and to discourage the misuse of primarily decorative vented hearth products. In response to the comments about safety, DOE finds that eliminating thermostats has not been proven to have a significant effect on the products safety. DOE notes that many hearth products are available on the market without thermostats, and there is no indication in the manufacturer literature, nor have the stakeholders provided any substantiation, that a hearth product without a thermostat is either unsafe or poses safety risks.

The third criterion is that the product must expressly and conspicuously be identified on its rating plate and in all manufacturer advertising and product literature as a ''Decorative Product: Not for use as a Heating Appliance.'' 76 FR 43941, 43953 (July 22, 2011). This requirement will provide additional clarification for consumers and installers and make it obvious that the product is intended primarily for decorative purposes. DOE received several comments on this criterion in response to the July 2011 NOPR.

R.H. Peterson commented that, in the NOPR, DOE recognized the importance of the role consumers played, and considered DOE's suggestion on better labeling requirements for primarily decorative fireplaces an attractive option for energy savings. (R.H. Peterson, No. 218 at p. 10) AGA stated that the product was not considered in the Federal Trade Commission's labeling discussion, and that primarily decorative products should not be required to have a label. (AGA, Public Meeting Transcript, No. 14 at pp. 85–86)

DOE disagrees with AGA's comment and notes that the exclusion criterion for manufacturers to disclose when their products are decorative in nature is not mandated for all hearth products, but rather, it is optional for those manufacturers who elect to pursue the exclusion for products that are decorative in nature. If such labeling is deemed to be overly burdensome, manufacturers have the choice to redesign products in order to meet the standards for gas hearth direct heating equipment established by the April 2010 final rule. As noted above, these products, although primarily decorative in nature, provide heat and are appropriately classified as direct heating equipment under the statute. Therefore, DOE believes it has the authority to require this criterion and believes this criterion is essential to help inform consumers about the intended use of the product.

The final criterion proposed would require that products manufactured on or after July 1, 2014, must not be equipped with a standing pilot light or other continuously-burning ignition source in order to qualify for exclusion from energy conservation standards for vented hearth heaters. 76 FR 43941, 43953 (July 22, 2011) According to DOE's market research, more than half of the primarily decorative hearth product market would not be impacted by this limitation because the products already utilize alternatives to a standing pilot light, such as an intermittent pilot or electronic ignition. However, DOE notes that some products on the market would have needed to be: (1) Redesigned to eliminate the use of standing pilot lights or other continuously-burning ignition source; (2) redesigned by April 16, 2013 to meet the required energy conservation standard level for gas hearth direct heating equipment established by the April 2010 final rule; or (3) removed from the market prior to July 1, 2014. DOE believes that given the prevalence and ease of availability of the technological alternatives to standing pilot lights and other continuously-burning ignition sources (*e.g.,* electronic ignition, intermittent pilot) and the experience of manufacturers in implementing these alternatives, a compliance date of July 1, 2014 would have likely allowed a reasonable amount of time for manufacturers to redesign or remove from the market their products with standing pilots or shift production to product lines without a standing pilot or other continuously-burning ignition source. However, in consideration of the comments discussed below, DOE has revised the July 1, 2014 compliance date to January 1, 2015, in order to provide manufacturers with more than three full years from the time of publication of the final rule to implement changes to remove standing pilots or other continuously-burning ignition sources from products that would require it.

In response to this proposed requirement, Short's Stoves stated that most manufacturers are already introducing electronic ignition on their fireplaces and gas log sets, which will save energy by turning off the pilot when not in use. (Short's Stoves, No. 174 at p. 1) NPGA commented that DOE cannot ban standing pilot lights because EPCA (42 U.S.C 6291(6)) does not provide DOE with the authority to impose design requirements. (NPGA, No. 209 at p. 5) Intertek stated that standing pilot lights are an important safety feature that may not be readily replaced with electronic ignition systems or other intermittent alternatives, and suggested DOE consider the benefit of allowing primarily decorative gas appliances to include standing pilot lights, because the secondary heating function can provide sufficient backup heating during a power outage, and it reduces the risk of large explosive ignitions. (Intertek, No. 198 at pp. 3–4)

In response to NPGA's comment about DOE's authority, DOE notes that it is not mandating a design requirement for primarily decorative hearth products, because meeting the exclusion criteria is completely optional and at the manufacturers' discretion. If manufacturers do not certify their product to ANSI Z21.50, then the product will not be considered primarily decorative, and the product may have a standing pilot light; however, if the product does not meet the criteria for the decorative exclusion, then it must comply with the energy conservation standards applicable to gas hearth direct heating equipment. DOE appreciates Intertek's comment about product safety, but it finds that eliminating standing pilot lights does not significantly reduce product safety, because products with alternative ignition systems are ubiquitously available on the market today. In the event of a power outage, DOE notes that electronic ignition systems are commonly equipped with a battery backup system that can provide power. Given the prevalence of alternatives to continuously-burning ignition systems in the market, DOE does not find there is adequate evidence of safety concerns related to replacing standing pilot ignitions or other continuously-burning ignition sources.

Barbara Jenkins, Percy Guidry Hearth & Patio, Arizona Gas, and San Bernardino Fireplace & Woodstove stated that eliminating the standing pilot light is unreasonable, because the alternative is electronic ignition which is expensive and requires more maintenance. (Barbara Jenkins, No. 22 at p. 1; Percy Guidry, No. 18 at p. 2; Arizona Gas, No. 98 at p. 2 ; San Bernardino, No. 11 at p. 1) San Bernardino Fireplace & Woodstove explained that electronic ignition systems are unreliable, and that 9 out of the 10 electronic ignition systems the company has sold did not work well and had to be bought back. (San Bernardino, No. 11 at p. 1) Exotic Flames and Arizona Gas stated that electronic ignition systems are cost-prohibitive and would impact small distributer businesses. (Exotic Flames,

No. 19 at p. 1; Arizona Gas, No. 98 at p.2) Intertek commented that electronic ignitions systems are more expensive that standing pilot lights, because they require an electrician to install a circuit. (Intertek, No. 198 at p. 4) Hearth and Home Shoppe commented that banning standing pilot lights is unreasonable, because electronic ignitions will not work effectively at very cold temperatures and electronic pilots are extremely expensive. (Hearth and Home Shoppe, No. 207 at p. 1) Golden Blount stated that eliminating standing gas pilot lights does not promote safety and that the energy savings do not outweigh the increased cost of an electronic ignition system. (Golden Blount, No. 210 at p. 1)

In its analysis for the April 2010 final rule, in examining design changes between a baseline heating unit and a unit at efficiency level 1 (which DOE assumed would be met through upgrading a baseline unit with an electronic ignition), DOE examined the differences between the components included in an electronic ignition system and a standing pilot ignition. In the analysis for the April 2010 final rule, DOE found the efficiency benefits associated with removing the standing pilot to be cost-effective (75 FR 20112, 20219 (April 16, 2010)), and believes that the same is true for primarily decorative hearth products given the similarities between the two in terms of components and construction. In response to the Hearth and Home Shoppe's comment about the effective operational temperature limit of electronic ignition, DOE finds that this concern is mitigated by the fact that only primarily decorative products will not be allowed to have a standing pilot light, and such products will not be used as the primary heat source of the residence.

Interested parties also submitted comments about the July 1, 2014, compliance date DOE proposed for the elimination of standing pilot lights, and the April 16, 2013, date by which manufacturers must meet the other exclusion criteria or the standard for gas hearth direct heating equipment. HBPA stated that: (1) The proposed July 1, 2014 compliance date for pilot restrictions contradicts the law; (2) DOE does not provide justification for the deadline; and (3) the deadline fails to consider the pressure it places of testing laboratories and their capacity. (HPBA, No. 201 at p. 20) Conversely, NRDC and EarthJustice commented that the proposed compliance dates are reasonable, because there are several low-cost options available to manufacturers seeking to replace standing pilot light systems, including manual and electronic spark ignitions systems. (NRDC and EarthJustice, No. 216 at p. 2)

Several interested parties commented that compliance deadlines for primarily decorative vented gas fireplaces and gas log sets are arbitrary and unreasonable and cannot be met by the industry, because most manufacturers do not have the funds to meet the deadline. (Crik-IT, No. 15 at p. 2; Sun Dance Leisure, No. 17 at p. 2; Dealers LP Equipment, No. 20 at p. 1; Creekside, No. 21 at p. 1; HWAM, No. 43 at p. 1; American Gas Log, No. 49 at p. 1; Perfection, No. 115 at p. 2; Penn Valley, No. 16 at p. 2; Sheldon Skolnick, No. 118 at p. 1; Hearth and Home, No. 144 at p. 2; American Gas Log, No. 146 at p. 2; Form Letter Comments, Hearth and Home Shoppe, No. 207 at p. 1; New Jersey Propane Gas Association, No. 212 at p. 1; Mr. Pierce, No. 219 at p. 1; Advantage, No. 13 at p. 1; Empire, No. 221 at p. 2) NPGA commented that certification would be extremely burdensome to manufacturers. (NPGA, No. 209 at p. 8) Empire stated that manufacturers need time for research and development, and also the volume of certifications will increase, making 2014 too aggressive for an industry made up of small businesses with limited resources. (Empire, Public Meeting Transcript, No. 14 at p. 62) HBPA stated that according to Executive Order 13563, DOE needs to consider the cumulative impact of regulations, and since burdensome regulations have already been imposed on the hearth industry, adding more regulations would create a backlog on the few independent testing labs that certify hearth products. They believe that labs will not be able to handle the surge of new equipment that needs to be tested from the EPA New Source Performance Standards for wood-burning products (expected in the first quarter of 2013) and the current DOE regulations for heater-rated hearth products. (HPBA, Public Meeting Transcript, No. 14 at pp. 20–21) Modern Gas commented that the industry is not ready to implement new standards by the proposed compliance deadline. (Modern Gas, No. 0213 at p. 1) Short's Stoves stated that DOE's compliance timeline will be detrimental to the industry, because most small manufacturers do not have the funds to meet the regulations and redesign their equipment. (Short's stoves, No. 174 at p. 1) Lennox stated that the proposed date violates the established precedent allowing at least three years for industries to implement new energy conservation standards, and requests DOE justify the accelerated effective date. Lennox explained that the current timeline places tremendous burden on the manufacturers. (Lennox, No. 6 at pp. 1–2) Empire suggested DOE consider extending the compliance date to be effective three years after the publication of the final rule. Empire explained that 70 percent of the industry shipments are primarily decorative hearth products and that the manufacturers, which are mostly small businesses, need more time for research and development and certification. (Empire, No. 4 at p. 2; Empire, Public Meeting Transcript, No. 14 at p. 61)

As explained below, DOE believes that the compliance date of April 16, 2013 for meeting the first three exclusion criteria is reasonable, because the exclusion criteria adopted by this rulemaking for primarily decorative vented hearth products are both achievable and optional. The April 2010 final rule would require most primarily decorative equipment covered by this rulemaking to comply with the energy conservation standards for vented hearth products by April 16, 2013, giving manufacturers three full years lead time contemplated under EPCA to upgrade their products to meet the energy conservation standards, if they choose to do so. Today's final rule amends the April 2010 final rule to reduce the difficulty of meeting the exclusion. DOE notes that beyond statements of their opinion, the commenters have provided no data or other information to show why they could not meet the deadlines DOE has proposed. DOE does not believe that certification, elimination of thermostats, and proper labeling could not be accomplished by April 16, 2013, and DOE believes that it is important to implement these changes to the exclusion for decorative products by the time compliance is required with the direct heating equipment standards, so as to prevent consumer confusion and disruptions in the marketplace. Moreover, DOE notes that it is no longer requiring gas log sets to comply with exclusion criteria nor the energy conservation standard, which will reduce the burden on test labs performing certification testing. DOE recognizes that elimination of the standing pilot light or other continuously-burning ignition source would likely require a more substantial change to manufacturers' affected product lines. Accordingly, for this criterion DOE is changing the compliance date from July 1, 2014, as proposed in the NOPR, to January 1, 2015 to provide more than three years

before the compliance date for removing continuously-burning ignition sources. DOE believes the January 1, 2015 compliance date for this criterion is reasonable, particularly given that the alternatives to continuously-burning ignition sources are readily available and currently used in a number of hearth products available on the market.

C. National Energy Savings

As noted above, in the NOPR, DOE proposed that to qualify for an exclusion from the current energy conservation standards for products that are primarily decorative in nature, vented gas hearth products and vented gas log sets manufactured on or after July 1, 2014, must not be equipped with a standing pilot light or other continuously-burning ignition source. 76 FR 43941, 43944–45 (July 22, 2011). For the NOPR, DOE analyzed the energy savings expected to result from exclusion of the standing pilot light or other continuously-burning ignition source in the amended ''vented hearth heater'' definition. Based on information about vented hearth product models available in the market,[8] DOE estimated that about 38 percent of the vented decorative hearth models on the market would need to be redesigned to eliminate the use of standing pilot lights or other continuously-burning ignition sources. DOE also estimated that 20 percent of vented gas logs would have standing pilot lights or other continuously-burning ignition sources, based on a 1997 GTI study.[9] The remaining portion of the market is assumed to already utilize ignition-based alternatives, such as an intermittent pilot, electronic ignition, or match light ignition system (gas logs only).

Several parties criticized DOE's estimate of the fraction of vented gas logs that would have standing pilot lights or other continuously-burning ignition sources. (HPBA, No. 0014 at p. 26; RH Peterson, No. 0218 at p. 2; Rasmussen, No. 0208 at p. 6) DOE acknowledges the above comments. However, DOE is not adopting in this final rule a standing pilot removal requirement for this product.

To estimate the energy savings, in the NOPR, DOE assumed that all primarily decorative hearth products and vented gas log models with standing pilot lights or other continuously-burning ignition sources would be replaced with an intermittent pilot ignition, and would have an average duration of the pilot operation of about 37.5 h/yr (the same as the main burner operating hours [10]). On average, continuous pilot energy use is about 350 Btu/h [11] for primarily decorative vented hearth products [12] and 1,250 Btu/h for vented gas logs.[13] For both vented hearth products and vented gas log sets, DOE assumed that pilot lights operate year round (*i.e.,* 8,760 h/yr) for 75 percent of the installations and that for the remaining 25 percent, the consumer operates the pilot for about one-fourth of the year (*i.e.,* 2,190 h/yr). The average annual energy savings amount to 2.67 million Btu per unit for primarily decorative vented hearth products and 9.53 million Btu per unit for vented gas logs. DOE assumed an average lifetime of 15 years for both primarily decorative vented hearth and vented gas logs units and average annual shipments of 460,000 primarily decorative vented hearth units and 103,000 vented gas log units.

Using the above assumptions, in the NOPR, DOE calculated the national energy savings over the analysis period to be 0.17 quads for primarily decorative hearth products and 0.07 quads for vented gas log sets under the proposed revised definition of ''vented hearth heater'' with an exclusion that would eliminate the standing pilot lights on those units. In the NOPR, DOE estimated that the elimination of standing pilots or other continuously-burning ignition sources in primarily decorative vented hearth products and gas log sets would result in an additional 0.12 quads of energy savings over the 30-year period from 2014 through 2043, beyond the savings estimated by the April 2010 final rule. 76 FR 43941, 43943 (July 22, 2011).

Commenting on the NOPR, several parties stated that DOE overestimated the national energy savings for primarily decorative hearth products and vented gas log sets under the proposed revised definition of ''vented hearth heater.'' (NPGA, No. 0209 at p. 9; SBA, No. 0096 at p. 6; RH Peterson, No. 0218 at p. 3) Commenters criticized DOE's assumptions in three main areas: (1) Product operating hours; (2) pilot light usage; and (3) pilot light gas input rate.

Regarding product operating hours, Rasmussen commented that the operating hours for primarily decorative hearth products and vented gas logs are highly variable. (Rasmussen, No. 0208 at p. 6) Homefires commented that for primarily decorative vented gas appliances, the typical system is only in use for 20 hours per year. (Homefires, No. 0010 at p. 1) DOE agrees that the operating hours for primarily decorative hearth products and vented gas logs are highly variable, but for the current national energy savings analysis, it was only necessary to use an average value. For primarily decorative hearth products, DOE used 35 hour per years based on a report prepared for HPBA.[14]

Regarding pilot light usage, several parties stated that DOE overestimated the number of customers that leave their standing pilot light on during the non-heating season. (Rasmussen, No. 0208 at p. 7; Intertek, No. 0198 at p. 4) Exotic Flames and SBA stated that most standing pilot lights are not left on all the time, and Independence Marketing commented that most pilot lights are only left on during the winter. (Exotic Flames, No. 0019 at p. 1; SBA, No. 0096 at p. 6; Independence Marketing Ltd, No. 0214 at p. 1) Homefires stated that the pilot light is generally turned off after the customer uses the system. (Homefires, No. 0010 at p. 1) Arizona Gas stated that most standing pilot lights are lit at most 4 to 5 months or, for propane systems, are only lit for each use to conserve fuel. (Arizona Gas, No. 0098 at p. 2) HPBA stated that DOE's assumption that 75 percent of all standing pilots are left on all year, while 25 percent are left on for a quarter of the year, lacks evidence. (HPBA, No. 0201 at p. 2) NPGA stated that 75 percent of consumers keep their pilot lights on for

[8] U.S. Department of Energy—Office of Codes and Standards, Analytical Tools: Energy Conservation Standards for Residential Water Heaters, Direct Heating Equipment, and Pool Heaters (April 27, 2010). (*http://www1.eere.energy.gov/buildings/appliance_standards/residential/pdfs/htgp_finalrule_correction.pdf*).

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

[10] Houck, James, ''Residential Decorative Gas Fireplace Usage Characteristics'' (Report prepared for HPBA) (2010).

[11] U.S. Department of Energy—Office of Codes and Standards, Technical Support Document: Energy Conservation Standards for Residential Water Heaters, Direct Heating Equipment, and Pool Heaters (April 27, 2010).

[12] U.S. Department of Energy—Office of Codes and Standards, Technical Support Document: Energy Conservation Standards for Residential Water Heaters, Direct Heating Equipment, and Pool Heaters (April 27, 2010).

[13] This value was derived from data collected on the following manufacturer Web sites:

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

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

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

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

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

[14] Houck, James, ''Residential Decorative Gas Fireplace Usage Characteristics'' (Report prepared for HPBA) (2010).

three months of the year, and only 25 percent remain on year-round. (NPGA, No. 0209 at p. 9)

For primarily decorative hearth products, DOE conducted further review in response to the comments, and accordingly revised its analysis as follows: Namely, that 50 percent of consumers keep their pilot lights on for three months of the year, 25 percent keep them on only when the equipment is being used, and 25 percent keep them on year-round. The fraction that keeps pilot lights on only when the equipment is being used is to address the pilot operation of propane systems [15] and other situations when the user chooses to turn off the pilot after each use.

Regarding the gas log set pilot light gas input rate, a number of parties stated that DOE's assumption that gas log pilot systems use 1,250 Btu/hr was too high. (Rasmussen, No. 0208 at p. 6; RH Peterson, No. 0218 at p. 3; SBA, No. 0096 at p. 6) DOE acknowledges the information provided on vented gas log pilot systems. However, DOE did not include energy savings for vented gas log sets in its current analysis, because the standing pilot removal requirement for this product is not covered under today's rule. For primarily decorative hearth products, Intertek commented that on average, most pilot lights use 800 Btu/hr. For primarily decorative hearth products, DOE revised its analysis based upon the data provided by Intertek, which is similar to the data reported by manufacturers and distributors of hearth products and Natural Resources Canada (NRCAN) Web sites, as well as an EER Consulting report and a GRI study.[16]

As a result of revising the assumptions for primarily decorative vented hearth products about the number of customers that leave their standing pilot light on and the pilot light gas input rate, DOE calculated that if all manufacturers of vented hearth products who could do so availed themselves of the exclusion, the national energy savings over the analysis period would be 0.17 quads for primarily decorative vented hearth products (not including gas log sets). According to DOE's estimates, elimination of standing pilots and other continuously-burning ignition sources in primarily decorative vented hearth products would result in an additional 0.04 quads of energy savings over the 30-year period from 2015 through 2044, beyond the savings estimated by the April 2010 final rule. DOE did not include the energy savings for vented gas log sets in its revised NES calculation, because the standing pilot elimination requirement for gas log sets has been removed from the exclusion for these products in today's final rule. In conclusion, even with modifications to DOE's National Energy Savings analysis based upon public comments (where substantiated), DOE has determined that the amendments in today's final rule would continue to provide substantial additional energy savings beyond those attributable to the April 2010 final rule.

D. Other Comments

1. Test Procedures

In response to the definition of ''vented hearth heater'' proposed by DOE in the July 2011 NOPR, DOE received a number of comments regarding the applicability of the DOE test procedures for primarily decorative hearth products and vented gas log sets.

HPBA stated that the AFUE methodology is inapplicable to primarily decorative gas fireplaces and cannot even be conducted on gas log sets; therefore, there is no applicable efficiency test method for these products. (HPBA, Public Meeting Transcript, No. 14 at pp. 21–22) NPGA stated that there is not an applicable test procedure to measure the efficiency of these products. (NPGA, No. 209 at p. 5) Further, NPGA stated that the current DOE test procedure cannot be applied to vented primarily decorative hearth products, because the test procedure measures convective heat transfer, rather than radiative heat transfer. (NPGA, No. 209 at pp. 6–7) SBA and AGA made similar comments. (SBA, No. 96 at p. 4; AGA, No. 217 at pp. 1–2) Several interested parties stated that there are no test standards to determine whether DOE's interpretation of the primarily decorative hearth products definition is appropriate, and that primarily decorative hearth products are different from direct heating equipment because they produce heat indirectly by their operation. (Form Letter Comments; Oahu Gas Service, No. 166 at p. 1; Heritage Propane, No 33 at p. 1; American Gas Log, No. 146 at p. 1; Penn Valley, No. 116 at p. 1; Gresham Petroleum, No. 165 at p. 1; HWAM, No. 43 at p. 1; Slate Spring, No. 92 at p. 1; Perfection, No. 115 at p. 1; Hearth and Home, Inc., No. 144 at p. 1; American Gas Log, No. 49 at p. 1; Sheldon Skolnick Associates, No. 118 at p. 1) R.H. Peterson commented specifically that gas log sets are not able to be tested using the standard AFUE test method. (R.H. Peterson, Public Meeting Transcript, No. 14 at pp. 36–37) Similarly, Short's Stoves commented that there is no sure way to test gas log sets, because they are installed into existing wood-burning fireplace which are not uniform. (Short's Stove, No. 174 at p. 1) R.H. Peterson commented that: (1) No vented gas log sets can or ever will be able to meet the 68-percent heating efficiency standard; (2) DOE knows there is no approved test; and (3) the only approved test does not work on vented gas logs. (R.H. Peterson, No. 218 at p. 5)

Intertek stated that there currently is no recognized test method for evaluation of the efficiency of gas log sets and that it is difficult to adapt the test procedure for vented hearth products to primarily decorative products, because the basic premise of the vented hearth product test procedure is that the appliance is operated to satisfy a heating load. (Intertek, No. 198 at pp. 2–3) NPGA stated that the efficiency of a product can be determined only in reference to how efficiently it serves its intended purpose, so the DOE test procedure does not apply to primarily decorative hearth products. (NPGA, No. 209 at p. 4) NPGA stated that to measure energy efficiency and stack losses, it is critical to have a test procedure that can account for the high and variable amount of dilution air, especially for gas log sets, and explained that based on testing by the Gas Technology Institute (GTI), the amount of CO_2 required to account for stack losses creates too large an error

[15] According to Energy Information Administration's 2009 Residential Energy Consumption Survey, 23 percent of secondary fireplaces use propane. For more information see: *http://www.eia.gov/consumption/residential/data/2009/.*

[16] This value was derived from data collected on the following manufacturer Web sites:

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

EER Consulting: Mullen, J. ''Input Rate of Pilot Burners on Gas Fireplaces'' (Consultant Report). EER Consulting. November 6, 2011.

NRCAN Web site. NRCAN. ''Personal: Residential: Chapter 3—All About Gas Fireplaces'' (URL: *http://oee.nrcan.gc.ca/Publications/infosource/Pub/home/all_about_gas_fireplaces_chapter3.cfm?text=N&printview=N*).

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

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

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

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

Fireplace Professionals. Frequently Asked Questions. (URL: *http://www.fireplaceprofessionals.com/faqs.htm*).

band to produce accurate results. (NPGA, No. 209 at p. 7) AGA stated that products designed and certified to ANSI Z21.50 or ANSI Z21.60 have been included, though they have no applicable test procedure. Further, AGA stated that when the test procedures for home heating equipment (not including furnaces) were developed, the ANSI Z21.50 or ANSI Z21.60 products were not considered part of the developed test method. (AGA, Public Meeting Transcript, No. 14 at pp. 21–22) AGA also stated that manufacturers that do not comply with ANSI Z21.50 or manufacturers who certify to a different standard would not be excluded from the direct heating equipment standards, but would not be able to demonstrate compliance under the current test procedures. (AGA, No. 217 at p. 2)

In considering the test procedures for vented home heating equipment as they apply to hearth products, DOE recognizes that the test procedures may not be applicable for gas log sets. Because DOE is not requiring the vented gas log sets to meet the standards for gas hearth direct heating equipment and is not requiring the products to meet any criteria for exclusion, the applicability of test procedures for those products is no longer relevant. However, as covered products, DOE may develop a test procedure for vented gas log sets in the future.

In the December 2009 NOPR, DOE proposed that its test procedures for vented direct heating equipment be applied to establish the efficiencies of vented gas hearth direct heating equipment. 74 FR 65852, 65861 (Dec. 11, 2009). In the April 2010 final rule, DOE noted that it received no comments from interested parties raising any concern in response to the NOPR about the application of the DOE test procedures for vented direct heating equipment to gas hearth direct heating equipment. 75 FR 20112, 20123 (April 16, 2010). DOE believes, therefore, that the test procedures for vented home heating equipment are generally applicable to gas hearth direct heating equipment. DOE believes that heating products can be tested using the vented home heating equipment test procedures, even though the test procedure may not be tailored specifically to these products. However, DOE is considering modifications to the direct heating equipment test procedures in a test procedure rulemaking for heating products (*i.e.,* water heaters, direct heating equipment, and pool heaters). DOE published a request for information in the **Federal Register** on October 12, 2011, which has a 45-day comment period that is open until November 28, 2011. 76 FR 63211. DOE is considering potential changes to the test procedure for vented home heating equipment that would clarify the procedure with respect to hearth heating products to reduce ambiguity and ensure that it is applied uniformly to vented hearth heating products. DOE encourages interested parties to comment on any test procedure issues as a part of that ongoing rulemaking. Additionally, DOE notes that if there is adequate evidence that a certain subset of products exists that have characteristics that prevent them from being tested according to the prescribed test procedures, manufacturers have the option of submitting a petition of waiver in accordance with 10 CFR 430.27.

2. DOE Analysis and Public Meeting Conduct

DOE received comments generally about the September 1, 2011 public meeting and its analysis for the July 2011 NOPR. HPBA stated that public meeting was not conducted in accordance with law, because DOE did not provide any substantive response to questions from interested parties. (HPBA, No. 201 at p. 6) Similarly, R.H. Peterson stated that DOE offered only non-responsive answers during the public meeting. (R.H. Peterson, No. 218 at p. 10) NPGA stated that DOE violated EPCA by refusing to participate in questioning at the public meeting and by not providing adequate information upon which to comment. (NPGA, No. 209 at pp. 5–6) Further, NPGA asserted that DOE is imposing a performance and design standard in the current rulemaking and has not undergone the appropriate rulemaking process by not fully considering the standards' technological feasibility and economic justification. (NPGA, No. 209 at pp. 5–6) NPGA stated that because the underlying final rule was in error, the July 2011 NOPR proposing to amend the April 2010 final rule, is also in error. (NPGA, Public Meeting Transcript, No. 14 at p. 31) In addition, HPBA stated that DOE has not submitted relevant data, documentation, or research to explain, support, or clarify the NOPR, and that these materials must be made publicly available in advance of the comment period. (HPBA, No. 128 at p. 1) HPBA also stated that DOE failed to fulfill its obligation to consider other less-costly alternatives to the prohibition of standing pilot lights, and asserted that simply providing information for the public to make informed energy conservation decisions would achieve equal or greater energy conservation benefits. (HPBA, Public Meeting Transcript, No. 14 at pp. 23–24) HPBA stated that there is a disconnect in this proposal, because DOE did not look at whether applying heating standards to primarily decorative products was technologically feasible or economically justified when the original standards were put in place. (HPBA, Public Meeting Transcript, No. 14 at p. 112) Further, HPBA stated that the heating efficiency standards are not technologically feasible for gas log sets and many primarily decorative gas fireplaces. (HPBA, Public Meeting Transcript No. 14 at p. 22) R.H. Peterson stated that it would be impossible for them to redesign and certify their products that would need to be recertified with the new pilot light restriction. (R.H. Peterson, Public Meeting Transcript, No. 14 at p. 56)

In response, DOE notes that an extremely detailed analysis was done by DOE in promulgation of the April 2010 final rule. Because the NOPR proposals were definitional changes only to that fully analyzed rule and given the temporal proximity of the two rulemakings, DOE was able to rely on that prior analysis and to analyze the incremental changes that were being proposed in the July 2011 NOPR. Further, in this rulemaking proceeding, DOE is not imposing any mandatory burdens on manufacturers. Rather, in this rulemaking, DOE is providing manufacturers of primarily decorative hearth products with an alternative to meeting the standards promulgated by the April 2010 final rule for gas hearth direct heating equipment. Regarding conduct at the public meeting, DOE notes that the primary purpose of the meeting was to facilitate stakeholder involvement and allow an opportunity for feedback on the positions presented by DOE in the July 2011 NOPR. DOE respectfully listened to the statements and opinions voiced by the participants at the public meeting. In fact, much of the comment related to gas log sets received by DOE at the public meeting was extremely helpful in leading DOE to withdraw in this final rule the proposed exclusion criteria for that product and to exclude at this time all gas log sets from the gas hearth direct heating equipment energy conservation standards.

3. Impacts of Proposed Definition

a. Consumer Choice

Several interested parties stated that the proposed definition would impact consumer choice. In particular, these interested parties stated that the proposed definition would force them to change the products they sell and distribute, which would impose a burden on consumer choice. (Perfection,

No. 115 at p. 1; Sheldon Skolnick Associates, No. 118 at p. 1; Hearth and Home, Inc., No. 144 at p. 1; American Gas Log, No. 49 at p. 1; Modern Gas, No. 213 at p. 1) Rasmussen stated that the new standard would limit consumer choice and drastically increase prices for gas log sets. (Rasmussen, Public Meeting Transcript, No. 14 at p. 84) R.H. Peterson stated that the standard would limit consumer alternatives and deprive consumers of gas log sets which are more efficient than existing wood-burning fireplaces. (R.H. Peterson, Public Meeting Transcript, No. 14 at p. 37) AGA voiced concern over the replacement market and what the product availability would be if the July 2011 NOPR proposal went into effect. (AGA, Public Meeting Transcript, No. 14 at p. 86)

Several interested parties stated that this rulemaking is compounding problems caused by the April 2010 final rule, which defined all hearth products with input over 9,000 BTUs as direct heating equipment. (Thompson Gas, No. 95 at p. 1; Short's Stoves, No. 174 at p. 1; Hearth and Home, Inc., No. 144 at p. 1; Sheldon Skolnick Associates, No. 118 at p. 1; New Jersey Propane Gas Association, No. 212 at p. 1; Form Letter Comments; Penn Valley, No. 116 at p. 1; HWAM, No. 43 at p. 1; Perfection, No. 115 at p. 1)

In contrast to the views expressed by the stakeholders in the preceding paragraph, DOE believes that the amended definition will increase consumer choice and product availability by better defining those vented hearth products that are primarily intended for heating purposes and those that are primarily intended for decorative purposes. Additionally, DOE notes that this rule eliminates the previous exclusion criteria of having an input capacity at or below 9,000 Btu/h. DOE believes that many of the comments made in reference to consumer choice related to the elimination of match lit gas log sets that would have occurred under the July 2011 proposal. Because this final rule does not adopt exclusion criteria for vented gas log sets and excludes them from energy conservation standards for gas hearth direct heating equipment, the concern about limiting consumer choice with respect to gas log sets is no longer an issue.

b. Energy Savings

Several interested parties expressed their belief that this rulemaking would save little to no energy. (Heritage Propane, No. 33 at p. 1; Nevada Propane Dealers Association, No. 30 at p. 1; Barbara Jenkins; No. 22 at p. 1; HWAM, No. 43 at p. 1; LF Pugh and Associates, No. 76 at p. 1) Other interested parties elaborated that the amendments proposed in the July 2011 NOPR would cause consumers to use heating products for decorative effects, resulting in an overall increase in energy use. (Perfection, No. 115 at p. 1; Hearth and Home, Inc., No. 144 at p. 1; Form Letter Comments; Sheldon Skolnick Associates, No. 118 at p. 1) Thomas McGinnis of AmeriGas commented that he believes the rulemaking will not save energy because direct heating equipment produces more heat, which they believe will cause consumers to turn on air conditioning equipment, run fans, or open windows to get rid of unwanted heat. (Thomas McGinnis (AmeriGas), No. 26 at p. 1) Empire Comfort Systems stated that vented hearth products is the smallest energy user of all products targeted for regulation. (Empire, Public Meeting Transcript, No. 14 at p. 62) Similarly, Independence Marketing remarked that primarily decorative fireplaces consume 0.005 percent of the nearly 25,000 trillion BTUs of annual U.S. gas consumption, and of that, pilot lights consume 0.00165 percent. (Independence Marketing Ltd, No. 214 at p. 1)

As noted above in section III.C, DOE calculated the energy savings that would result from switching from standing pilot lights to other non-continuously-burning ignition sources for primarily decorative hearth products. Based upon the analysis described in section III.C, DOE found that this change would result in 0.17 quads of energy savings over the analysis period. DOE believes these potential energy savings are significant, despite the commenters' anecdotal statements to the contrary.

c. Environmental Impacts

Several interested parties stated that the proposed regulations in the July 2011 NOPR would promote the use of wood-burning fireplaces for decorative purpose. (Form Letter Comments; Fairview, No. 25 at p. 1; New Jersey Propane Gas Association, No. 212 at p. 1; Perfection, No. 115 at p. 1; Oahu Gas Service, No. 166 at p. 1; Penn Valley, No. 116 at p. 1; Siouxland, No. 85 at p. 1; Hearth and Home, Inc., No. 144 at p. 1; Sheldon Skolnick Associates, No. 118 at p. 1; Gas-fired products, No. 155 at p. 1) Other interested parties stated that the proposed regulation would promote use of wood-burning fireplaces, and that this would have a negative environmental impact because gas hearth products burn cleaner than wood-burning appliances. (Rasmussen, No. 208 at p. 13; R.H. Peterson, Public Meeting Transcript, No. 14 at p. 43; Jack's Butane Service, No. 23 at p. 1; Big Woods, No. 3 at p. 1; San Bernardino Fireplace and Woodstove, No. 11 at p. 2; Arizona Gas, No. 98 at p. 2m). Further, R.H. Peterson noted that a number of entities, including the NRDC and American Lung Association, support the transition from wood-burning fireplaces to gas log sets and that there is a program in Los Angeles that encourages and pays consumers to switch to gas log sets. (R.H. Peterson, Public Meeting Transcript, No. 14 at p. 42)

In response, DOE notes that definition adopted in this final rule would exclude vented gas log sets from having to comply with gas hearth direct heating equipment standards, without requiring that they meet any criteria for exclusion. Therefore, consumers would not be discouraged from replacing their wood-burning fireplaces with a gas log set as a result of this rule. DOE believes, therefore, that this rulemaking will not promote wood burning fireplaces and there will be no negative environmental impacts.

d. Impacts on Manufacturers

(i) Employment Impacts

DOE received a number of comments stating that the hearth industry and employment would be negatively impacted by the proposals in the July 2011 NOPR. Empire Comfort Systems commented that DOE is not considering the economic condition of the hearth industry, which is a stressed industry directly affected by the housing market downturn, and that these regulations will likely promote more job losses for a minor energy savings. (Empire, Public Meeting Transcript, No. 14 at pp. 63–64) Several other interested parties commented that the proposed regulations would have a significant negative impact on the hearth industry and would eliminate jobs. (Firelight, No. 206 at p. 1; Homefires, No. 10 at p. 1; Top Hat, No. 168 at p. 1; NPGA, No. 209 at p. 2; Sheldon Skolnick Associates, No. 118 at p. 1; H&S Oil, No. 125 at p. 1; East Texas Brick Co., No. 135 at p. 1; Nevada Propane Dealers Association, No. 30 at p. 1; Percy Guidry Hearth and Patio, No. 18 at p.4; Big Woods, No. 3 at p. 1; Mazzeo, No. 16 at p. 1; Independence Marketing Ltd, No. 214 at p. 2) APGA commented that natural gas distributors would be adversely impacted by this rulemaking as well. (AGPGA, No. 223 at p. 1)

Numerous interested parties stated that the impact of the proposed standards on small business

manufacturers, distributors, and marketers would be significant, because the industry cannot meet the requirements and products would be too expensive to be viable in the marketplace. (Penn Valley, No. 116 at p. 2; Perfection, No. 115 at p. 2; American Gas Log, No. 49 at p. 2; Hearth and Home, Inc., No. 209 at p. 2; Sheldon Skolnick Associates, No. 118 at p. 1; Slate Spring, No. 92 at p. 1; Short's Stoves, No. 174 at p. 1) Other interested parties stated that the rulemaking would place an unnecessary and onerous burden on their company. (American Gas Log, No. 49 at p. 1; Sheldon Skolnick Associates, No. 118 at p. 1; Perfection, No. 115 at p. 1; Hearth and Home, Inc., No. 144 at p. 1; Form Letter Comments; Thompson Gas, No. 191 at p. 1; Oahu Gas Service, No. 166 at p. 1)

DOE disagrees with these comments and believes that today's final rule will have positive employment benefits, because the exclusion criteria being adopted in today's notice, as compared to the criteria in the April 2010 final rule, will reduce manufacturer burden, and that the exclusion criteria adopted in today's rule are less likely than the original exclusion criteria to cause job losses in the hearth industry. Furthermore, DOE believes that the impacts of today's rule are mitigated because DOE is not adopting exclusion requirements or an energy conservation standard for gas log sets in today's rule. It is important to remember that this final rule merely provides manufacturers with a choice in terms of either complying with the energy conservation standards or availing themselves of the exclusion from those standards.

(ii) Small Business Impacts

DOE received several comments relating to how small businesses producing vented hearth products and gas log sets would be impacted. Multiple interested parties stated that a significant price increase associated with the proposed requirements would have a negative impact on small business entities. (R.H. Peterson, Public Meeting Transcript, No. 14 at p. 55; Form Letter Comments; Advantage, No. 13 at p. 1; Independence Marketing Ltd, No. 214 at p. 1; Creekside Hearth & Patio, No. 21 at p. 1; Sundance Leisure, No. 17 at p. 4; Crik-IT, No. 15 at p. 3;) In contrast, NRDC commented that the impact on small businesses is not significant enough to sacrifice the anticipated energy savings. (NRDC, No. 216 at p. 3)

In response, DOE believes that this final rule lessens the impacts as compared to the proposed standard and to the April 2010 final rule. For today's rule, DOE is not adopting exclusion requirements or minimum energy efficiency standards for gas log set manufacturers, thereby eliminating all burden related to those products. Additionally, DOE believes this rule reduces the burden on small manufacturers of primarily decorative hearth products when considered in comparison to meeting the April 2010 energy conservation standards. DOE acknowledges that the exclusion criteria would still have impacts on small business manufacturers of primarily decorative hearth products. DOE estimates industry conversion costs totaling $90,000 to $1.8 million for the four exclusion criteria. The full analysis of the number of small businesses and of the impacts on small businesses can be found in section IV.B.

SBA stated that DOE significantly underestimated the number of small businesses producing gas log sets and, consequently, the cost to the industry of complying with the rule. SBA estimated that there are between twenty and fifty manufacturers of primarily decorative gas fireplaces and/or gas log sets, almost all of which are small businesses. (SBA, No. 96 at p. 4) HPBA stated that the NOPR estimate of 14 small businesses (for both vented hearth and gas log set products) being impacted is low by a wide margin, and does not take into account distributors and retailers who are small businesses. (HPBA, No. 201 at p. 24)

For gas lost set products, public comments helped make DOE aware that it had not identified all of the relevant small manufacturers at the NOPR stage. However, for the final rule, DOE is not adopting exclusion requirements or minimum energy efficiency standards for gas log set manufacturers, thereby eliminating all burden related to those products. For vented hearth products that are subject to the exclusion criteria, DOE conducted an additional round of investigation to identify small manufacturers of primarily decorative hearths. Consistent with SBA's finding, DOE identified thirty-six manufacturers of decorative hearth products (excluding gas log set manufactures). However, out of these thirty-six companies, only ten qualified as small domestic manufacturers of products covered by this rule. DOE believes this rule reduces the burden on these small manufacturers of primarily decorative hearth products by providing the exclusion criteria as an alternative to meeting energy conservation standards.

(iii) Cost of Compliance

DOE received several comments regarding the cost to comply with the exclusion criteria. American Gas Log stated that the dollar estimate for testing, redesigning, and recertifying their gas log set product lines would be in excess of $350,000. (American Gas Log, No. 146 at p. 2) Rasmussen commented that the conversion costs would be extremely high and could force them to leave the gas log set business. (Rasmussen, No. 208 at p. 11) HPBA stated that DOE's assumption that there would be no regulatory burdens associated with certification is not correct, because there are significant numbers of vented hearth products and vented gas log sets that are not certified to ANSI Z21.50 and Z21.60. Furthermore, HPBA stated that a number of gas log sets cannot be certified to ANSI Z21.60. (HPBA, Public Meeting Transcript, No. 14 at pp. 24–25) HPBA also stated that the NOPR mischaracterizes the impacts the rule would have by assuming no regulatory burdens associated with the certification of primarily decorative products (most are not certified or cannot be), and that there will be no burdens associated with modifying product labeling and literature. Further, HPBA stated that the elimination of standing pilot lights would require redesign work, and would affect pricing. (HPBA, No. 201 at p. 24) Plumbing-Heating-Cooling Contractors Association commented that DOE estimated an average of $9,000 per unit for modifying and recertifying primarily decorative hearth products, which PHCC considers too low. (PHCC, No. 199 at p. 1) NPGA stated that research and development would be a huge financial burden to manufacturers which DOE has underestimated. NPGA stated that certification would cost between $1,500 and $2,000 per model. (NPGA, No. 209 at p. 10) Similarly, Empire stated that the proposed amendments would cause expenditures in research and development, engineering, marketing, and inventory. (Empire, No. 2 at p. 2)

Incorporating feedback from gas log set manufacturers, this final rule does not set exclusion criteria or energy conservation standards for gas log set manufacturers, thereby reducing burden on the industry. DOE presents an analysis of the costs of compliance for small business manufacturers of primarily decorative hearths in section IV.B of this notice. While PHCC states that DOE's conversion costs are too low, the trade association does not provide or justify revised estimates. Alternatively, NPGA recommended a certification cost

that is below DOE's estimate. However, based on interviews with gas hearth heater manufacturers during the April 2010 rulemaking, DOE believes its original estimates of compliance costs for hearth products are correct.

4. Procedural Requirements

NPGA stated that this rulemaking does not comply with Executive Order 12988, ''Civil Justice Reform,'' because key terms are not adequately defined and the April 2010 rule and this rulemaking have not minimized litigation, as required by the Executive Order. (NPGA, No. 209 at p. 11) NPGA also commented that DOE violated Executive Order 13563, ''Improving Regulation and Regulatory Review,'' because the energy savings for both vented hearth products and vented gas log sets were erroneously skewed. (NPGA, No. 209 at p. 5) HPBA commented that the NOPR was issued without adequate basis, in violation of Executive Order 13563, because it did not provide a reasoned determination that the benefits justify its costs. (HPBA, No. 201 at p. 2) NPGA also stated that this rulemaking did not meet the requirements of the Administrative Procedure Act, because the April 2010 final rule promulgated a definition that was not included in the December 2009 NOPR and the public did not have an opportunity to comment on that definition. (NPGA, Public Meeting Transcript, No. 14 at p. 31) Congressman Mike Rogers remarked that DOE did not request comments on regulatory requirements for decorative vented gas fireplaces in the December 2009 NOPR and that this rulemaking runs counter to President Obama's Executive Order aimed at improving agency rulemakings. (Mike Rogers, No. 225 at p. 1)

SBA stated that DOE must use the statutorily-prescribed process for imposing an energy efficiency standard upon manufacturers of vented gas log sets and cannot redefine ''vented hearth heater'' to cover vented gas log sets, thereby circumventing the required procedure for establishing a standard. (SBA, No. 96 at p. 3)

In response, DOE first notes that in response to comments DOE is not requiring gas log sets to meet the standards for gas hearth direct heating equipment, or to meet any criteria for exclusion from the standards at this time. Regarding primarily-decorative hearth products, DOE notes that these products were explicitly considered in the April 2010 final rule. The April 2010 final rule was preceded by the December 2009 NOPR (74 FR 65852 (Dec. 11, 2009)) which allowed for public comment on the proposed standards and definitions related to vented hearth products. The issue of an exclusion for decorative products and how to differentiate between products that are heaters and products that are primarily decorative was raised in comments at the NOPR public meeting (Public Meeting Transcript for Heating Products NOPR Public Meeting held on January 7, 2010, No. EERE–2006–STD–0129–0089 at pp. 48–52), so DOE's definitional changes at the time of the final rule were a logical outgrowth of public comments. As discussed in sections IV.A and IV.F, DOE believes this final rule satisfies the requirements of Executive Order 13563 and 12988, respectively.

5. Product Characteristics

R.H. Peterson argued that DOE incorrectly assumed that gas logs have similar characteristics to primarily decorative fireplaces, and instead, the commenter stated that gas log sets can only be used in wood-burning fireplaces and have different characteristics than primarily decorative gas fireplaces. (R.H. Peterson, Public Meeting Transcript, No. 14 at p. 38) Rasmussen stated that DOE had previously recognized that there is a difference between gas log sets and other gas hearth products, that there is a difference in construction between the two types of products, and that the two types of products have different heating capabilities. Rasmussen elaborated that fireplaces are designed as a completed system where removing the logs would compromise safety, but vented gas log sets in wood-burning fireplaces can be changed out. (Rasmussen, Public Meeting Transcript, No. 14 at p. 71)

As noted in the *Frequently Asked Questions: 'Vented Hearth Heater' Definition* that was published on DOE's Web site after the April 2010 final rule, DOE agrees that there are differences between gas log sets and primarily decorative hearth products, both in construction and heating ability. Given those constructional and operational differences of the products, DOE is not requiring at this time that vented gas log sets meet any criteria to be exempt from the standards for gas hearth direct heating equipment that were promulgated in the April 2010 final rule, while DOE is establishing criteria for primarily decorative hearth products to meet to qualify to be excluded from the direct heating equipment energy conservation standards. However, DOE also notes that there are basic similarities, in that both units are inserted in the living space and provide heat. Therefore, as explained previously, DOE believes both types of products are properly classified as direct heating equipment.

6. Requests To Delay or Discontinue Rulemaking

DOE received a number of comments requesting that DOE reconsider or withdraw this rulemaking, and abandon regulating primarily decorative hearth products. (Empire, Public Meeting Transcript, No. 14 at p. 64; Hearth and Home, Inc., No. 144 at pp. 1–2; Hearth and Home Shoppe, No. 207 at p. 2; Sheldon Skolnick Associates, No. 118 at p. 1; Gas-fired Products, No. 155 at p. 1; Short's Stoves, No. 174 at p. 1; Penn Valley, No. 116 at p. 3; APGA, No. 223 at p. 1; NPGA, No. 209 at pp. 2 and 12; Thompson Gas, No. 95 at p. 1; Gresham Petroleum, No. 165 at p. 1; L.E. Klein, No. 162 at p. 1; New Jersey Propane Gas Association, No. 212 at p. 1; Rasmussen, No. 208 at p. 13; Jack's Butane Service, No. 23 at p. 1; Perfection, No. 115 at pp. 1–2; Modern Gas, No. 213 at p. 1; Fairview, No. 25 at p. 1; Form Letter Comments; Nevada Propane Dealers Association, No. 30 at p. 1; American Gas Log, No. 49 at p. 1; Siouxland, No. 85 at p. 1; Thompson; LF Pugh and Associates, No. 76 at p. 1; Slate Spring, No. 92 at p. 1; Heritage Propane, No. 33 at p. 1; Hearth & Home Technologies, No. 204 at p. 3; H&S Oil, No. 125 at p. 1; Arizona Gas, No. 98 at p. 1; HWAM, No. 43 at p. 1; Fred Pierce, No. 219 at p. 2; Mike Rogers (U.S. Congressman), No. 225 at p. 1)

Several interested parties urged DOE to request that Congress enact a corrective statutory definition that states that primarily decorative vented gas fireplaces and gas log sets are not direct heating equipment. (Hearth and Home, Inc., No. 144 at p. 2; Sheldon Skolnick Associates, No. 118 at p. 1; Russo, No. 56 at p. 1) Congressman Mike Rogers requested that DOE issue a stay of the effective date of the April 2010 Final Rule as related to primarily decorative hearth products until Congress can enact legislation to clarify the definitional distinction between primarily decorative vented gas fireplaces and gas log sets. (Mike Rogers, No. 225 at p. 2)

In response, DOE believes that the exclusion criteria included in the April 2010 final rule have several limitations, which will be improved through the rulemaking process. The HPBA (a major trade association for hearth manufacturers) and several manufacturers expressed concerns about being able to meet the exclusion criteria in the April 2010 final rule and still produce products that consumers will want to buy. Additionally, as noted

previously, the limit on input capacity could have allowed certain heating hearth products to qualify for the primarily decorative exclusion. For these reasons, DOE believes that, while ensuring energy conservation, it should assist both industry and consumers with a clear, objective set of criteria to distinguish those vented hearth heaters that are primarily intended as heaters and all agree should be subject to energy conservation standards from those vented hearth heaters that are primarily intended for decorative purposes. Accordingly, DOE is issuing today's final rule amending the definition of ''vented hearth heater.''

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866 and 13563

Today's regulatory action has been determined to not be a ''significant regulatory action'' under section 3(f) of Executive Order 12866. Accordingly, the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) is not required to review this rule.

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

DOE emphasizes as well that Executive Order 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, the Office of Information and Regulatory Affairs has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in the preamble, DOE believes that today's final rule is consistent with these principles, including the requirement that, to the extent permitted by law, agencies adopt a regulation only upon a reasoned determination that its benefits justify its costs, and in choosing among alternative regulatory approaches, those approaches maximize net benefits.

B. Review Under the Regulatory Flexibility Act

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

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

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

The reasons why DOE is amending the definition of ''vented hearth heater'' in today's final rule and the objectives of this and other related amendments are provided elsewhere in the preamble and not repeated here.

2. Description and Estimated Number of Small Entities Regulated

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

In preparation for the April 2010 final rule, DOE conducted a market survey using available public information to identify potential small manufacturers of the type of products that are the subject of this rulemaking. DOE asked stakeholders and industry representatives if they were aware of any small manufacturers during manufacturer interviews and at previous DOE public meetings. DOE reviewed publicly-available data and contacted various companies, as necessary, to determine whether they met the SBA's definition of a small business manufacturer of covered residential direct heating equipment. DOE screened out companies that did not offer products covered by this rulemaking, did not meet the definition of a ''small business,'' or are foreign owned and operated. Additionally, DOE conducted a second round of research based on the HPBA membership directory, AHRI product databases, SBA databases, and individual company Web sites to find potential small business manufacturers for this rulemaking. In total, DOE identified 36 companies that manufactured hearth products (*e.g.,*

fireplaces and/or fireplace inserts). Of those 36 companies, 26 manufactured gas vented hearth products that are covered by this rulemaking. Of those 26 companies, five were large manufacturers. Of the 21 small businesses, 11 were foreign owned and operated and 10 were domestically owned and operated. Therefore, DOE identified 10 small domestic manufacturers of vented gas hearth products that are subject to the energy conservation standard.

Before issuing the NOPR that lead to the April 2010 final rule, DOE attempted to contact the small business manufacturers of vented hearth products. One of the small businesses consented to being interviewed during the MIA interviews, and DOE received feedback from an additional two small businesses through survey responses. DOE also obtained information about small business impacts while interviewing manufacturers that exceed the small business size threshold of 500 employees in this industry.

3. Description and Estimate of Compliance Requirements

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

In order to comply with the energy conservation standards promulgated in the April 2010 final rule, manufacturers of primarily decorative hearth products with efficiencies lower than the minimum allowable standard would need to either: (1) Redesign their products to meet the required standard level for gas hearth direct heating equipment; (2) redesign their products to ensure that input ratings are below 9,000 Btu/h; or (3) discontinue manufacturing those products. In the April 2010 final rule, DOE assumed manufacturers would redesign their products with input rating below 9,000 Btu/h with relatively minor changes to existing primarily decorative products. 75 FR 20112, 20129 (April 16, 2010). Under the amended definition of ''vented hearth heater'' in this notice, the 9,000 Btu/h limitation would no longer apply for purposes of exclusion from the energy conservation standard. Instead, vented hearth products (regardless of input rating) would not be subject to the minimum standard for vented hearth heaters if they comply with the four criteria outlined above (*i.e.,* (1) certified to ANSI Standard Z21.50, but not to ANSI Standard Z21.88); (2) sold without a thermostat and with a warranty provision expressly voiding all manufacturer warranties in the event the product is used with a thermostat; (3) expressly and conspicuously identified on its rating plate and in all manufacturer's advertising and product literature as a ''Decorative Product: Not For Use As A Heating Appliance''; and (4) with respect to products sold after January 1, 2015, not equipped with a standing pilot light or other continuously-burning ignition source). Under the April 2010 final rule, vented gas log sets were not addressed. However, today's final rule explicitly provides that vented gas log sets are not subject to the energy conservation standard at this time.

Each of the exclusion criteria for primarily decorative gas hearth products would have impacts on small business manufacturers. The first criterion (that the product must be certified to ANSI Standard Z21.50, but not ANSI Standard Z21.88 for decorative hearth products) would likely impose minimal new conversion costs on small businesses, but has the potential to impose costs up to $1.7 million. According to industry representatives, products that are primarily decorative in nature are generally certified to ANSI Standard Z21.50 (vented hearth products) while products that are heaters by nature are generally certified to ANSI Standard Z21.88 by manufacturers. Products that are certified to the appropriate ANSI standard today will not incur additional product conversion costs. However, for some hearth heating product lines, manufacturers may choose to eliminate optional thermostat features and certify to ANSI Z21.50 rather than meet the energy conservation standard for hearth heaters, which would require them to recertify products if they are currently certified to ANSI Z21.88. Under this scenario, the exclusion criteria could lead to product conversion costs. Based on publicly-available product information from the 10 small domestic manufacturers, DOE identified 189 vented hearth product lines certified to ANSI Z21.88. While manufacturers are not likely to recertify all these products to ANSI Z21.50, the total ANSI recertification cost of all 189 product lines provides an upper bound on the product conversion costs. This upper bound for this first exclusion criterion is estimated to total $1.7 million. DOE expects the actual conversion cost to be lower than this figure.

Regarding the second criterion that eliminates the option for manufacturers to offer a thermostat with any primarily decorative hearths, DOE does not believe that this would impose any capital conversion costs because thermostats are optional features on primarily decorative products. Thus, their removal would not require redesign of existing manufacturing lines.

The third criteria would require manufacturers to clearly identify the decorative nature of the vented hearth product, as well as further detail the warranty provisions of the hearth product. These provisions would require an update of the product and marketing literature and product labeling, which DOE believes would result in added product conversion costs. However, DOE notes that product conversion costs to update manufacturer literature and labels are also required under the definition and standards for gas hearth direct heating equipment (*i.e.,* vented hearth heaters) set forth by the April 2010 final rule, due to the requirements for making representations of the AFUE as well as certifying compliance to the Department. Under the April 2010 final rule, all of the product and marketing materials would have to have been revised to reflect the test AFUE. Because the compliance date for the standards promulgated in the April 2010 final rule is April 2013, DOE believes that manufacturers have likely not already updated product literature in preparation for compliance with those standards. Consequently, DOE estimated that all manufacturers, including small businesses, would incur product conversion costs for new labels and literature under the 2010 final rule. DOE believes the third criteria would result in similar updates to product specifications, marketing materials, and products labels to make clear the intended use of primarily decorative hearths. This would not impose a product conversion cost beyond the cost associated with the April 2010 final rule. Thus, DOE concludes the labeling requirement would have a minimal

impact additional on manufacturers, including small businesses.

Lastly, DOE considered the criterion that requires manufacturers to eliminate standing pilot lights and other continuously-burning ignition devices from primarily decorative vented hearth products by January 1, 2015. This would likely cause manufacturers to incur conversion costs to qualify for the proposed exclusion from the energy conservation standards. To calculate the conversion costs for primarily decorative hearth products to remove standing pilots, DOE used publicly-available information for the 10 domestic small business manufacturers to identify all vented hearth products certified to the ANSI Z21.50 standard. DOE found the total number of product lines manufactured by small businesses for primarily decorative vented hearth products to be 20. Based on a review of all small business manufacturers' products, DOE estimated that 47 percent of primarily decorative gas hearth products would have to remove standing pilots. Therefore, 10 of these product lines would have to be upgraded by January 1, 2015.

DOE believes that the elimination of standing pilot would only result in product conversion costs associated with testing and recertification to the ANSI safety standards for the newly designed products. If all 10 product lines need to be retested and recertified as a result of the elimination of standing pilots or other continuously-burning ignition sources from the system, the estimated product conversion cost would be approximately $90,000 for the set of small businesses to comply with the January 1, 2015 exclusion criteria for the primarily decorative gas hearth products. DOE recognizes that not all decorative products are currently certified to ANSI Z21.50 and that the $90,000 represents a lower bound in conversion costs. However, DOE did not find a significant number of decorative hearth products that were not certified to either ANSI Z21.50 or ANSI Z21.88.

Based on the engineering analysis performed for the April 2010 final rule, DOE does not believe any capital conversion costs would be needed for manufacturers of primarily decorative hearth products to comply with the criterion for elimination of the standing pilot, because for these products the addition of an electronic ignition system primarily consists of component additions that would not require new capital investment or significant changes to the manufacturing line.

In considering the impacts of this requirement, DOE compared the impacts of meeting the exclusion criteria to the alternative of meeting the efficiency requirements in the April 2010 final rule. Under the newly-proposed exclusion criteria, instead of completely redesigning primarily decorative hearth products to improve energy efficiency, manufacturers could make a comparatively minor engineering change of replacing the standing pilot or other continuously-burning ignition with an alternative technology such as an electronic ignition or interrupted ignition device. DOE believes that replacing the standing pilot or other continuously-burning ignition device with an alternative technology would be less burdensome to manufacturers than a complete redesign of primarily decorative hearth products to meet the minimum efficiency standard. Moreover, a redesign to comply with the energy conservation standard would likely necessitate elimination of any standing pilot on units so equipped anyway, along with additional engineering changes to improve efficiency. In addition, manufacturers would be required to test and certify their equipment to DOE efficiency's standards along with the ANSI safety standards, further increasing the cost and burden of compliance with the energy conservation standard in comparison to simply replacing the standing pilot or continuously-burning ignition with an alternative technology. Based on this analysis of the four exclusion criteria, DOE anticipates industry conversion costs of $90,000 to update primarily decorative hearth products that are currently certified to ANSI Z21.50 and have a continuously-burning ignition to meet the exclusion criteria, as these products would need to be recertified once the continuously-burning ignition was removed. If manufacturers chose to reclassify a significant portion of their hearth heating products that are currently certified to ANSI Z21.88 as decorative hearth products, which would require recertifying them to ANSI Z21.50, conversion costs for the four criteria could reach an upper bound of $1.8 million. However, manufacturers have indicated that this is not a likely scenario.

As a result of the considerations discussed above, DOE has concluded that today's final rule would not disproportionately impact small manufacturers of vented hearth products.

4. Duplication, Overlap, and Conflict With Other Rules and Regulations

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

5. Significant Alternatives to the Rule

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

C. Review Under the Paperwork Reduction Act of 1995

Manufacturers of direct heating equipment must certify to DOE that their products comply with any applicable energy conservation standards. In certifying compliance, manufacturers must test their products according to the DOE test procedures for direct heating equipment, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including direct heating equipment. (76 FR 12422 (March 7, 2011). The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (PRA). (44 U.S.C. 3501 *et seq.*) This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 20 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

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

D. Review Under the National Environmental Policy Act of 1969

DOE has prepared a draft environmental assessment (EA) of the impacts of the proposed rule pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), the

regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and DOE's regulations for compliance with the National Environmental Policy Act of 1969 (10 CFR part 1021). This assessment, which has been placed in the docket for this rulemaking, includes an examination of the potential effects of emission reductions likely to result from the rule in the context of global climate change, as well as other types of environmental impacts. The estimated additional cumulative CO_2 and NO_X emissions reductions for these proposed amendments to the energy conservation standards are 0.79 million metric tons (Mt) for CO_2 and 0.63 thousand metric tons (kt) for NO_X. DOE found that the environmental effects associated with the amended standards for direct heating equipment are not significant. Therefore, after consideration of the public comments received on the NOPR, DOE issued a finding of no significant impact (FONSI) as part of the final EA. The FONSI is available in the docket for this rulemaking at *http://www.regulations.gov.*

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism.'' 64 FR 43255 (Aug. 10, 1999), imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of today's final rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

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

G. Review Under the Unfunded Mandates Reform Act of 1995

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

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

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

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

I. Review Under Executive Order 12630

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

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

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

it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

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

DOE has concluded that today's regulatory action, which sets forth amended definitions for direct heating equipment, is not a significant energy action the rule is not a significant regulatory action under Executive Order 12866 and because the amended standards are not likely to have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as such by the Administrator at OIRA. Accordingly, DOE has not prepared a Statement of Energy Effects on the final rule.

L. Review Under the Information Quality Bulletin for Peer Review

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

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

M. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this rule prior to its effective date. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

V. Approval of the Office of the Secretary

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

List of Subjects in 10 CFR Part 430

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

Issued in Washington, DC, on November 8, 2011.

Kathleen Hogan,

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

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

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

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

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

■ 2. Section 430.2 is amended by revising the definition for ''Vented hearth heater'' to read as follows:

§ 430.2 Definitions.

* * * * *

Vented hearth heater means a vented appliance which simulates a solid fuel fireplace and is designed to furnish warm air, with or without duct connections, to the space in which it is installed. The circulation of heated room air may be by gravity or mechanical means. A vented hearth heater may be freestanding, recessed, zero clearance, or a gas fireplace insert or stove. The following products are not subject to the energy conservation standards for vented hearth heaters:

(1) Vented gas log sets and

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

(i) Certified to ANSI Z21.50 (incorporated by reference; see § 430.3), but not to ANSI Z21.88 (incorporated by reference; see § 430.3);

(ii) Sold without a thermostat and with a warranty provision expressly voiding all manufacturer warranties in the event the product is used with a thermostat;

(iii) Expressly and conspicuously identified on its rating plate and in all manufacturer's advertising and product literature as a ''Decorative Product: Not for use as a Heating Appliance''; and

(iv) With respect to products sold after January 1, 2015, not equipped with a standing pilot light or other continuously-burning ignition source.

* * * * *

■ 3. Section 430.3 is amended by adding new paragraphs (c)(18) and (c)(19) to read as follows:

§ 430.3 Materials incorporated by reference.

* * * * *

(c) * * *

(18) ANSI Z21.50–2007 (CSA 2.22–2007), (''ANSI Z21.50''), Vented Gas Fireplaces, Fifth Edition, Approved February 22, 2007, IBR approved for § 430.2.

(19) ANSI Z21.88–2009 (CSA 2.33–2009), (''ANSI Z21.88''), Vented Gas Fireplace Heaters, Fifth Edition, Approved March 26, 2009, IBR approved for § 430.2.

* * * * *

[FR Doc. 2011–29503 Filed 11–17–11; 8:45 am]

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