[6450-01-P]

DEPARTMENT OF ENERGY

10 CFR Part 430

(Docket No. EERE-2013-BT-STD-0033)

RIN 1904–AD02

Energy Conservation Program for Consumer Products and Certain Commercial and Industrial Equipment: Determination of Portable Air Conditioners as a Covered Consumer Product

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

ACTION: Final determination.

SUMMARY: The U.S. Department of Energy (DOE) is classifying portable air conditioners (ACs) as a covered product under the Energy Policy and Conservation Act (EPCA), as amended. This classification is based on DOE's determination that portable ACs are a type of consumer product that meets the requisite criteria specified in EPCA. Specifically, DOE has determined that classifying portable ACs as a covered product is necessary or appropriate to carry out the purposes of EPCA, and that average U.S. household energy use by portable ACs is likely to exceed 100 kilowatt-hours (kWh) per year.

DATES: This rule is effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: This rulemaking can be identified by docket number EERE-2013-BT-STD-0033 and/or Regulatory Information Number (RIN) 1904–AD02.

Docket: The docket, which includes Federal Register notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials, is available for review at www.regulations.gov. All documents in the docket are listed in the www.regulations.gov index. However, some documents listed in the index may not be publicly available, such as those containing information that is exempt from public disclosure.

A link to the docket webpage can be found at: https://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx/ruleid/76. This webpage will contain a link to the docket for this notice on the www.regulations.gov site. The www.regulations.gov webpage contains simple instructions on how to access all documents, including public comments, in the docket.

For further information on how to review the docket, contact Ms. Brenda Edwards at (202) 586-2945 or by e-mail: Brenda.Edwards@ee.doe.gov.

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SUPPLEMENTARY INFORMATION:

Table of Contents

I. Statutory Authority

Title III of the Energy Policy and Conservation Act (EPCA), as amended (42 U.S.C. 6291 et seq.), sets forth various provisions designed to improve energy efficiency. Part A of Title III of EPCA (42 U.S.C. 6291–6309) established the "Energy Conservation Program for

Consumer Products Other Than Automobiles."[1] EPCA authorizes the Secretary of Energy to classify additional types of consumer products not otherwise specified in Part A as covered products. For a type of consumer product to be classified as a covered product, the Secretary must determine that:

(1) Classifying the product as a covered product is necessary for the purposes of EPCA; and

(2) The average annual per-household energy use by products of such type is likely to exceed 100 kilowatt-hours (kWh) per year. (42 U.S.C. 6292(b)(1))

For the Secretary to prescribe an energy conservation standard pursuant to 42 U.S.C. 6295(o) and (p) for covered products added pursuant to 42 U.S.C. 6292(b)(1), he must also determine that:

(1) The average household energy use of the products has exceeded 150 kWh per household for a 12-month period;

(2) The aggregate 12-month energy use of the products has exceeded 4.2 terawatt-hours (TWh);

(3) Substantial improvement in energy efficiency is technologically feasible; and

(4) Application of a labeling rule under 42 U.S.C. 6294 is unlikely to be sufficient to induce manufacturers to produce, and consumers and other persons to purchase, covered products of such type (or class) that achieve the maximum energy

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

efficiency that is technologically feasible and economically justified. (42 U.S.C. 6295(l)(1))

Portable ACs are movable units typically designed to provide 8,000–14,000 British thermal units (Btu) per hour (hr) of cooling capacity[2] for a single room. In contrast to room ACs, a covered product that provides consumers with a similar function, portable ACs are not permanently installed on the wall or in a window. DOE has determined that portable ACs meet the statutory requirements under 42 U.S.C. 6292(b)(1), and therefore classifies portable ACs as a covered product. Separately, DOE is conducting rulemakings to consider test procedures and energy conservation standards for portable ACs. DOE will determine if portable ACs satisfy the provisions of 42 U.S.C. 6295(l)(1) during the course of the energy conservation standards rulemaking.

II. Current Rulemaking Process

DOE has not previously conducted an energy conservation standards rulemaking for portable ACs. On July 5, 2013, DOE published in the Federal Register a notice of proposed determination of coverage (NOPD) in which it tentatively determined that portable ACs satisfy the provisions of 42 U.S.C. 6292(b)(1). 78 FR 40403. After considering public comments on the NOPD (see sections III and IV of this notice), DOE is issuing this final determination of coverage for portable ACs and is evaluating in separate rulemakings both test procedures and energy conservation standards for portable ACs.

[2] As rated according to current industry test methods.

With respect to the test procedure rulemaking, DOE initially published a notice of data availability (NODA) on May 9, 2014, in which it discussed various industry test procedures and presented results from its investigative testing. 79 FR 26639. In the NODA, DOE evaluated existing methodologies and alternate approaches adapted from these methodologies that could be incorporated in a future DOE test procedure for portable ACs.

After reviewing comments and information received on the NODA, DOE published a test procedure notice of proposed rulemaking (NOPR) on February 25, 2015, in which it proposed to establish test procedures for portable ACs that would measure the energy efficiency, energy use, and estimated annual operating cost of portable ACs during a representative average use period and that would not be unduly burdensome to conduct, as required under 42 U.S.C. 6293(b)(3)). 80 FR 10211. The proposed test procedures were based upon industry methods to determine energy consumption in active modes, standby modes, and off mode, with certain modifications to ensure the test procedures would be repeatable and representative. Based on comments from interested parties on the NOPR, DOE subsequently published a supplemental notice of proposed rulemaking (SNOPR) on November 27, 2015, in which it proposed revisions to the test procedure proposed in the NOPR to improve repeatability, reduce test burden, and ensure that the test procedure is representative of typical consumer usage. 80 FR 74020.

With respect to the energy conservation standards rulemaking, DOE published a notice of public meeting and notice of availability of a preliminary technical support document (TSD) for portable ACs on February 27, 2015. 80 FR 10628. The TSD describes the details of DOE's preliminary analysis. DOE held a public meeting to discuss and receive comments on the

preliminary analysis it conducted. The meeting covered the analytical framework, models, and tools that DOE used to evaluate potential standards; the results of preliminary analyses performed by DOE for this product; the potential energy conservation standard levels derived from these analyses that DOE could consider for this product; and other issues relevant to the development of energy conservation standards for portable ACs.

After considering comments and information submitted on the preliminary analysis, DOE expects to complete a full analysis of both the burdens and benefits of potential energy conservation standards in a NOPR, pursuant to 42 U.S.C. 6295(o). Because DOE is classifying portable ACs as a covered product under 42 U.S.C. 6292(b)(1), DOE will also consider as part of any energy conservation standard NOPR whether portable ACs satisfy the requirements of 42 U.S.C. 6295(l)(1). After the publication of the standards NOPR, DOE will afford interested parties an opportunity during a period of not less than 60 days to provide oral and written comment. After receiving and considering the comments on the NOPR and not less than 90 days after the publication of the NOPR, DOE will issue the final rule prescribing any new energy conservation standards for portable ACs.

III. Product Definition

In the NOPD, DOE proposed the following definition of "portable air conditioner" to determine the potential scope of which products would potentially be regulated as a covered product. The proposed definition also provided clarity for interested parties with respect to the

test procedure and energy conservation standards rulemakings as DOE continued its analyses. DOE initially proposed that a portable AC was:

> A consumer product, other than a "packaged terminal air conditioner," which is powered by a single phase electric current and which is an encased assembly designed as a portable unit that may rest on the floor or other elevated surface for the purpose of providing delivery of conditioned air to an enclosed space. It includes a prime source of refrigeration and may include a means for ventilating and heating.
> 78 FR 40403, 40404 (July 5, 2013).

DOE noted that this proposed definition would be mutually exclusive to the current definition for a room AC, which is "designed as a unit for mounting in a window or through the wall." (10 CFR 430.2) Id.

In response to the NOPD, DOE received several comments from interested parties regarding the kinds of products that would be included under the proposed definition of a portable AC. DOE addressed these comments in the test procedure NOPR and proposed a revised definition to further refine the definition and exclude other similar products. Specifically, DOE proposed the definition:

> An encased assembly, other than a "packaged terminal air conditioner," "room air conditioner," or "dehumidifier," designed as a portable unit for delivering cooled, conditioned air to an enclosed space, that is powered by single-phase electric current,

which may rest on the floor or other elevated surface. It includes a source of refrigeration and may include additional means for air circulation and heating.

80 FR 10212, 10214–15 (Feb. 25, 2015).

DOE received multiple comments from interested parties in response to the proposed definition in the test procedure NOPR, focusing on the distinction between portable ACs intended for consumer versus commercial applications.

DENSO Products and Services Americas, Inc. (DENSO) noted that portable ACs are used in both residential and commercial settings, and that the typical distinction between the two settings is the use of single-phase versus three-phase power. However, DENSO expressed concern about the proposed definition because some portable ACs with single-phase power may be used in commercial or industrial applications. (DENSO, TP Public Meeting Transcript, No. 13 at pp. 21–22)[3]

Oceanaire and the National Association of Manufacturers (NAM) supported the exclusion of commercial portable ACs from coverage, given the limited size of the industry and small number of units produced. These commenters stated that requiring additional testing would have a significant negative impact on this niche market. According to Oceanaire and DENSO, annual shipments of commercial portable ACs are only 15,000, as compared to the 973,700

[3] A notation in the form "DENSO, TP Public Meeting Transcript, No. 13 at pp.21–22" identifies an oral comment that DOE received on March 18, 2015 during the Test Procedure NOPR public meeting, was recorded in the public meeting transcript in the docket for the test procedure rulemaking (Docket No. EERE-2014-BT-TP-0014). This particular notation refers to a comment (1) made by DENSO Products and Services Americas, Inc. (DENSO) during the public meeting; (2) recorded in document number 13, which is the public meeting transcript that is filed in the docket of the test procedure rulemaking; and (3) which appears on pages 21 through 22.

annual shipments of consumer portable ACs in the United States that DOE estimated in its preliminary analysis for portable AC energy conservation standards. (Oceanaire, No. 10 at p. 3; NAM, No. 17 at pp. 1, 3; DENSO, TP NOPR No. 14 at p. 4)[4]

To identify products that are commonly referred to as portable ACs but that it contends should be excluded from coverage as consumer products, Oceanaire referred to NAM's definition of a commercial portable AC and the following characteristics it believes are common to commercial portable ACs: 1) a minimum evaporator inlet air flow of 265 cubic feet per minute (CFM) and minimum condenser air flow of 500 CFM at standard temperature, pressure, and rated voltage; 2) a minimum refrigerant charge of 14 ounces per unit; 3) an internal condensate tank of a minimum 2-gallon capacity or a condensate pump capable of a minimum 15-foot head pressure; and 4) a minimum weight of 110 pounds. Oceanaire also stated that cooling capacities of commercial portable ACs typically range up to 65,000 Btu/hr. (Oceanaire, TP NOPR No. 10 at p. 1–2; NAM, TP NOPR No. 17 at p. 3)

A number of commenters asserted that the installation locations, operating conditions, use cases, and necessary product construction for commercial portable ACs are substantially different than those for consumer portable ACs. Oceanaire, NAM, and DENSO cited examples of permanent installations for commercial portable ACs, including steel mills, auto repair shops, cosmetics and food product processing facilities, and other environments that are subject to

[4] A notation in the form "DENSO, TP NOPR No. 14 at p. 4" identifies a written comment: (1) made by DENSO Products and Services Americas, Inc. (DENSO); (2) recorded in document number 14 that is filed in the docket of the test procedure notice of proposed rulemaking as a covered consumer product (Docket No. EERE–2014– BT–TP–0014) and available for review at www.regulations.gov; and (3) which appears on page 4 of document number 14.

extreme temperature, humidity, and corrosive conditions. Oceanaire further noted that commercial portable ACs are also used to address temporary or emergency short-term conditions, and are purchased by rental companies that provide temporary service to a variety of businesses. Oceanaire described the construction of commercial portable ACs as having 18 gauge and thicker steel cabinetry and support structures to meet the needs of commercial and industrial customers, and according to Oceanaire, such portable ACs have an average lifetime of 10 years. (Oceanaire, TP NOPR No. 10 at p. 2; NAM, TP NOPR No. 17 at pp. 2–3; DENSO, TP NOPR No. 14 at p. 1)

For the aforementioned reasons, Oceanaire and NAM stated that they believe that commercial portable ACs do not qualify under the provisions of EPCA as a covered product. (Oceanaire, TP NOPR No. 10 at p. 2; NAM, TP NOPR No. 17 at p. 3)

In the test procedure NOPR, DOE stated that portable ACs are not currently a covered product, and did not propose to classify commercial portable ACs as a covered product. Rather, consistent with the authority under EPCA to classify additional types of "consumer product" not otherwise specified in Part A as covered products, DOE proposed to classify "portable ACs" as a covered product.

EPCA defines "consumer product" as any article of a type that consumes, or is designed to consume, energy and which, to any significant extent, is distributed in commerce for personal use or consumption by individuals. (42 U.S.C. 6291(1)) EPCA further specifies that the definition of a consumer product applies "without regard to whether the product is in fact

distributed in commerce for personal use or consumption by an individual." (42 U.S.C. 6291(1)(B)) Under the definition of "portable air conditioner" proposed by DOE, portable ACs clearly meet EPCA's definition of "consumer product."

Although the definition of consumer product does not depend on whether the product is, in fact, distributed in commerce for personal use or consumption by an individual, DOE has proposed a definition of "portable air conditioner" that excludes units that could normally not be used in a residential setting by limiting the definition to include only portable ACs powered by single-phase electric current. As such, a product that requires three-phase power, a characteristic that is not appropriate for consumer products, would not be covered under DOE's definition. Conversely, any product with single-phase power that otherwise meets the definition of a portable AC would be considered by DOE to be a portable AC regardless of the manufacturer-intended application or installation location.

Moreover, air flow rates, refrigerant charge, condensate handling system, and product weight are not attributes that inherently determine suitability for consumer use. For example, DOE identified multiple portable ACs marketed as consumer products with evaporator air flow rates greater than 265 CFM, the threshold suggested by Oceanaire and NAM, and rugged construction with correspondingly higher weight that may be desirable in some residential applications such as garages or temporary attic cooling. Further, a portable AC that meets the single-phase power requirement in the portable AC definition would not meet certain minimum thresholds for some of the product attributes in NAM's definition of a commercial portable AC,

such that the power requirement would have the same effect as if the definition were to specifically include those thresholds.

For these reasons, DOE is establishing in 10 CFR 430.2 the definition of "portable air conditioner" proposed in the test procedure NOPR with minor editorial revisions that do not modify the intent or scope of the definition:

> A portable encased assembly, other than a "packaged terminal air conditioner," "room air conditioner," or "dehumidifier," that delivers cooled, conditioned air to an enclosed space, and is powered by single-phase electric current. It includes a source of refrigeration and may include additional means for air circulation and heating.

IV. Evaluation of Portable ACs as a Covered Product Subject to Energy Conservation Standards

The following sections describe DOE's determination that portable ACs fulfill the criteria for being added as a covered product pursuant to 42 U.S.C. 6292(b)(1). As stated previously, DOE may classify a type of consumer product as a covered product if (1) classifying products of such type as covered products is necessary and appropriate to carry out the purposes of EPCA; and (2) the average annual per-household energy use by products of such type is likely to exceed 100 kWh (or its Btu equivalent) per year.

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

DOE tentatively concluded in the NOPD that coverage of portable ACs is necessary or appropriate to carry out the purposes of EPCA, which include: (1) to conserve energy supplies through energy conservation programs, and, where necessary, the regulation of certain energy uses; and (2) to provide for improved energy efficiency of motor vehicles, major appliances, and certain other consumer products. (42 U.S.C. 6201) In the NOPD, DOE presented the results of its initial analysis, which suggested that the aggregate energy use of portable ACs has been increasing as these units have become popular in recent years. DOE estimated, based on market studies, that 973.7 thousand units shipped in North America in 2012, with a projected growth to 1743.7 thousand units by 2018, representing nearly 80-percent growth over 6 years.[5] DOE notes that the number of entries in the California Energy Commission's product database for "spot air conditioners"[6] increased from 295 in August 2013 to 442 in October 2015, suggesting that DOE's initial estimate of significant growth in this product category is reasonable. DOE stated in the NOPD that coverage of portable ACs would enable the conservation of energy supplies through both labeling programs and the regulation of portable AC efficiency. DOE also asserted that there is significant variation in the annual energy consumption of different models currently available, such that technologies exist to reduce the energy consumption of portable ACs. 78 FR 40403, 40404 (Jul. 5, 2013).

[5] Transparency Media Research. Air Conditioning Systems Market - Global Scenario, Trends, Industry Analysis, Size, Share and Forecast, 2012 - 2018. January 2013.

[6] California regulations define "spot air conditioner" as "an air conditioner that discharges cool air into a space and discharges rejected heat back into that space, where there is no physical boundary separating the discharges." This definition is distinct from the regulations' definition of "room air conditioner" as "a factory-encased air conditioner that is designed: (1) as a unit for mounting in a window, through a wall, or as a console, and (2) for delivery without ducts of conditioned air to an enclosed space." (California Code of Regulations, Title 20: Division 2; Chapter 4, Article 4, Section 1602(c) and (d)) Entries in the CEC database listed as spot ACs include varying configurations of portable ACs, including those that reject heat outside the conditioned space, as well as products that would not meet DOE's definition of portable AC because they operate on three-phase power.

The Appliance Standards Awareness Project (ASAP), Alliance to Save Energy (ASE), American Council for an Energy-Efficient Economy (ACEEE), Consumers Union (CU), and Northwest Energy Efficiency Alliance (NEEA) (hereinafter the "Joint Commenters") and AHAM supported DOE's proposed determination that classifying portable ACs as a covered product is necessary or appropriate to carry out the purposes of EPCA. (AHAM, No. 6 at pp. 1–2; Joint Commenters, No. 4 at p. 2) The Joint Commenters further recommended that DOE classify portable ACs as a covered product to enable subsequent development of test procedures and consideration of energy conservations standards for portable ACs because: (1) shipments are growing; (2) portable ACs have high per-unit energy use; and (3) competing products (such as room ACs) are currently covered. (Joint Commenters, No. 4 at p. 2)

DOE, therefore, reaffirms its tentative conclusion in the NOPD and determines that classifying portable ACs as a covered product is necessary and appropriate to carry out the purposes of EPCA. In consideration of the potential for improved energy efficiency of portable ACs and associated national energy savings, DOE has developed a proposed test procedure in a recent rulemaking that would establish appendix CC, and is currently addressing potential energy conservation standards for portable ACs in a standards rulemaking.

B. Average Household Energy Use

In the NOPD, DOE estimated the average household portable AC energy use of portable ACs. DOE based its calculations on a review of the current market and a comparison to room AC energy use, and determined that the typical rated energy efficiency ratio (EER) of portable ACs

is approximately 9.5, with a large available range (approximately 8.2–14.3), and that typical cooling capacities range from 8,000–14,000 Btu/hr. DOE further estimated average per-household annual electricity consumption of a portable AC, based on a typical unit with EER 9.5, to be approximately 650 kWh/yr (750 kWh/yr for EER 8.2, and 400 kWh/yr for EER 14.3). DOE also noted that one set of laboratory tests[7] measured the cooling capacity of units to be half of manufacturers' reported values, suggesting that in-field energy use is much larger than the rated value would imply. Therefore, DOE tentatively determined in the NOPD that the average annual per-household energy use for portable ACs is very likely to exceed 100 kWh/yr, satisfying the criterion of 42 U.S.C. 6292(b)(1)(B) required for classification of portable ACs as a covered product under Part A of Title III of the EPCA, as amended. 78 FR 40403, 40404–40405.

AHAM agreed with the result of DOE's estimate of portable AC annual energy use, although it did not agree with DOE's methodology. Specifically, AHAM suggested that the usage profiles of portable ACs differ from those for room ACs, which were the basis for DOE's analysis. AHAM stated its belief that portable ACs are used for a shorter period of time because some consumers may use them to supplement conditioned air in a particular space or area of a room instead of as the primary means of cooling. Nevertheless, AHAM stated that it does not believe that these differences would change the determination that per-household energy use for portable ACs is likely to exceed 100 kWh/yr. (AHAM, No. 6 at pp. 2–3) The California IOUs stated that DOE's estimate of annual energy use for a typical portable AC unit is significant and comparable to the per-unit energy use of many major household appliances. (California IOUs,

[7] Consumer Reports. Buying Advice: Portable Air Conditioners. http://news.consumerreports.org/home/2008/06/air-condition-1.html

No. 5 at p. 3) DOE solicited, but did not receive, portable AC usage data in both the test procedure and energy conservation standards rulemakings. DOE agrees, however, that the potential differences between portable AC and room AC usage would not change DOE's initial determination that portable ACs meet the threshold per-household energy use, particularly because DOE's estimates were at least a factor of four greater than the 100 kWh/yr requirement. Therefore, DOE determines here that average annual per-household energy use by portable ACs is likely to exceed 100 kWh (or its Btu equivalent) per year.

Accordingly, DOE has determined that portable ACs meet the statutory requirements under 42 U.S.C 6292(b)(1), and therefore classifies portable ACs as a covered product. DOE amends the definition of covered product in 10 CFR 430.2 to reflect this determination.

V. Procedural Issues and Regulatory Review

DOE has reviewed this final determination of coverage for portable ACs under the following executive orders and acts.

A. Review Under Executive Order 12866

The Office of Management and Budget (OMB) has determined that coverage determination rulemakings do not constitute "significant regulatory actions" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993). Accordingly, this final action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) in the OMB.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act of 1996) requires preparation of a regulatory flexibility analysis 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. A regulatory flexibility analysis examines the impact of the rule on small entities and considers alternative ways of reducing negative effects. Also, as required by E.O. 13272, "Proper Consideration of Small Entities in Agency Rulemaking" 67 FR 53461 (Aug. 16, 2002), DOE published procedures and policies on February 19, 2003 to ensure that the potential impact of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990 (Feb. 19, 2003). DOE makes its procedures and policies available on the Office of the General Counsel's website at http://energy.gov/gc/office-general-counsel.

DOE reviewed this final determination under the provisions of the Regulatory Flexibility Act and the policies and procedures published on February 19, 2003. This final determination sets no standards; it only positively determines that future standards may be warranted and should be explored in an energy conservation standards and test procedure rulemaking. Economic impacts on small entities would be considered in the context of such rulemakings. On the basis of the foregoing, DOE certifies that the determination has no significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this final determination. DOE will transmit this certification

and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act of 1995

This final determination, which concludes that portable ACs meet the criteria for a covered product for which the Secretary may prescribe an energy conservation standard pursuant to 42 U.S.C. 6295(o) and (p), imposes no new information or record-keeping requirements. Accordingly, the OMB clearance is not required under the Paperwork Reduction Act. (44 U.S.C. 3501 et seq.)

D. Review Under the National Environmental Policy Act of 1969

In this notice, DOE positively determines that portable ACs meet the criteria for classification as covered products and that future standards may be warranted to regulate their energy use. Should DOE pursue that option, the relevant environmental impacts would be explored as part of that rulemaking. As a result, DOE has determined that this action falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and DOE's implementing regulations at 10 CFR part 1021. Specifically, this action establishes a class of products (portable ACs) for which energy conservation standards would be appropriate. However, this action does not establish energy conservation standards, and, therefore, does not result in any environmental impacts. Thus, this action is covered by Categorical Exclusion A6 “Procedural rulemakings” under 10 CFR part 1021, subpart D. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order (E.O.) 13132, "Federalism" 64 FR 43255 (Aug. 10, 1999), imposes certain requirements on 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 assess carefully 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 developing regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process that it will follow in developing such regulations. 65 FR 13735 (Mar. 14, 2000). DOE has examined this final determination and concludes that it does not preempt State law or have substantial direct effects on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the product that is the subject of this final determination. States can petition DOE for exemption from such preemption to the extent permitted, and based on criteria, set forth in EPCA. (42 U.S.C. 6297) No further action is required by E.O. 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of E.O. 12988, "Civil Justice Reform" 61 FR 4729 (Feb. 7, 1996),

imposes on Federal agencies the duty to: (1) eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Section 3(b) of E.O. 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation specifies the following: (1) the preemptive effect, if any; (2) any effect on existing Federal law or regulation; (3) a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) the retroactive effect, if any; (5) definitions of key terms; and (6) other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of E.O. 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether these standards are met, or whether it is unreasonable to meet one or more of them. DOE completed the required review and determined that, to the extent permitted by law, this final determination meets the relevant standards of E.O. 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104-4, codified at 2 U.S.C. 1501 et seq.) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and tribal governments and the private sector. For regulatory actions likely to result in a rule that may cause expenditures by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any 1 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) and (b)) UMRA requires a Federal agency to develop an effective

process to permit timely input by elected officers of State, local, and tribal governments on a proposed "significant intergovernmental mandate." UMRA also requires an agency plan for giving notice and opportunity for timely input to small governments that may be potentially affected before establishing any requirement that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820 (Mar. 18, 1997). (This policy also is available at http://energy.gov/gc/office-general-counsel). DOE reviewed this final determination pursuant to these existing authorities and its policy statement and determined that the rule contains neither an intergovernmental mandate nor a mandate that may result in the expenditure of $100 million or more in any year, so the UMRA requirements do not apply.

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

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

I. Review Under Executive Order 12630

Pursuant to E.O. 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights" 53 FR 8859 (Mar. 15, 1988), DOE determined that this final determination does not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

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

The Treasury and General Government Appropriation Act of 2001 (44 U.S.C. 3516, note) requires agencies to review most disseminations of information they make to the public under guidelines established by each agency pursuant to general guidelines issued by the OMB. The 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 this final determination under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

E.O. 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgates a final rule or is expected to lead to promulgation of a final rule, and that: (1) is a significant regulatory action under E.O. 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 the Office of Information and Regulatory Affairs (OIRA) as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use if the proposal is implemented, and of reasonable alternatives to the proposed action and their expected benefits on energy supply, distribution, and use.

DOE has concluded that this regulatory action establishing certain definitions and determining that portable ACs meet the criteria for a covered product for which the Secretary may prescribe an energy conservation standard pursuant to 42 U.S.C. 6295(o) and (p) does not have a significant adverse effect on the supply, distribution, or use of energy. This action is also not a significant regulatory action for purposes of E.O. 12866, and the OIRA Administrator has not designated this final determination as a significant energy action under E.O. 12866 or any successor order. Therefore, this final determination is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under the Information Quality Bulletin for Peer Review

On December 16, 2004, OMB, in consultation with the Office of Science and Technology Policy (OSTP), issued its Final Information Quality Bulletin for Peer Review (the Bulletin). 70 FR 2664 (Jan. 14, 2005). The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal government, including influential scientific information related to agency regulatory actions. The purpose of the Bulletin is to enhance the quality and credibility of the Government's scientific information. DOE has determined that the analyses conducted for the regulatory action discussed in this document do not constitute "influential scientific information," which the Bulletin defines as "scientific information the agency reasonably can determine will have or does have a clear and substantial impact on important public policies or private sector decisions." 70 FR 2667 (Jan. 14, 2005). The analyses were subject to pre-dissemination review prior to issuance of this rulemaking.

DOE will determine the appropriate level of review that would apply to any future rulemaking to establish energy conservation standards for portable ACs.

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final determination.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Reporting and recordkeeping requirements.

Issued in Washington, D.C., on April 11, 2016.

David Friedman
Principal Deputy Assistant Secretary
Energy Efficiency and Renewable Energy

For the reasons stated in the preamble, DOE amends part 430 of chapter II of title 10, Code of Federal Regulations 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 of "covered product" and adding the definition of "portable air conditioner" in alphabetical order to read as follows:

§ 430.2 Definitions.

* * * * *

Covered product means a consumer product--

(1) Of a type specified in section 322 of the Act, or

(2) That is a ceiling fan, ceiling fan light kit, medium base compact fluorescent lamp, dehumidifier, battery charger, external power supply, torchiere, or portable air conditioner.

* * * * *

Portable air conditioner means a portable encased assembly, other than a "packaged terminal air conditioner," "room air conditioner," or "dehumidifier," that delivers cooled, conditioned air to an enclosed space, and is powered by single-phase electric current. It includes a source of refrigeration and may include additional means for air circulation and heating.

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