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[6450-01-P]

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket No. EERE-2013-BT-DET-0035]

RIN: 1904-AD04

Energy Conservation Program: Proposed Determination of Computer and Battery Backup Systems as a Covered Consumer Product

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

ACTION: Proposed determination

SUMMARY: The U.S. Department of Energy (DOE or the “Department”) has determined tentatively that computer and battery backup systems (hereafter referred to as “computer systems”) qualify as a covered product under Part A of Title III of the Energy Policy and Conservation Act (EPCA), as amended. This notice supersedes DOE’s previous proposed determination of coverage relating to computers, and expands the scope of coverage to include computer systems. DOE has determined that computer systems meet the criteria for covered products because classifying products of such type as covered products is necessary or appropriate to carry out the purposes of EPCA, and the average U.S. household energy use for computer systems is likely to exceed 100 kilowatt-hours (kWh) per year.

EFFECTIVE DATE: DOE will accept written comments, data, and information on this notice, but no later than **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].**

ADDRESSES: Interested persons may submit comments, identified by docket number EERE-2013-BT-DET-0035, by any of the following methods:

- *Federal eRulemaking Portal:* www.regulations.gov. Follow the instructions for submitting comments.
- *Email:* Computers2013DET0035@ee.doe.gov. Include EERE-2013-BT-DET-0035 and/or RIN 1904-AD04 in the subject line of the message.
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Office, Mailstop EE-5B, Proposed Determination for computers, EERE-2013-BT-DET-0035 and/or RIN 1904-AD04, 1000 Independence Avenue SW., Washington, DC 20585-0121. *Phone:* (202) 586-2945. Please submit one signed paper original.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Office, 6th Floor, 950 L'Enfant Plaza SW., Washington, DC 20024. *Phone:* (202) 586-2945. Please submit one signed paper original.

Instructions: All submissions received must include the agency name and docket number or RIN for this rulemaking.

Docket: For access to the docket to read background documents, or comments received, go to the Federal eRulemaking Portal at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Mr. Jeremy Domm, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE-5B, 1000 Independence Avenue, SW, Washington, DC, 20585-0121. Telephone: (202) 586-9870. E-mail: DOE_computer_standards@ee.doe.gov.

Ms. Celia Sher, U.S. Department of Energy, Office of the General Counsel, GC-71, 1000 Independence Avenue, SW, Washington, DC, 20585-0121. Telephone: (202) 287-6122. E-mail: Celia.Sher@hq.doe.gov.

SUPPLEMENTARY INFORMATION:**I. Background**

On July 12, 2013, DOE published a proposed determination (July 2013 Notice) in the Federal Register (78 FR 41873) tentatively determining that computers qualify as a covered product under Part A of Title III of EPCA, as amended. The Department is superseding the July 2013 Notice with this updated notice.

II. Authority

Title III of EPCA (42 U.S.C. 6291, et seq.) sets forth a variety of 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,” which covers consumer products and certain commercial products (hereafter referred to as “covered

products”).¹ In addition to specifying a list of covered residential and commercial products, EPCA contains provisions that enable the Secretary of Energy to classify additional types of consumer products as covered products. (42 U.S.C. 6292(a)(20)) DOE may prescribe test procedures for any product it classifies as a “covered product.” (42 U.S.C. 6293(b)) For a given 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 TWh;

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

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

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

If DOE issues a final determination that computer systems are a covered product, DOE will consider test procedures and energy conservation standards for them. DOE will determine if computer systems satisfy the provisions of 42 U.S.C. 6295(l)(1) during the course of any energy conservation standards rulemaking.

III. Discussion

In the July 2013 Notice, DOE tentatively determined that computers qualify as a covered product. DOE further proposed that a definition for computers be added to the Code of Federal Regulations to clarify coverage of any potential test procedure or energy conservation standard. Accordingly, DOE proposed the following definition of computers and sought comment from interested parties:

A consumer product which performs logical operations and processes data. A computer is composed of, at a minimum: (a) A central processing unit (CPU) to perform operations, or the ability to function as a client gateway to a server which acts as a computational CPU; (b) user input devices such as a keyboard, mouse, or touchpad; and (c) an integrated display screen and/or the ability to support an external display screen to output information. 78 FR 41874.

DOE also proposed a notice to tentatively cover computer servers (servers) as a covered product. 78 FR 41868 (July 12, 2013). In that notice, DOE proposed that servers be defined as:

A computer that provides services and manages networked resources for client devices (e.g., desktop computers, notebook computers, thin clients, wireless devices, PDAs, IP telephones, other computer servers, or other network devices). A computer server is primarily accessed via network connections, versus directly connected user input devices such as a keyboard or mouse. 78 FR 41870.

By separate action published elsewhere in today's Federal Register, DOE is withdrawing its proposed rule to determine servers as a covered product. Upon further consideration, DOE believes that computers and servers share numerous technical and physical characteristics which would make it more appropriate to cover them together as a single covered product. Because battery backup functions are closely tied to computers and servers, DOE believes that backup batteries such as uninterruptible power supplies (UPSs), which provide emergency power in case of failure, should also be included in the covered product to which this notice relates. Thus, DOE is proposing that the name of the covered product in this notice be changed to "computer and battery backup systems" and be defined as:

A consumer product whose primary function is to perform logical operations and process data, or equipment whose primary function is to maintain continuity of load power for such products in case of input power failure.

While DOE recognizes that this revised definition further broadens the scope of the covered product that this notice relates, DOE believes that is necessary given the increasingly networked environment in which these products operate. For example, the increased use of tablets, smart phones and cloud services has shifted energy use from personal computers like desktop and notebook computers to servers (e.g. more disc storage in servers, less disc storage in desktop computers). Consumers commonly use battery backups for their computers to allow users to save all data in the event of power loss. Some servers integrate these backup batteries within the server itself, and notebook computers contain their own battery systems to run when either not connected to mains power or in the event of a power loss. This revised definition would allow DOE to account for shifts in energy use between products, and also help to ensure that the covered product remains relevant as technology trends in computer systems advance. Based on DOE's revised definition for computer systems, DOE would consider consumer products, such as computers, servers, and UPSs, to be within the scope of coverage.

While all of these consumer products are related, DOE recognizes that different test methods and efficiency metrics would be necessary to measure the energy consumption and energy efficiency of such products. As such, DOE is considering dividing computer systems into separate product classes based on the type of energy used, the capacity, and any other performance-related feature that justifies different standard levels, such as features affecting consumer utility. (42 U.S.C. 6295(q)) DOE will propose specific definitions for product classes as part of the efficiency standards rulemaking. As suggested by the Information Technology Industry Council (ITI), DOE will look to harmonize the definitions of each potential product class with already established industry terms and definitions (ITI, No. 0035 at p.1).

DOE notes that the scope for the test procedure and standards rulemakings that DOE initiates may not cover all products that would otherwise meet the definition of computer systems. DOE further clarifies that the proposed definition of computer systems only covers those products whose primary function is to perform logical operations and process data, or whose primary function is to maintain continuity of load power in case of input power failure.

DOE received comment from Cisco Systems, Inc. (Cisco), ITI, the Consumer Electronics Association (CEA), and Telecommunications Industry Association (TIA) on DOE's proposed definition of "server" in its July 12, 2013 proposed rule to determine servers as a covered product (78 FR 41868). Specifically, these parties commented that the proposal improperly attempts to combine a variety of consumer products, which DOE has authority to regulate, with entirely dissimilar commercial products that DOE does not currently have the authority to regulate. (EERE-2013-BT-DET-0034, Cisco, No. 0017 at p. 3) (EERE-2013-BT-DET-0034, ITI, No. 0018 at p. 1) (EERE-2013-BT-DET-0034, CEA, No. 0015 at p. 3) (EERE-2013-BT-DET-0034, TIA, No. 0019 at p. 2) In light of these comments, DOE clarifies that the proposed scope of coverage for this rulemaking relates only to consumer products. Thus, this rule applies to those computer systems that are of a type which, to any significant extent, are distributed into commerce for personal use or consumption. *See* 42 U.S.C. 6291(1). These consumer products can be distinguished from commercial/industrial equipment, which are of a type not sold for consumer use. *See* 42 U.S.C. 6311(2)(A). DOE is seeking assistance from interested parties in identifying those computer systems that are of a type that make them a consumer product as distinguished from those that are objectively commercial.

IV. Evaluation of Computer and Battery Backup Systems as a Covered Product Subject to Energy Conservation Standards

The following sections describe DOE's evaluation of whether computer systems 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 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

Coverage of computer systems 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) The aggregate energy use of computer systems is significant. For example, recent estimates of national electricity usage for computers alone are 30.3 billion kWh in the residential sector, and 31.3 billion kWh in the commercial sector.² For servers, total national electricity usage is estimated to be 26.5 billion kWh as a lower bound.³ The national energy use of UPSs is estimated to be at least 6.9 billion kWh.⁴ The penetration of computer systems in the residential

² Urban, B. et al., 2011. *Energy Consumption of Consumer Electronics in U.S. Homes in 2010*. Prepared by the Fraunhofer Center for Sustainable Energy Systems for the Consumer Electronics Association; Zogg, R. et al., 2009. *Energy Savings Potential and RD&D Opportunities for Commercial Building Appliances*. Prepared by Navigant Consulting, Inc. for DOE.

³ Koomey, J.G. 2011. *Growth in Data Center Electricity Use 2005 to 2010*. Analytics Press.

⁴ Zogg, R. et al., 2009. *Energy Savings Potential and RD&D Opportunities for Commercial Building Appliances*. Prepared by Navigant Consulting, Inc. for DOE; Roth, K.W. et al. 2007. *Residential Miscellaneous Electric Loads: Energy Consumption Characterization and Savings Potential*. Prepared by TIAX LLC for DOE.

sector is high, with 63% of U.S. households owning a desktop computer, 65% of U.S. households owning a notebook, laptop, or netbook computer, and an installed base of 8.6 million UPSs in U.S. households.⁵ Coverage of computer systems will enable the conservation of energy supplies through both labeling programs and the regulation of computer systems energy efficiency. There is significant variation in the annual energy consumption of different models currently available for computers, servers, and UPSs. Therefore, technologies exist to reduce the energy consumption of computer systems.

B. Average Household Energy Use

DOE calculated average household energy use for computer systems, in households that use the product, based on data from published literature and under the assumption that computer systems contain at least one computer or server, and possibly a UPS as well. The average annual energy use for a desktop computer was estimated to be 220 kWh/yr, and the average annual energy use for a portable computer was estimated to be 62 kWh/yr, resulting in a weighted average of 130 kWh/yr per computer.⁶ In addition, there are an estimated 1.4 desktop computers and 1.9 portable computers per household that owns these devices in the U.S.,⁷ thus the total average household energy consumption of computers is likely higher than these estimations. The estimated annual energy consumption of individual servers ranges from approximately 1900-

⁵ Consumer Electronics Association, 2013. *15th Annual CE Ownership and Market Potential Study*; Urban, B. et al., 2011. *Energy Consumption of Consumer Electronics in U.S. Homes in 2010*. Prepared by the Fraunhofer Center for Sustainable Energy Systems for the Consumer Electronics Association; Roth, K.W. et al. 2007. *Residential Miscellaneous Electric Loads: Energy Consumption Characterization and Savings Potential*. Prepared by TIAX LLC for DOE.

⁶ Urban, B. et al., 2011. *Energy Consumption of Consumer Electronics in U.S. Homes in 2010*. Prepared by the Fraunhofer Center for Sustainable Energy Systems for the Consumer Electronics Association; Zogg, R. et al., 2009. *Energy Savings Potential and RD&D Opportunities for Commercial Building Appliances*. Prepared by Navigant Consulting, Inc. for DOE.

⁷ Consumer Electronics Association, 2013. *15th Annual CE Ownership and Market Potential Study*.

2100 kWh/yr for mass-produced volume servers.⁸ Under the assumption that households that use servers would have at most one of these types of servers, DOE estimated the average annual household energy use for households that use servers to be at least 1900 kWh/yr. The average annual per-unit energy use of ENERGY STAR-qualified UPSs is approximately 190 kWh/yr (including only standby and line-interactive UPSs, and assuming an average load of 0.7 of rated output power).⁹ Therefore, DOE tentatively determines that the average annual per-household energy use for computer systems is likely to exceed 100 kWh/yr, satisfying the provisions of 42 U.S.C. 6292(b)(1).

Based on the above, DOE has determined tentatively that computer systems qualify as a covered product under Part A of Title III of the EPCA, as amended.

V. Procedural Issues and Regulatory Review

DOE has reviewed its proposed determination of computer systems 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).

⁸ Koomey, J.G. 2011. *Growth in Data Center Electricity Use 2005 to 2010*. Analytics Press; Koomey, J.G. 2008. Worldwide Electricity Used in Data Centers. *Environmental Research Letters*, 3; Zogg, R. et al. 2009. *Energy Savings Potential and RD&D Opportunities for Commercial Building Appliances*. Prepared by Navigant Consulting, Inc. for DOE; Masanet, E.R. et al. 2011. Estimating the Energy Use and Efficiency Potential of U.S. Data Centers. *Proceedings of the IEEE* 99 (8), 1440-1453.

⁹ ENERGY STAR Uninterruptible Power Supplies Qualified Products List, posted October 30, 2013 (accessed October 31, 2013).
http://downloads.energystar.gov/bi/qplist/Uninterruptible_Power_Supplies_Product_List.xls

Accordingly, this proposed action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) in 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 an initial regulatory flexibility analysis for any rule that, by law, must be proposed for public comment, unless the agency certifies that the proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. 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 (August 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 (February 19, 2003). DOE makes its procedures and policies available on the Office of the General Counsel’s website at www.gc.doe.gov/gc/office-general-counsel.

DOE reviewed today’s proposed determination under the provisions of the Regulatory Flexibility Act and the policies and procedures published on February 19, 2003. If adopted, today’s proposed determination would set no standards; it would only positively determine that future standards may be warranted and should be explored in an energy conservation standards and test procedure rulemaking. Economic impacts on small entities would be considered in the context of such rulemakings. On the basis of the foregoing, DOE certifies that the proposed determination, if adopted, would have no significant economic impact on a substantial number of

small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this proposed 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 proposed determination, which proposes to determine that computer systems 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), will impose no new information or record-keeping requirements. Accordingly, 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 proposes to positively determine that future standards may be warranted and that environmental impacts should be explored in an energy conservation standards rulemaking. DOE has determined that review under the National Environmental Policy Act of 1969 (NEPA), Pub. L. 91-190, codified at 42 U.S.C. 4321 et seq. is not required at this time. NEPA review can only be initiated “as soon as environmental impacts can be meaningfully evaluated” (10 CFR 1021.213(b)). This proposed determination would only determine that future standards may be warranted, but would not itself propose to set any specific standard. DOE has, therefore, determined that there are no environmental impacts to be evaluated at this time. 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 (August 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 (March 14, 2000). DOE has examined today’s proposed determination and concludes that it would 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 today’s proposed 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 (February 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 proposed determination meets the relevant standards of E.O. 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 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 (March 18, 1997). (This policy also is available at www.gc.doe.gov). DOE reviewed today's proposed determination pursuant to these existing authorities and its policy statement and determined that the proposed determination 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 (Pub. L. 105-277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This proposed determination would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

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

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

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 OMB. The OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's proposed 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 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 today's regulatory action proposing to determine that computer systems 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) would 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 proposed determination as a significant energy action under E.O. 12866 or any successor order. Therefore, this proposed determination is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects for this proposed determination.

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 (January 14, 2005). The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal government, including influential scientific information related to agency regulatory actions. The purpose of the Bulletin is to enhance the quality and credibility of the Government's scientific information. DOE has determined that the analyses conducted for this rulemaking do not constitute "influential scientific information," which the Bulletin defines as "scientific information the agency reasonably can determine will have or does have a clear and substantial impact on important public policies or private sector decisions." 70 FR 2667 (January 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 be applicable to any future rulemaking to establish energy conservation standards for computer systems.

VI. Public Participation

A. Submission of Comments

DOE will accept comments, data, and information regarding this notice of proposed determination no later than the date provided at the beginning of this notice. After the close of

the comment period, DOE will review the comments received and determine whether computer systems are a covered product under EPCA.

Comments, data, and information submitted to DOE's e-mail address for this proposed determination should be provided in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format. Submissions should avoid the use of special characters or any form of encryption, and wherever possible comments should include the electronic signature of the author. No telefacsimiles (faxes) will be accepted.

According to 10 CFR Part 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies: one copy of the document should have all the information believed to be confidential deleted. DOE will make its own determination as to the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include (1) a description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known or available from public sources; (4) whether the information has previously been made available to others without obligations concerning its confidentiality; (5) an explanation of the competitive injury to the submitting persons which would result from public disclosure; (6) a date after which such information might no longer be considered confidential; and (7) why disclosure of the information would be contrary to the public interest.

B. Issues on Which DOE Seeks Comments

DOE welcomes comments on all aspects of this proposed determination. DOE is particularly interested in receiving comments from interested parties on the following issues related to the proposed determination for computer systems:

- Definition of computer and battery backup systems;
- Whether classifying computer systems as a covered product is necessary or appropriate to carry out the purposes of EPCA;
- Scope of this proposed determination;
- Identifying those computer systems that are of a type that make them a consumer product as distinguished from those computer systems that are objectively commercial;
- Calculations and values for average household energy consumption; and
- Availability or lack of availability of technologies for improving energy efficiency of computer systems.

The Department is interested in receiving views concerning other relevant issues that participants believe would affect DOE's ability to establish test procedures and energy conservation standards for computer systems. The Department invites all interested parties to submit in writing by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, comments and information on matters addressed in this notice and on other matters relevant to consideration of a determination for computer systems.

After the expiration of the period for submitting written statements, the Department will consider all comments and additional information that is obtained from interested parties or through further analyses, and it will prepare a final determination. If DOE determines that computer systems qualify as a covered product, DOE will consider a test procedure and energy conservation standards for computer systems. Members of the public will be given an opportunity to submit written and oral comments on any proposed test procedure and standards.

VII. Approval of the Office of the Secretary

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

List of Subjects

10 CFR Part 430

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

Issued in Washington, DC, on February 21, 2014.



Kathleen B. Hogan
Deputy Assistant Secretary of Energy Efficiency
Energy Efficiency and Renewable Energy