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[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: Proposed Determination of Portable Air Conditioners as a Covered Consumer Product

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

ACTION: Proposed determination of coverage.

SUMMARY: The U.S. Department of Energy (DOE or the “Department”) has determined tentatively that portable air conditioners (ACs) qualify as a covered product under Part A of Title III of the Energy Policy and Conservation Act (EPCA), as amended. DOE has determined that portable ACs 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 portable ACs is likely to exceed 100 kilowatt-hours (kWh) per year.

DATES: 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-STD-0033, by any of the following methods:

- Federal eRulemaking Portal: www.regulations.gov Follow the instructions for submitting comments.
- E-mail: Brenda.Edwards@ee.doe.gov. Include EERE-2013-BT-STD-0033 and/or RIN 1904-AD02 in the subject line of the message.
- Mail: Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE-2J, Proposed Determination for portable ACs, EERE-2013-BT-STD-0033 and/or RIN 1904-AD02, 1000 Independence Avenue SW, Washington, D.C. 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 Program, 6th Floor, 950 L'Enfant Plaza SW, Washington, D.C. 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 U.S. Department of Energy, 6th Floor, 950 L'Enfant Plaza SW, Washington, D.C. 20024, (202) 586-2945, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards at (202) 586-2945 for additional information regarding visiting the Resource Room.

FOR FURTHER INFORMATION CONTACT: Ronald Majette, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE-2J, 1000 Independence Avenue SW, Washington, D.C. 20585-0121. Telephone: (202) 586-7935. E-mail: portable_ACs@ee.doe.gov .

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

Table of Contents

- I. Statutory Authority
- II. Current Rulemaking Process
- III. Proposed Definition
- IV. Evaluation of Portable ACs as a Covered Product Subject to Energy Conservation Standards
 - A. Coverage Necessary or Appropriate to Carry Out Purposes of EPCA
 - B. Average Household Energy Use
- V. Procedural Issues and Regulatory Review
 - A. Review Under Executive Order 12866
 - B. Review Under the Regulatory Flexibility Act
 - C. Review Under the Paperwork Reduction Act of 1995
 - D. Review Under the National Environmental Policy Act of 1969
 - E. Review Under Executive Order 13132

- F. Review Under Executive Order 12988
 - G. Review Under the Unfunded Mandates Reform Act of 1995
 - H. Review Under the Treasury and General Government Appropriations Act of 1999
 - I. Review Under Executive Order 12630
 - J. Review Under the Treasury and General Government Appropriations Act of 2001
 - K. Review Under Executive Order 13211
 - L. Review Under the Information Quality Bulletin for Peer Review
- VI. Public Participation
- A. Submission of Comments
 - B. Issues on Which DOE Seeks Comments

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,” 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. 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))

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

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
- (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)).

Portable ACs are movable units typically designed to provide 8,000-14,000 Btu/hr of cooling capacity for a single room. In contrast to room ACs, they are not permanently installed on the wall or in a window.

If DOE issues a final determination that portable ACs are a covered product, DOE may prescribe 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 any energy conservation standards rulemaking.

II. Current Rulemaking Process

DOE has not previously conducted an energy conservation standard rulemaking for portable ACs. If, after public comment, DOE issues a final determination of coverage for this product, DOE may prescribe both test procedures and energy conservation standards for this product.

With respect to test procedures, DOE will consider a proposed test procedure for measuring the energy efficiency, energy use or estimated annual operating cost of portable ACs during a representative average use cycle or period of use that is not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) In a test procedure rulemaking, DOE initially prepares a notice of proposed rulemaking (NOPR) and allows interested parties to present oral and written data, views, and arguments with respect to such procedures. In prescribing new test procedures, DOE takes into account relevant information including technological developments relating to energy use or energy efficiency of portable ACs.

With respect to energy conservation standards, DOE is required to publish a NOPR. The NOPR provides DOE's proposal for potential energy conservation standards and a summary of the results of DOE's supporting technical analysis. The details of DOE's energy conservation standards analysis are provided in a technical support document (TSD) that describes the details of DOE's analysis of both the burdens and benefits of potential standards, pursuant to 42 U.S.C. 6295(o). Because portable ACs would be a product that is newly covered under 42 U.S.C. 6292(b)(1), DOE would 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 NOPR, DOE affords interested persons 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 would issue the final rule prescribing any new energy conservation standards for portable ACs.

III. Proposed Definition

DOE proposes to add a definition for “Portable Air Conditioners” in the Code of Federal Regulations to clarify coverage of any potential test procedure or energy conservation standard that may arise from today’s proposed determination. There currently is no statutory definition of portable ACs. DOE has determined preliminarily that adding portable ACs as a covered product is justified. Accordingly, DOE proposes the following definition of portable ACs to consider test procedures and energy conservation standards for portable ACs and to provide clarity for interested parties as it continues its analyses:

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.

This proposed definition is 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) DOE seeks feedback from interested parties on its proposed definition of portable ACs.

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

The following sections describe DOE's evaluation of whether 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 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 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) The aggregate energy use of portable ACs has been increasing as these units have become popular in recent years. There were an estimated 973.7 thousand units shipped in North America in 2012, with a projected growth to 1743.7 thousand units by 2018, representing nearly 80% growth in only 6 years.² Coverage of portable ACs will enable the conservation of energy supplies through both labeling programs and the regulation of portable AC energy efficiency.

² Transparency Media Research. *Air Conditioning Systems Market - Global Scenario, Trends, Industry Analysis, Size, Share and Forecast, 2012 - 2018*. January 2013.

There is significant variation in the annual energy consumption of different models currently available, therefore technologies exist to reduce the energy consumption of portable ACs.

B. Average Household Energy Use

DOE calculated average household energy use for portable ACs, in households that use the product, based on a review of the current market and a comparison to room air conditioner energy use. Based on the available models from a number of large online retailers, the typical rated energy efficiency ratio (EER) of portable ACs is approximately 9.5, with a large available range (approximately 8.2 – 14.3). Typical cooling capacities range from 8,000 – 14,000 Btu/hr. Under the assumption that portable ACs have a very similar usage profile to window-mounted room ACs of a similar capacity, DOE estimated portable AC annual electricity usage using values developed for residential room ACs (8,000 – 13,999 Btu/hr capacity).³ For a typical portable AC with EER 9.5, DOE estimated the average per-household annual electricity consumption to be approximately 650 kWh/yr (750 kWh/yr for EER 8.2, and 400 kWh/yr for EER 14.3). Furthermore, one set of laboratory tests⁴ 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 determines that the average annual per-household energy use for portable ACs is very likely to exceed 100 kWh/yr, satisfying the provisions of 42 U.S.C. 6292(b)(1).

³ See Technical Support Document: Energy Efficiency Program for Consumer Products: Residential Clothes Dryers and Room Air Conditioner (Direct Final Rule), Washington, DC. April 2011.

<http://www.regulations.gov/#!documentDetail;D=EERE-2007-BT-STD-0010-0053>

⁴ Consumer Reports. *Buying Advice: Portable Air Conditioners*.

<http://news.consumerreports.org/home/2008/06/air-condition-1.html>

Based on the above, DOE has determined tentatively that portable ACs 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 portable ACs under the following executive orders and acts.

A. Review Under Executive Order 12866

The Office of Management and Budget 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 proposed action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (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 <http://energy.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; they 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 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), 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 <http://energy.gov/gc/office-general-counsel>). 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 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 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) 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 portable ACs.

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 portable ACs 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 portable ACs:

- Definition(s) of portable ACs;
- Whether classifying portable ACs as a covered product is necessary or appropriate to carry out the purposes of EPCA;
- Calculations and values for average household energy consumption; and
- Availability or lack of availability of technologies for improving energy efficiency of portable ACs.

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 portable ACs. 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 portable ACs.

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 portable ACs qualify as a covered product, DOE will consider a test procedure and energy conservation standards for portable ACs. Members of the public will be given an opportunity to submit written and oral comments on any proposed test procedure and standards.

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 June 27, 2013.

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

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