

release frequency (LERF) have been introduced and widely used. Our colleagues seem to believe that there are known critical values of these surrogate metrics that mark the point at which a plant meets the QHOs. We know of no defensible analysis that establishes such critical values of these surrogate metrics. We are, of course, quite aware of very limited analyses considering only risk during normal operations that purport to show existing reactors meet the QHOs. Such limited analyses are simply not pertinent. They do not meet the exacting standards required by the definitions of the QHOs. Should defensible analyses ever be done, we are sure that they will show the critical values of the surrogate metrics are technology dependent. Indeed, more defensible analyses will show in all likelihood that better surrogate measures can be defined for advanced reactor technologies.

Our colleagues are sufficiently enamored with the existing surrogate metrics that they recommend these surrogates be enshrined on a level equivalent to QHOs. More remarkable, our colleagues want to establish critical values of the metrics that are a factor of ten less than the values they assert mark a plant meeting the rather stringent level of safety defined by the QHOs. They do this, apparently, for no other reason than the fact that clever engineers can design plants meeting these smaller values at least for a limited number of operational states. While we are willing to congratulate the engineers on their designs, we can see no reason why such stringent safety requirements should be made regulatory requirements to be imposed on the designers' efforts. Again, we worry that doing so may create unnecessary burdens that cause our society to sacrifice for practical reasons great improvements in power reactor safety simply because these improvements fall short of our colleagues unreasonably high safety expectations.

Though surrogate metrics have been useful, it is important to remember that they are only expedients. The full promise of risk-informed safety assessment will not be realized until it is possible to do routinely risk assessments of sufficient scope and depth so it is possible to dispense with surrogate metrics. Enshrining these surrogates along with the QHOs will only delay efforts to reach this preferred status.

The potential of our colleagues' recommendations have to stifle new technology and forego improved safety reaches a crisis when they speak to the location of modern, safer plants on sites with older but still adequately safe plants. Our colleagues have no tolerance for a single older plant if a newer, safer plant is to be collocated on the site. They are willing to tolerate any number of similarly old plants on a site if a new, safer plant is not added to this site. We find this remarkable. Our colleagues' recommendations give no credit for experience with a site. They fail to recognize the finite life of older plants even when licenses have been renewed. We fear that our colleagues have failed to assess the integral safety consequences of their stringent demands on this matter. A very great concern is that our colleagues' pursuit of ideals in risk avoidance may well arrest the current,

healthy quest for improved safety among those exploring advanced reactor designs.

#### References

1. U.S. Nuclear Regulatory Commission, SECY-05-130, "Policy Issues Related to New Plant Licensing and Status of the Technology Neutral Framework for New Plant Licensing," dated July 21, 2005.
2. U.S. Nuclear Regulatory Commission, "Safety Goals for the Operations of Nuclear Power Plants, Policy Statement," **Federal Register**, Vol. 51, (51 FR 30028), August 4, 1986.
3. U.S. Nuclear Regulatory Commission, "Commission's Policy Statement on the Regulation of Advanced Nuclear Power Plants," 59 FR 35461, July 12, 1994.
4. U.S. Nuclear Regulatory Commission, NUREG-1437, Volume 1, "Generic Environmental Impact Statement for License Renewal of Nuclear Plants," May 1996. [FR Doc. E6-6745 Filed 5-3-06; 8:45 am]

BILLING CODE 7590-01-P

## DEPARTMENT OF ENERGY

### Office of Energy Efficiency and Renewable Energy

#### 10 CFR Part 430

[Docket No. EE-RM-03-630]

RIN 1904-AB52

### Energy Conservation Program for Consumer Products: Classifying Products as Covered Products

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

**ACTION:** Notice of proposed rulemaking and opportunity for public comment.

**SUMMARY:** Under the Energy Policy and Conservation Act (EPCA or the Act), the Department of Energy (DOE or the Department) is proposing to define the term "household" and related terms. These definitions would provide a basis for the Department to determine whether the household energy use of products not currently covered by EPCA meets the levels required for DOE to classify a product as a "covered product" under the Act; such a classification would mean that DOE potentially could establish energy conservation requirements for the covered product. Once the "household" definition is in place, the Secretary may exercise statutory authority to (1) classify as covered products additional qualifying consumer products beyond the products already specified in EPCA, and then (2) set test procedures and efficiency standards for them.

**DATES:** The Department will accept written comments, data and information

regarding the proposed rule no later than June 19, 2006. The Department has determined that a public meeting is unnecessary under 42 U.S.C. 7191(c)(1), since no substantial issue of fact or law exists and this rulemaking is unlikely to have a substantial impact on the Nation's economy or large numbers of individuals or businesses.

**ADDRESSES:** Submit written comments, identified by docket number EE-RM-03-630 and/or RIN 1904-AB52, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- E-mail: [coverageconsumerproducts@ee.doe.gov](mailto:coverageconsumerproducts@ee.doe.gov). Include EE-RM-03-630 and/or RIN 1904-AB52 in the subject line of the message.
- Mail: Ms. Brenda Edwards-Jones, U.S. Department of Energy, Building Technologies Program, Mailstop EE-2J, NOPR to Define "Household", EE-RM-03-630, and/or RIN 1904-AB52, 1000 Independence Avenue, SW., Washington, DC 20585-0121. Telephone: (202) 586-2945. Please submit one signed original paper copy.
- Hand Delivery/Courier: Ms. Brenda Edwards-Jones, U.S. Department of Energy, Building Technologies Program, Room 1J-018, 1000 Independence Avenue, SW., Washington, DC 20585-0121.

**Instructions:** All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see section IV of this document (Public Participation).

**Docket:** For access to the docket to read background documents or comments received, go to the U.S. Department of Energy, Forrestal Building, Room 1J-018 (Resource Room of the Building Technologies Program), 1000 Independence Avenue, SW., Washington, DC, (202) 586-9127, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards-Jones at the above telephone number for additional information regarding visiting the Resource Room.

**FOR FURTHER INFORMATION CONTACT:** Linda Graves, Esq., Project Manager, Coverage of Consumer Products, Docket No. EE-RM-03-630, EE-2J/Forrestal Building, U.S. Department of Energy, Office of Building Technologies, EE-2J, 1000 Independence Avenue, SW., Washington, DC 20585-0121, (202) 586-1851, E-mail: [linda.graves@ee.doe.gov](mailto:linda.graves@ee.doe.gov), or Francine Pinto, Esq., or Thomas

DePriest, Esq., U.S. Department of Energy, Office of General Counsel, GC-72/Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585-0103, (202) 586-9507, E-mail: [Francine.Pinto@hq.doe.gov](mailto:Francine.Pinto@hq.doe.gov) or [Thomas.DePriest@hq.doe.gov](mailto:Thomas.DePriest@hq.doe.gov).

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#### I. Introduction

##### A. Authority

Part B of Title III of the Energy Policy and Conservation Act sets forth a variety of provisions that provide for the "Energy Conservation Program for Consumer Products Other than Automobiles." (42 U.S.C. 6291-6309) The program consists essentially of four parts: Mandatory testing, labeling, and energy conservation standards, as well as certification and enforcement procedures. DOE implements all parts of the program except for the labeling provisions, which are implemented by the Federal Trade Commission (FTC).

The Act lists specific types of consumer products that are subject to this program, referring to them as "covered products," and authorizes the

Department to add other consumer products to the program as covered products. (42 U.S.C. 6292(a) and (b)) The Department may add any type of consumer product if: (1) "classifying products of such type as covered products is necessary or appropriate to carry out the purposes" of EPCA, and (2) the annual per household energy use of such products in the households that use them is likely to average more than 100 kilowatt-hours. (42 U.S.C. 6292(b)) For purposes of section 6292(b), "[t]he term 'household' shall be defined under rules of the Secretary [of Energy]." (42 U.S.C. 6292(b)(2)(C)) This notice proposes a rule that would amend 10 CFR 430.2 to define "household" as well as four related terms, three of which are used in defining "household."

The Department may prescribe test procedures for any product it classifies as a "covered product." (42 U.S.C. 6293(b)(1)(B)) If the Department prescribes such test procedures, the FTC may also prescribe a labeling rule under EPCA for the product if it determines that labeling will assist purchasers in making purchasing decisions and is economically and technically feasible. (42 U.S.C. 6294(a)(3)) Finally, the Department may prescribe energy conservation standards for a type of consumer product it classifies as covered if the product meets certain additional criteria, such as "average per household energy use within the United States" in excess of 150 kilowatt-hours, and "aggregate household energy use" in excess of 4.2 billion kilowatt-hours, for any prior 12-month period. (42 U.S.C. 6295(l)(1))

Once the household definition is finalized through this rulemaking, the Secretary may exercise statutory authority (1) to identify as covered products additional qualifying consumer products beyond the products already specified in EPCA, and then potentially (2) to set test procedures and efficiency standards for the newly covered consumer products.

##### B. Background

Prior to 2006, the Department annually prepared an analysis of pending and prospective rulemakings under its energy conservation program for consumer products and its companion program for commercial and industrial equipment under parts B and C of Title III of EPCA. DOE used this analysis to develop priorities and propose schedules for all rulemakings under these programs. In its priority-setting activities beginning in fiscal year 2003, the Department discussed possible expansion of the programs to

include additional consumer products and commercial and industrial equipment. However, with the passage of the Energy Policy Act of 2005 (EPACT 2005), Public Law 109-58, several additional products that the Department had been considering for coverage (e.g., ceiling fans and torchieres) became covered products with prescribed standards.

Since the passage of EPACT 2005, the Department has re-assessed its rulemaking procedures and scheduling decisions. The Department held a public meeting November 15, 2005, followed by a 30-day public comment period, to obtain public input. After considering the public comments, the Department released a five-year plan that describes how DOE will address the appliance standards rulemaking backlog and meet all of the statutory requirements established in EPCA, as amended, and EPACT 2005. The plan is contained in the Report to Congress, which was released January 31, 2006, and is posted on the DOE Web page at: [http://www.eere.energy.gov/buildings/appliance\\_standards/2006\\_schedule\\_setting.html](http://www.eere.energy.gov/buildings/appliance_standards/2006_schedule_setting.html). The report focuses on how the Department will complete rulemakings currently in process, catch up on a very large backlog of overdue rulemakings, and meet all new rulemaking requirements contained in EPACT 2005 on time. Those tasks are such a major undertaking that the Department does not contemplate expanding the program to cover additional consumer products or commercial equipment at this time. Nonetheless, the Department is proceeding with this rulemaking because it has invested substantial work effort that is now close to the point of completion. This rulemaking also fills in a gap in DOE regulations that must be filled before the Secretary may exercise statutory authority in the future as scheduling, priorities, and available resources permit to expand standards coverage to appropriate products. Particularly, as energy efficient technologies advance in the future, the results of this rulemaking may be used to implement the Department's authority to consider whether any other products should be classified as covered products.

As indicated above, a significant element of such assessment for each of these products is whether its annual "per-household" energy use is likely to exceed 100 kilowatt-hours. The Department can classify a product as covered only if it determines that the product meets this criterion. To address the criterion, the Department must define the term "household," and is

proposing such a definition in this notice. DOE would apply the definition to any future evaluations of whether the Department can classify other consumer products as covered products. In addition, the Department would use the definition as a basis for determining whether a product meets the per-household and aggregate-household energy-use criteria for setting energy conservation standards for a product DOE classifies as covered. (42 U.S.C. 6295(l))

### C. Summary of Proposed Rule

The proposed rule defines “household” and three related terms. Taken together, these definitions in essence provide that a household is an individual or group that lives together in a housing unit that they occupy separately from any other group or individual. The content of these definitions is consistent with the legislative history of EPCA and with dictionary definitions of “household,” and is essentially the same as the relevant definitions that the DOE Energy Information Administration (EIA) uses as a basis for its periodic Residential Energy Consumption Surveys (RECS) of household energy use, which is discussed in more detail below in section II., C. The proposed rule also defines the term “energy use of a type of consumer product which is used by households,” which is virtually identical to a term used in section 322(b)(2)(A) of EPCA, 42 U.S.C. 6292(b)(2)(A), so as to make clear the locations at which household energy consumption can occur and that visitors to a household can contribute to such consumption.

## II. Discussion

### A. The Proposed Definitions

As discussed above, DOE is authorized to add products to its program under EPCA, if the product is likely to exceed “annual per-household energy use” of 100 kilowatt-hours pursuant to the Department’s definition of “household.” (42 U.S.C. 6292(a) and (b))

The Department is proposing a definition of “household,” and of the related terms “housing unit,” “separate living quarters,” and “group quarters.” The definitions of these related terms serve to clarify the meaning of “household.” “Housing unit” is defined because the term is used in the definition of “household,” and “separate living quarters” and “group quarters” are defined because they are used in the definition of “housing unit.”

The core of the proposed rule is the definition of “household” as an individual or group that resides in a particular housing unit. This conforms to the general dictionary definition of the term. The proposed rule, in turn, defines “housing unit” as “a house, an apartment, a group of rooms, or a single room occupied as separate living quarters, but [that] does not include group quarters.” “Separate living quarters” is defined as a place where people live in a separate space from others and to which they have access without going through the living space of others, and “group quarters” is defined as living quarters occupied by an institutional group of 10 or more unrelated persons. The Department has incorporated the substance of the RECS definitions of these last two terms to assure that “household” refers to a group that consumes energy as a unit. See 2001 RECS Report at <http://www.eia.doe.gov/emeu/recs/glossary.html>. The cut off of 10 or more unrelated people would serve to distinguish a group that acts as a unit from one that does not.

Under these proposed definitions, the Department intends to use a broad range of data, including data generated by the RECS, in determining whether products qualify for coverage and the development of standards under EPCA. In gathering information as to the household energy use of any particular product, DOE will use the best available data for that product. When RECS data covers a product, its use will be possible because the substance of the proposed definitions is consistent with and quite similar to the corresponding EIA definitions. See 2001 RECS Report at <http://www.eia.doe.gov/emeu/recs/glossary/html>. Moreover, DOE will generally prefer to use the RECS data because generally it is the most comprehensive and best available source of information on residential energy consumption. The RECS, however, will likely not cover many of the products the Department is investigating. By not adhering to all of the details of the definitions used in the RECS, today’s proposed definitions would allow the Department sufficient flexibility to use other sources of information as well.

Finally, EPCA defines “average annual per-household energy use” for a type of product as being the “estimated aggregate annual energy use \* \* \* of consumer products of such type which are used by households in the United States, divided by the number of such households which use [them].” (42 U.S.C. 6292(b)(2)) The Department is proposing to define “energy use of a

type of consumer product which is used by households” as meaning energy use by the product both within the interior space of housing units occupied by households, as well as on contiguous property used primarily by the household occupying the housing unit. Thus, for example, where a product consumes energy in a housing unit’s back yard or outdoor pool or accessory building(s) or structures, such energy use would be included in determining per-household or aggregate-household energy use. This definition also makes clear that household energy use includes all energy consumption, both by members of each household and their visitors, at all housing units occupied by each household.

### B. Extent of Reliance on Definitions Used in the Department’s Residential Energy Consumption Survey

Since 1978, the EIA has periodically gathered information about energy consumption in the residential sector by conducting a RECS, and in 2004, EIA posted data on its Web site on the results of its 2001 RECS at <http://www.eia.doe.gov/emeu/recs/> (2001 RECS Report). The RECS provides information on the use of energy in residential housing units in the United States. This information includes: The physical characteristics of the housing units surveyed; the appliances in those units, including space heating and cooling equipment; demographic characteristics of the households; the types of fuels used; and other information that relates to energy use. 2001 RECS Report at <http://www.eia.doe.gov/emeu/recs/contents.html>.

Clearly, “household” energy consumption behavior is the focus of the RECS. This behavior is a primary driver behind purchases and consumption of energy in the residential setting. The RECS collects information focused on the household, and the RECS Report provides data on energy consumption and expenditures per household.

Today’s proposed definitions contain the same concepts as the RECS definitions (see 2001 RECS Report at <http://www.eia.doe.gov/emeu/recs/glossary/html>), and this is appropriate for several reasons. First, as a general matter, the RECS definitions appear to be reasonable and logical constructions of the term “household.” In content, they are very similar to definitions for household and related terms in the Census Bureau’s housing survey, e.g., Current Housing Reports, U.S. Census Bureau, Pub. No. H150/01, American Housing Survey for the United States:

2001 at Appendix A, A-9—A-11 (2002) (2002 Housing Survey Report). Second, the RECS uses “household” and related terms for purposes very similar to those for which DOE would use today’s proposed definitions. The proposed definitions would provide a basis on which the Department could estimate the household energy use of particular products. The RECS uses the terms for gathering and presenting precisely this type of information, although it also collects information as to household energy use generally. Finally, DOE has used RECS data in its rulemakings concerning energy conservation standards, and intends to use this data whenever possible to determine whether it can classify as covered, and adopt standards for, consumer products not listed as covered in EPCA. For example, DOE used RECS data in rulemakings concerning efficiency standards for residential central air conditioners and heat pumps, and for residential water heaters. 65 FR 59589, 59595, 59600 (October 5, 2000); 66 FR 4474, 4477, 4478 (January 17, 2001).

As indicated above, today’s proposed rule would incorporate from the RECS definitions the concept that a group of 10 or more unrelated people, even if living in a dwelling that would otherwise be a single housing unit, would not be a “household” for purposes of determining per-household energy consumption. The Census Bureau’s Housing Survey uses a similar approach: It does not treat as a household a group that occupies living quarters inhabited by nine or more unrelated persons. 2001 Housing Survey Report, App. A at A-10. Although DOE might possibly use a different numerical cut off than the RECS uses, or a more subjective approach to describe groups that occupy a dwelling and act as a unit, the Department believes that the approach in the RECS is reasonable and wants to be able to rely on the RECS data to the greatest extent possible to evaluate household energy consumption for products it seeks to cover. DOE emphasizes that it is proposing this classification only for purposes of evaluating household energy consumption under EPCA. The proposed rule’s definition of “household” is not intended in any way to address or make a judgment on the desirability of households of any particular size or composition.

Although today’s proposed definitions are essentially the same in substance as the definitions the RECS uses for “household” and related terms, the proposed language is much less detailed, and differs from the language of the RECS definitions in a number of

respects. The RECS definitions contain language specifically geared to EIA’s purposes that is unnecessary for this rulemaking. Regarding the level of detail, most significant is that the RECS definition of “household” identifies various specific categories of people who would or would not be considered household members, whereas today’s proposed rule does not identify such categories. The RECS gathers information as to the characteristics of the households it surveys, but DOE will not use today’s proposed definitions as a basis for obtaining such information. Therefore, the RECS definition needs to delineate who is and is not within a household with much greater precision than today’s proposed definition.

In addition, today’s proposed definitions contain many technical and editorial changes to the RECS definitions. For example, the RECS definition of “household” refers to a person’s residence “at the time of the first field contact” and to comparison of the numbers of households and of occupied housing units “in the RECS.” 2001 RECS Report at <http://www.eia.doe.gov/emeu/recs/glossary.html>. Such language does not belong in today’s proposed definition of household, which would be used to provide a metric for assessing the energy use of a product.

Furthermore, because EIA did not develop the RECS definitions for inclusion in regulations, they are not in the form, and sometimes lack the precision, needed in a regulation. For example, consecutive sentences of the RECS definition of “household” describe members of the household as persons who have their “usual or permanent place of residence” in the same housing unit, who “live in the housing unit,” and who “usually live in the household.” 2001 RECS Report at <http://www.eia.doe.gov/emeu/recs/glossary.html>. These different descriptions create the potential for misinterpretation, and use of the word “household” within the definition of that term makes the definition circular. In today’s proposed definitions, the Department has converted the EIA definitions into language suitable for use as a regulation, adhering to the concepts in these definitions while attempting to reduce the potential for misinterpretation, vagueness, and conflicts, as well as unnecessary wording.

Finally, today’s proposed definition of “energy use of a type of consumer product which is used by households” reflects how EIA conducts the RECS and uses its definitions of household and related terms, although in one

significant respect it departs from the RECS approach. First, the RECS concern all energy consumption at the housing unit where the household is located, *i.e.*, consumption both by members of a household and by visitors. 2001 RECS Report at <http://www.eia.doe.gov/emeu/recs/recs2001/questionnaire.pdf>. The language of the RECS definitions of household and related terms, however, does not clearly provide that household energy consumption includes consumption by non-members of the household. The Department is proposing to define “energy use of a type of consumer product which is used by households” so as to clearly include such energy consumption.

Second, the RECS often addresses energy consumption on the grounds and in buildings belonging to the housing unit in which the household members reside, although its definition of “housing unit” does not explicitly include such areas. For example, the 2001 RECS addressed swimming pool heaters, well water pumps, and outdoor gas lighting (2001 RECS Report at Table HC5-4a), and previous surveys have addressed products such as electric lawn mowers. Today’s proposed definition of “energy use of a type of consumer product which is used by households” provides in essence that energy consumption on the grounds of housing units occupied by the household, and in structures on those grounds, is part of household energy consumption.

Third, the RECS concerns energy consumption only at housing units that households occupy as primary residences. 2001 RECS Report at [http://www.eia.doe.gov/emeu/recs/recs2001/append\\_a.html](http://www.eia.doe.gov/emeu/recs/recs2001/append_a.html) and <http://www.eia.doe.gov/emeu/recs/recs2001/questionnaire.pdf>. Thus, the RECS does not include information as to household energy use in secondary residences. The EIA uses this approach for several reasons. First, the amount of energy consumed in secondary residences, although not negligible, is not large. Second, by covering a narrower universe—primary residences rather than all residences occupied by households—the sample of households from which the RECS gathers information will provide stronger support for the conclusions reached in the RECS as to household energy use. And third, this approach parallels the Census Bureau’s definition of “household” and its approach to gathering information in its housing survey. EPCA’s criteria for determining whether a consumer product qualifies for coverage and the adoption of standards, however, do not limit per-

household or aggregate household energy use to energy use in the primary residences of households. (42 U.S.C. 6292(b) and 6295(l)) Furthermore, the Department sees no reason to adopt such a limitation in evaluating products for coverage and standards. Therefore, today's proposed definitions provide in effect that household energy use by a product includes all energy that households consume in using that product, at all housing units they occupy, regardless of whether the housing units are primary residences. This would permit the Department to use data as to household energy consumption that includes both primary and secondary residences, if such data is available. When such data is not available, the Department would use data that includes only primary residences, such as the RECS data. Energy consumption at primary residences will always be at least a constituent element of total household energy use for consumer products, since for all or virtually all such products it appears to represent the most significant portion of household energy use. Thus, for products for which the available data includes energy use only at primary residences, such as the RECS data, the Department's use of such data as a basis for determining whether the product qualifies for coverage and the adoption of standards would provide an accurate but conservative estimate of per-household and aggregate household energy use under EPCA.

### C. Conclusion

In sum, the Department proposes to adopt definitions of "household" and related terms, which it would use to determine whether products not currently covered under EPCA meet the EPCA criteria for classification as "covered products." The Department would also use these definitions to determine whether, once a product has been so classified, it meets the additional per-household and aggregate household energy use criteria for setting energy conservation standards under EPCA for a product DOE classifies as covered. EPCA directs DOE to define "household," and the Department believes the proposed definitions are reasonable and consistent with data the Department intends to use in making its determinations on household energy consumption.

## III. Procedural Requirements

### A. Review Under Executive Order 12866

The Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB) has

determined that today's regulatory action is not a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (October 4, 1993). Accordingly, this action was not subject to review under the Executive Order.

### B. Review Under the Regulatory Flexibility Act

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

DOE has reviewed today's proposed rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. Today's proposed rule neither classifies any product as covered under the Act, nor includes any requirement for any product. Thus, the proposed definitions would not have any economic impact on any business or entity. On the basis of the foregoing, DOE certifies that the proposed rule, if adopted as a final rule, will not impose a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking. DOE will transmit the certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review pursuant to 5 U.S.C. 605(b).

### C. Review Under the Paperwork Reduction Act

The Department reviewed today's proposed rule under the Paperwork Reduction Act. (44 U.S.C. 3501 *et seq.*) Today's proposed rule concerns an element of the criteria the Department must use to determine whether it can regulate and adopt energy conservation standards for consumer products not already covered under EPCA. It would not require any additional reports or record-keeping. Accordingly, this action

is not subject to review under the Paperwork Reduction Act.

### D. Review Under the National Environmental Policy Act

In this rulemaking, DOE proposes to adopt definitions that would provide a basis for the Department to determine whether products not currently covered by EPCA meet the requirements for DOE to classify a product as a "covered product" under the Act, and to establish energy conservation requirements for the product. The definitions will not affect the quality or distribution of energy and, therefore, will not result in any environmental impacts. DOE, therefore, determined that this rule 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 the Department's implementing regulations at 10 CFR part 1021. More specifically, today's rule is covered by the Categorical Exclusion in paragraph A5 to subpart D, 10 CFR part 1021 (rulemaking that amends an existing rule without changing the environmental effect of the rule being amended). Accordingly, neither an environmental assessment nor an environmental impact statement is required.

### E. Review Under Executive Order 13132

Executive Order 13132, "Federalism," 64 FR 43255 (August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive Order 13132 requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations (65 FR 13735).

The proposed rule published today would supply an element of the criteria the Department must use to determine whether it can regulate and adopt energy conservation standards for consumer products not already covered under EPCA. This proposed rule will not directly affect state or local governments. However, it might ultimately have an indirect impact on

such governments because the rule could affect which products the Department covers and adopts standards for, under EPCA. If the Department ultimately decides to extend the coverage of its energy efficiency program to additional consumer products, the future application of coverage criteria could pre-empt state and local requirements for those newly covered products. Such impacts would not be the result of this proposal but would be the result of later notice—and—comment rulemakings. Thus today's rule, by itself, would not pre-empt any state or local action.

For these reasons, the Department has determined that today's proposed rule does not preempt State law and would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, no further action is required by Executive Order 13132.

#### *F. Review Under Executive Order 12988*

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

#### *G. Review Under Unfunded Mandates Reform Act of 1995*

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and tribal governments and the private sector. With respect to a proposed regulatory action that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector of \$100 million or more (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish estimates of the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a),(b)) UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and tribal governments on a proposed "significant intergovernmental mandate," and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA (62 FR 12820) (also available at <http://www.gc.doe.gov>).

This proposed rule will not directly affect any state, local or tribal government, or the private sector. It might ultimately have an indirect effect on state or local governments, and the private sector, since it could affect which products the Department covers and adopts standards for under EPCA. The Department's coverage and adoption of standards for products could pre-empt state and local requirements for those products, and would affect companies that manufacture and sell them. Such impacts will not result from adoption of today's proposed rule, however, and the rule would impose no mandates of any kind.

For these reasons, we have determined that the action proposed today does not provide for any Federal mandate that may result in estimated costs of \$100 million or more. Therefore, the UMRA does not require a cost benefit analysis of today's proposal.

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

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105-277), requires

Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. Today's proposed rule would not have any impact on the autonomy or the 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*

The Department has determined under Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights," 53 FR 8859 (March 18, 1988), that this proposed regulation would not result in any takings which might require compensation under the Fifth Amendment to the United States Constitution.

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

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency under general guidelines issued by OMB. The OMB guidelines were published in 67 FR 8452 (February 22, 2002), and the DOE guidelines were published in 67 FR 62446 (October 7, 2002). The Department has reviewed today's notice under the OMB and DOE guidelines, and has concluded that it is consistent with applicable policies in those guidelines.

#### *K. Review Under Executive Order 13211*

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, 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 or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administration 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 should the proposal be implemented,

and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Today's proposed rule is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy. Therefore, it is not significant energy action, and DOE has not prepared a Statement of Energy Effects.

#### IV. Public Participation

##### A. Determination Not To Hold Public Meeting

Under 42 U.S.C. 7191(c)(1), the Secretary may determine that "no substantial issue of fact or law exists and that such rule \* \* \* is unlikely to have a substantial impact on the Nation's economy or large numbers of individuals or businesses," and that "such proposed rule \* \* \* or order may be promulgated in accordance with section 553 of title 5." Section 553(c) of title 5 permits the agency to "give interested persons an opportunity to participate in the rulemaking through submission of written data, views, or arguments with or without opportunity for oral presentation." The Department has determined that a 45-day public comment period for written comments is sufficient and that a public meeting for oral presentation is unnecessary for this rulemaking. Since this rulemaking does not raise any issues of fact or law and merely provides a definition necessary for the Secretary to carry out authority already held by the Secretary under EPCA, this rulemaking is unlikely to have a substantial impact on the Nation's economy or large numbers of individuals or businesses.

##### B. Submission of Written Comments

The Department will accept comments, data, and information regarding the proposed rule no later than the date provided at the beginning of this notice of proposed rulemaking. Please submit comments, data, and information electronically. Send them to the following e-mail address: [coverageconsumer.products@ee.doe.gov](mailto:coverageconsumer.products@ee.doe.gov). Submit electronic comments in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format and avoid the use of special characters or any form of encryption. Comments in electronic format should be identified by the docket number EE-RM-03-630 and/or RIN number 1904-AB52, and wherever possible carry the electronic signature of the author. Absent an electronic signature, comments submitted electronically must be followed and authenticated by

submitting the signed original paper document. No telefacsimiles (faxes) will be accepted.

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

Factors of interest to the Department 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 by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

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

The Secretary of Energy has approved issuance of this notice of proposed rulemaking.

##### List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Energy conservation, Household appliances.

Issued in Washington, DC, on April 17, 2006.

**Alexander A. Karsner,**

*Assistant Secretary, Energy Efficiency and Renewable Energy.*

For the reasons set forth in the preamble, part 430 of Chapter II of Title 10, Code of Federal Regulations, is proposed to be amended 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 adding definitions for "energy use of a

type of consumer product which is used by households," and "household," in alphabetical order to read as follows:

##### § 430.2 Definitions.

\* \* \* \* \*

*Energy use of a type of consumer product which is used by households* means the energy consumed by such product within housing units occupied by households (such as energy for space heating and cooling, water heating, the operation of appliances, or other activities of the households), and includes energy consumed on any property that is contiguous with a housing unit and that is used primarily by the household occupying the housing unit (such as energy for exterior lights or heating a pool).

\* \* \* \* \*

*Household* means an entity consisting of either an individual, a family, or a group of unrelated individuals, who reside in a particular housing unit. For the purpose of this definition:

(1) *Group quarters* means living quarters that are occupied by an institutional group of 10 or more unrelated persons, such as a nursing home, military barracks, halfway house, college dormitory, fraternity or sorority house, convent, shelter, jail or correctional institution.

(2) *Housing unit* means a house, an apartment, a group of rooms, or a single room occupied as separate living quarters, but does not include group quarters.

(3) *Separate living quarters* means living quarters:

(i) To which the occupants have access either:

(A) Directly from outside of the building, or

(B) Through a common hall that is accessible to other living quarters and that does not go through someone else's living quarters, and

(ii) Occupied by one or more persons who live and eat separately from occupant(s) of other living quarters, if any, in the same building.

\* \* \* \* \*

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