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DEPARTMENT OF ENERGY

10 CFR Part 430

EERE-2021-BT-DET-0022

RIN 1904–AF25

Energy Conservation Program: Proposed Determination of Air Cleaners as a Covered Consumer Product

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

ACTION: Notification of proposed determination and request for comment.

SUMMARY: The U.S. Department of Energy (“DOE”) has tentatively determined that air cleaners qualify as a covered product under Part A of Title III of the Energy Policy and Conservation Act (“EPCA”), as amended. DOE has tentatively determined that coverage of air cleaners is necessary and appropriate to carry out the purposes of EPCA, and that the average U.S. household energy use for air cleaners is likely to exceed 100 kilowatt-hours per year.

DATES: Written comments, data, and information are requested and will be accepted on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].**

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *www.regulations.gov*. Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE–2021–BT–DET-0022, by any of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov*. Follow the instructions for submitting comments.
2. *E-mail: to AirCleaners2021DET0022@ee.doe.gov*. Include docket number EERE–2021–BT–DET-0022 in the subject line of the message.

No telefacsimiles (“faxes”) will be accepted. For detailed instructions on submitting comments and additional information on this process, see section VI of this document.

Although DOE has routinely accepted public comment submissions through a variety of mechanisms, including postal mail and hand delivery/courier, DOE has found it necessary to make temporary modifications to the comment submission process in light of the ongoing COVID-19 pandemic. DOE is currently suspending receipt of public comments via postal mail and hand delivery/courier. If a commenter finds that this change poses an undue hardship, please contact Appliance Standards Program staff at (202) 586-1445 to discuss the need for alternative arrangements. Once the COVID-19 pandemic health emergency is resolved, DOE anticipates resuming all of its regular options for public comment submission, including postal mail and hand delivery/courier.

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

The docket web page can be found at *www.regulations.gov/docket/EERE-2021-BT-DET-0022*. The docket web page contains instructions on how to access all documents, including public comments, in the docket. See section VI, “Public Participation,” for further information on how to submit comments through *www.regulations.gov*.

FOR FUTHER INFORMATION CONTACT:

Dr. Stephanie Johnson, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE-2J, 1000 Independence Avenue SW., Washington, DC 20585-0121. Telephone: (202) 287-1943. E-mail: *ApplianceStandardsQuestions@ee.doe.gov*.

Ms. Linda Field, U.S. Department of Energy, Office of the General Counsel, GC-33, 1000 Independence Avenue SW., Washington, DC 20585-0121. Telephone: (202) 586-3440. E-mail: *Linda.Field@hq.doe.gov*.

For further information on how to submit a comment or review other public comments and the docket, contact the Appliance and Equipment Standards Program staff at (202) 287-1445 or by email: *ApplianceStandardsQuestions@ee.doe.gov*.

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I. Statutory Authority

EPCA¹ authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part B² of EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles, which sets forth a variety of provisions designed to improve energy efficiency for certain consumer products, referred to generally as “covered products.”³ In addition to specifying a list of consumer products that are covered products, EPCA contains provisions that enable the Secretary of Energy to classify additional types of consumer products as covered products. For a given consumer product to be classified as a covered product, the Secretary must determine that:

- (1) Classifying the product as a covered product is necessary or appropriate to carry out the purposes of EPCA; and
- (2) The average annual per-household⁴ energy use by products of such type is likely to exceed 100 kilowatt-hours (“kWh”) (or its British thermal unit (“Btu”) equivalent)

¹ All references to EPCA in this document refer to the statute as amended through the Energy Act of 2020, Pub. L. 116-260 (Dec. 27, 2020).

² For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

³ The enumerated list of covered products is at 42 U.S.C. 6292(a)(1)–(19).

⁴ DOE has defined “household” to mean 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. 10 CFR 430.2.

per year.

(42 U.S.C. 6292(b)(1))

When attempting to cover additional consumer product types, DOE must first determine whether these criteria from 42 U.S.C. 6292(b)(1) are met. Once a determination is made, the Secretary may prescribe test procedures to measure the energy efficiency or energy use of such product. (42 U.S.C. 6293(a)(1)(B)) Furthermore, once a product is determined to be a covered product, the Secretary may set standards for such product, subject to the provisions in 42 U.S.C. 6295(o) and (p), provided that DOE determines that four additional criteria at 42 U.S.C. 6295(l) have been met. Specifically, 42 U.S.C. 6295(l) requires the Secretary to 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 4200 gigawatt-hours;
- (3) Substantial improvement in energy efficiency of products of such type 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))

II. Current Rulemaking Process

DOE has not previously conducted a rulemaking for air cleaners. 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. DOE will publish a final decision on coverage as a separate notice, an action that will be completed prior to the initiation of any test procedure or energy conservation standards rulemaking. 10 CFR part 430 subpart C appendix A section 5(c). If DOE determines that coverage is warranted, DOE will proceed with its typical rulemaking process for both test procedures and standards. *Id.* DOE is not proposing test procedures or energy conservation standards as part of this proposed determination. If DOE proceeds with a rulemaking to establish energy conservation standards, DOE would determine if air cleaners satisfy the provisions of 42 U.S.C. 6295(l)(1) during the course of that rulemaking.

III. Scope of Coverage

Air cleaners are products that remove, destroy, or deactivate particulate matter and other contaminants from the air to improve indoor air quality. A wide range of consumer air cleaner products are available on the market, including tabletop units, units sized for single rooms or multiple rooms, and whole-home units integrated into a central heating and cooling system. Air cleaners employ a wide variety of technologies to remove particulate matter and other contaminants from the air, and may also provide air circulation or humidification, and other forms of indoor air quality improvement.

To help inform its proposed scope of coverage, DOE utilized existing classifications of air cleaners developed by the Association of Home Appliance Manufacturers (“AHAM”)—the

industry trade group for air cleaners—and the U.S. Environmental Protection Agency’s (“EPA’s”) ENERGY STAR® program, as well as additional market research conducted by DOE. The following paragraphs discuss DOE’s considerations from these sources and present the proposed definition that would provide the basis for coverage of air cleaners under EPCA.

AHAM publishes a standard method of test, certified by American National Standards Institute (“ANSI”), for measuring the performance of portable household electric room air cleaners, titled ANSI/AHAM AC-1-2020 *Portable Household Electric Room Air Cleaners* (“ANSI/AHAM AC-1-2020”).⁵ AHAM describes this standard as establishing a uniform, repeatable procedure or standard method for measuring specified product characteristics of household portable air cleaners. The standard methods provide a means to compare and evaluate different brands and models of household portable air cleaners on the basis of characteristics significant to product use. Section 3.1 of ANSI/AHAM AC-1-2020 defines “Portable Household Electric Room Air Cleaner (‘Air Cleaner’)” as “[a]n electric appliance with the function of removing particulate matter from the air and which can be moved from room to room. Hereinafter referred to as ‘air cleaner.’” In addition, Sections 3.1.1 through 3.1.6 of ANSI/AHAM AC-1-2020 define the following installation configurations of air cleaners:

(1) Air Cleaner – Floor Type: Floor type air cleaners are designed to stand alone on the floor of a room and are designated as stand-alone floor models by the manufacturer. Appliances of this type are tested on the floor facing the test window as close to the center of the test chamber as possible.

⁵ ANSI/AHAM AC-1-2020 available at AHAM website at www.aham.org/itemdetail?iproductcode=30002&category=padstd.

(2) Air Cleaner – Table Type: Table type air cleaners are designed to set on a table or counter by the manufacturer. Appliances of this type are tested on the table stand facing the test window at the center of the test chamber.

(3) Air Cleaner – Wall Type: Wall type air cleaners are designed either to attach to a wall and are designated as wall mountable by the manufacturer or as a plug-in air cleaner. A wall type air cleaner must include appropriate wall mounting brackets or specifically designated instructions to mount the air cleaner integrally to the wall (*i.e.*, not a shelf). Appliances of this type are tested on the wall mount stand facing the test window placed at the center of the test chamber.

(4) Air Cleaner – Combination Type: Combination type air cleaners are designed to operate in one or more orientations/positions (floor, table, wall) as designed by the manufacturer. A combination type air cleaner may be tested at the center of the test chamber facing the test window on the floor, table, or wall mount stand, according to how it has been designated by the manufacturer.

(5) Air Cleaner – Ceiling Type: Air cleaner appliances designed to be mounted on the ceiling are considered outside the scope of this method. Uniform testing practices and statistical examination of such appliances have not been conducted.

(6) Air Cleaner – Plug-In Type: A fixed location air cleaner directly connected to an electric receptacle (outlet) by means of direct plug-in (no electric cord). Appliances of this type are tested at the lower level electrical receptacle of the plug-in type test stand facing the test window.

In addition, Section 3.2 of ANSI/AHAM AC-1-2020 defines the following specific design characteristics of portable household electric room air cleaners:

(1) Fan with Filter: Air cleaners that operate with an electrical source of power and which contain a motor and fan for drawing air through a filter media.

(2) Fan with Electrostatic Plates: Air cleaners that operate with a fan and incorporate electrically charged plates or wires to electrostatically collect particulate matter. Such devices may include filter(s).

(3) Fan Filter with Ion Generator: Air cleaners that incorporate an ion generator in addition to a fan and filter.

(4) Ion Generator: Air cleaners that incorporate an ion generator only.

(5) Hybrid: An air cleaner employing a combination of the above definitions of fan with filter, electrostatic plate/wire, and ion generator.

(6) Other Types: A device that has the stated capability to reduce the concentration of particulate matter in a room. Such devices do not have to contain a fan and can incorporate any of the particle removal methods previously noted.

The ENERGY STAR program provides qualification criteria for room air cleaners (also referred to as air purifiers).⁶ On its webpage, ENERGY STAR describes room air cleaners as portable, electric appliances that remove fine particles, such as dust and pollen, from indoor air. The current ENERGY STAR Product Specification⁷ defines “room air cleaner” as “an electric

⁶ See ENERGY STAR website for air purifiers (cleaners) at www.energystar.gov/products/air_purifiers_cleaners.

⁷ See Eligibility Criteria Version 2.0, Rev. April 2021, available at www.energystar.gov/sites/default/files/ENERGY%20STAR%20Version%202.0%20Room%20Air%20Cleaners%20Specification_Rev%20April%202021_with%20Partner%20Commitments.pdf

appliance with the function of removing particulate matter from the air and which can be moved from room to room,” consistent with ANSI/AHAM AC-1-2020.

The definitions in both ANSI/AHAM AC-1-2020 and the ENERGY STAR Product Specification include specific air cleaning and air purifying designs and technologies, but state that they cover only “portable” air cleaners that “can be moved from room to room.” DOE notes that while ANSI/AHAM AC-1-2020 specifies coverage of portable air cleaners, it includes air cleaners that include appropriate wall mounting brackets or specifically designated instructions to mount the air cleaner integrally to the wall. In order to cover a more comprehensive range of the consumer market for air cleaning and purification, an expanded definition of a consumer air cleaner may be appropriate. DOE has therefore considered a modified definition that would include “non-portable” air cleaners, such as those that are mounted on walls and ceilings, or that provide whole-home air cleaning in conjunction with central heating or air conditioning systems. The proposed definition also includes technologies that clean the air by destroying or deactivating contaminants, including microbes as well as particulates, from the air (instead of only removing them).

DOE is also proposing to exclude from coverage those consumer products which purify air solely by means of ultraviolet (“UV”) light without circulating air through the product by means of a fan. The energy-consuming component of such products would be a fluorescent lamp or light-emitting diode that emits light in the UV portion of the electromagnetic spectrum. Accordingly, DOE would classify these products as a type of lamp under EPCA (See the definition of “lamps primarily designed to produce radiation in the ultraviolet region of the

spectrum” and “light-emitting diode or LED” in 10 CFR 430.2), and therefore, is not considering coverage for these products as a consumer air cleaner.

DOE additionally proposes to make clear that a product that meets the definition of a central air conditioners, room air conditioners, portable air conditioners, dehumidifiers, and furnaces as defined in 10 CFR 430.2 is not included in the proposed definition of air cleaner. Although these products may eliminate certain particulates from the air by means of filters or through collection and removal of condensate containing the particulates, DOE is proposing to exclude them. (See the definitions for “central air conditioner,” “room air conditioner,” “portable air conditioner,” “dehumidifier,” and “furnace” in 10 CFR 430.2.)

For the purpose of this analysis, DOE evaluated air cleaners, which DOE defined as a consumer product that:

- (1) Is a self-contained, mechanically encased assembly;
- (2) Is powered by single-phase electric current;
- (3) Removes, destroys, or deactivates particulates and microorganisms from the air;
- (4) Excludes products that destroy or deactivate particulates and microorganisms solely by means of ultraviolet light without a fan for air circulation; and
- (5) Excludes central air conditioners, room air conditioners, portable air conditioners, dehumidifiers, and furnaces as defined in 10 CFR 430.2.

DOE proposes to adopt this definition to inform stakeholders while DOE continues its analysis. The proposed definition considers the air cleaning and air purification function of the product that is described in ANSI/AHAM AC-1-2020, the current ENERGY STAR Version 2.0

Product Specification for consumer room air cleaners, and the wide variety of air cleaning and air purifying consumer products currently on the market.

As stated, EPCA authorizes DOE to classify a type of consumer product as a covered product upon making certain determinations. EPCA defines a “consumer product” as any article (other than an automobile) of a type – (A) which in operation consumes, or is designed to consume energy; and (B) which, to any significant extent, is distributed in commerce for personal use or consumption by individuals; without regard to whether such article of such type is in fact distributed in commerce for personal use or consumption by an individual. (42 U.S.C. 6291(a)(1)) As such, in considering the potential scope of coverage, DOE does not consider whether an individual product is distributed in commerce for residential or commercial use, but whether it is *of a type* of product distributed in commerce for residential use.

DOE seeks feedback from interested parties on its proposed definition and scope of coverage of air cleaners.

IV. Evaluation of Air Cleaners as a Covered Product Subject to Energy Conservation Standards

The following sections describe DOE’s preliminary evaluation of whether air cleaners 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 or appropriate to carry out the purposes of EPCA; and

(2) The average annual per-household energy use by products of such type is likely to exceed 100 kWh (or its Btu equivalent) per year.

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

DOE has preliminarily determined that coverage of air cleaners 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. 6291(4) – (5))

Although air cleaners are not currently subject to energy conservation standards under EPCA, as discussed, the ENERGY STAR program has developed qualifying specifications for room air cleaners, starting with the Version 1.0 specification that became effective July 1, 2004. The current specification, Version 2.0 Rev. April 2021, became effective October 17, 2020. During the process of developing the Version 1.0 specification, EPA cited shipments data from AHAM showing 1.65 million units shipped in 2000, and estimated that shipments would grow to 2.02 million units in 2010 with an installed base of 15 million units.⁸ EPA reported that shipments of ENERGY STAR-qualified room air cleaners in 2019 were 2.224 million units, with an estimated market penetration of 43 percent, indicating overall shipments of air cleaners were

⁸ *ENERGY STAR & Air Cleaners*. January 14, 2003. Andrew Fanara, EPA. Available online at: www.energystar.gov/sites/default/files/specs//private/AirCleanersatIHS-Presentation-Final.ppt.

5.17 million units.⁹ Based on EPA’s definition of room air cleaner, these shipments and installed base estimates comprise only portable configurations of air cleaners. Nevertheless, the ratings contained in the ENERGY STAR database of certified room air cleaners¹⁰ demonstrate significant variation in the total energy consumption among different models currently available, suggesting that technologies exist to reduce the energy consumption of air cleaners.

DOE requests data and information regarding current annual shipments of air cleaners and the installed base of air cleaners, specifying the scope of products included in any such estimates (*e.g.*, portable, non-portable (wall-mounted, ceiling-mounted, whole-home), *etc.*)

DOE requests comment on the availability or lack of availability of technologies for improving energy efficiency of air cleaners.

B. Average Household Energy Use

DOE estimated the average household energy use for air cleaners, in households that use the product, using power consumption data reported in the ENERGY STAR product database. The ENERGY STAR database is the only publicly available source, of which DOE is aware, that provides energy consumption data for air cleaners. For each model, the database lists the annual energy use in kilowatt-hours per year (“kWh/yr”), along with other relevant performance

⁹ ENERGY STAR® Unit Shipment and Market Penetration Report: Calendar Year 2019 Summary. Available online at: www.energystar.gov/sites/default/files/asset/document/2019%20Unit%20Shipment%20Data%20Summary%20Report.pdf.

¹⁰ ENERGY STAR Certified Room Air Cleaners Database. Accessed June 24, 2021. Available online at www.energystar.gov/productfinder/product/certified-room-air-cleaners/.

metrics, as measured according to ANSI/AHAM AC-1-2020. The reported annual energy consumption ranges from 123 kWh/year to 770 kWh/year, with an average annual energy consumption of 299 kWh/year among all models in the ENERGY STAR database. The energy consumption of non-ENERGY STAR-qualified models, comprising 57 percent of shipments in 2019 as discussed in section IV.A of this document, is likely to be higher. The ENERGY STAR program estimates that the standard (*i.e.*, non-ENERGY STAR qualified) consumer air cleaner operating continuously uses around 550 kWh/year.¹¹

Although the ENERGY STAR program covers only portable configurations of air cleaners, the similarity in fundamental design and operation (*i.e.*, a fan or other means for air circulation and a means for removing, destroying, or deactivating particulates and microorganisms from the air) of non-portable products (*e.g.*, wall-mounted, ceiling-mounted, whole-home units) suggests that non-portable air cleaners are likely to have similar or higher energy consumption as compared to portable air cleaners.

Based on this analysis, DOE tentatively determines that the average annual per-household energy use for air cleaners is very likely to exceed 100 kWh/year, satisfying the provisions of 42 U.S.C. 6292(b)(1).

¹¹ *Air Purifiers (Cleaners)*. Accessed June 28, 2021. Available online at: www.energystar.gov/products/air_purifiers_cleaners.

DOE requests data and information regarding annual energy use estimates for air cleaners, particularly for products not covered by the ENERGY STAR program, such as non-portable products (wall-mounted, ceiling-mounted, and whole-home units).

C. Preliminary Determination

Based on the foregoing, DOE has tentatively determined that classifying air cleaners, as proposed to be defined in this document, is necessary and appropriate to carry out the purposes of EPCA; and the average annual per-household energy use by air cleaners is likely to exceed 100 kWh (or its Btu equivalent) per year. As such, DOE has preliminarily determined to classify air cleaners as a covered product under Part A of Title III of EPCA, as amended.

DOE requests comment on whether classifying air cleaners as a covered product is necessary or appropriate to carry out the purposes of EPCA.

V. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

This proposed determination has been determined to be not significant for purposes of Executive Order (“E.O.”) 12866, “Regulatory Planning and Review,” 58 FR 51735 (Oct. 4, 1993). As a result, the Office of Management and Budget (“OMB”) did not review this proposed determination.

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 (“IRFA”) 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. As required by E.O. 13272, “Proper Consideration of Small Entities in Agency Rulemaking” 67 FR 53461 (Aug. 16, 2002), DOE published procedures and policies on February 19, 2003 to ensure that the potential impact of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel’s website (www.energy.gov/gc/office-assistant-general-counsel-legislation-regulation-and-energy-efficiency).

This proposed determination would not establish test procedures or energy conservation standards for air cleaners. If adopted, the proposed determination 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. Therefore, DOE initially concludes that the impacts of the proposed determination would not have a “significant economic impact on a substantial number of small entities,” and that the preparation of an IRFA is not warranted. DOE will transmit the 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

Manufacturers of covered products must certify to DOE that their products comply with any applicable energy conservation standards. To certify compliance, manufacturers must first obtain test data for their products according to the DOE test procedures, including any

amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment. (*See generally* 10 CFR part 429.) The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (“PRA”). This requirement has been approved by OMB under OMB control number 1910-1400. Public reporting burden for the certification is estimated to average 35 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number. As noted previously, this proposed determination, if made final, would not establish any testing requirements or energy conservation standards for air cleaners.

D. Review Under the National Environmental Policy Act of 1969

DOE is analyzing this proposed regulation in accordance with the National Environmental Policy Act (“NEPA”) and DOE’s NEPA implementing regulations (10 CFR part 1021). DOE’s regulations include a categorical exclusion for rulemakings that are strictly procedural. 10 CFR part 1021, subpart D, appendix A6. DOE anticipates that this rulemaking qualifies for categorical exclusion A6 because it is a strictly procedural rulemaking and

otherwise meets the requirements for application of a categorical exclusion. See 10 CFR Part 1021.410. DOE will complete its NEPA review before issuing the final rule.

E. Review Under Executive Order 13132

E.O. 13132, “Federalism” 64 FR 43255 (Aug. 10, 1999), imposes certain requirements on federal agencies formulating and implementing policies or regulations that preempt state law or that have Federalism implications. The Executive order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process that it will follow in the development of such regulations. 65 FR 13735. DOE has examined this proposed determination and had tentatively determined that it would not have a 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 products that are the subject of this proposed determination. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297) Therefore, 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,” 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, (3) provide a clear legal standard for affected conduct rather than a general standard, and (4) promote simplification and burden reduction. 61 FR 4729 (Feb. 7, 1996). Regarding the review required by section 3(a), section 3(b) of E.O. 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any, to be given to the law (2) clearly specifies any effect on existing Federal law or regulation, (3) provides a clear legal standard for affected conduct, (4) specifies the retroactive effect, if any, to be given to the law, (5) defines key terms, either explicitly or by reference to other statutes that explicitly define those terms, and (6) addresses other important issues affecting clarity and general draftsmanship of legislation 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 they are met or it is unreasonable to meet one or more of those standards. 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”) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104-4, sec. 201 (codified at 2 U.S.C. 1531). For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and

Tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA 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 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. DOE’s policy statement is also available at www.energy.gov/sites/prod/files/gcprod/documents/umra_97.pdf.

DOE examined this proposed determination according to UMRA and its statement of policy and determined that the proposed determination does not contain a Federal intergovernmental mandate, nor is it expected to require expenditures of \$100 million or more in any one year by State, local, and Tribal governments, in the aggregate, or by the private sector. As a result, the analytical requirements of UMRA 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 (Mar. 15, 1988), DOE has 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

Section 515 of the Treasury and General Government Appropriation Act, 2001 (44 U.S.C. 3516, note) provides for Federal agencies to review most disseminations of information to the public under information quality guidelines established by each agency pursuant to general guidelines issued by OMB. OMB’s guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE’s guidelines were published at 67 FR 62446 (Oct. 7, 2002). Pursuant to OMB Memorandum M-19-15, Improving Implementation of the Information Quality Act (April 24, 2019), DOE published updated guidelines which are available at www.energy.gov/sites/prod/files/2019/12/f70/DOE%20Final%20Updated%20IQA%20Guidelines%20Dec%202019.pdf. DOE has reviewed this NOPD 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 the Office of Information and Regulatory Affairs (“OIRA”) at 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 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 Executive 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 should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

This proposed regulatory action to classify air cleaners as covered products 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, nor has it been designated as such by the Administrator of OIRA. Accordingly, DOE has not prepared a Statement of Energy Effects.

L. Information Quality

On December 16, 2004, OMB, in consultation with the Office of Science and Technology Policy (“OSTP”), issued its Final Information Quality Bulletin for Peer Review (“the Bulletin”). 70 FR 2664 (Jan. 14, 2005). The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal Government, including influential scientific information related to agency regulatory actions. The purpose of

the Bulletin is to enhance the quality and credibility of the Government’s scientific information. DOE has determined that the analyses conducted for 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 (Jan. 14, 2005). The analyses were subject to pre-dissemination review prior to issuance of this rulemaking.

VI. Public Participation

A. Submission of Comments

DOE will accept comments, data, and information regarding this notification of proposed determination no later than the date provided at the **DATES** section at the beginning of this document. Interested parties may submit comments, data, and other information using any of the methods described in the **ADDRESSES** section at the beginning of this document.

Submitting comments via www.regulations.gov. The www.regulations.gov webpage will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Otherwise, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit information to *www.regulations.gov* for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (“CBI”)). Comments submitted through *www.regulations.gov* cannot be claimed as CBI. Anyone submitting comments through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email. Comments and documents submitted via email also will be posted to *www.regulations.gov*. If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information on a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. With this instruction followed, the cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. Facsimile submissions will not be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, that are written in English, and that are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. Pursuant 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 via email two well-marked copies: one copy of the document marked "confidential" including all the information believed to be confidential, and one copy of the document marked "non-confidential" with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

It is DOE policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

B. Issues on Which DOE Seeks Comments

DOE welcomes comments on all aspects of this proposed determination. DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

- Proposed definition and scope of coverage of air cleaners;
- Data and information regarding current annual shipments of air cleaners and the installed base of air cleaners, specifying the scope of products included in any such estimates (*e.g.*, portable, non-portable (wall-mounted, ceiling-mounted, whole-home), *etc.*);
- Availability or lack of availability of technologies for improving energy efficiency of air cleaners.
- Data and information regarding annual energy use estimates for air cleaners, particularly for products not covered by the ENERGY STAR program, such as non-portable products (wall-mounted, ceiling-mounted, and whole-home units); and
- Whether classifying air cleaners as a covered product is necessary or appropriate to carry out the purposes of EPCA.

DOE is interested in receiving views concerning other relevant issues that participants believe would affect its ability to establish test procedures and energy conservation standards for air cleaners.

After the expiration of the period for submitting written statements, DOE will consider all comments and additional information that is obtained from interested parties or through further analyses, and it will prepare a final determination.

VII. Approval of the Office of the Secretary

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

Signing Authority

This document of the Department of Energy was signed on September 10, 2021, by Kelly Speakes-Backman, Principal Deputy Assistant Secretary and Acting Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the *Federal Register*.

Signed in Washington, DC, on September 10, 2021

 Kelly Speakes-Backman Digitally signed by Kelly Speakes-Backman
Date: 2021.09.10 12:44:40 -0400

Kelly Speakes-Backman
Principal Deputy Assistant Secretary and
Acting Assistant Secretary
Energy Efficiency and Renewable Energy