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## DEPARTMENT OF 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:** Final rule.

**SUMMARY:** Under the Energy Policy and Conservation Act (EPCA), the U.S. Department of Energy (DOE) promulgates a rule to define the term “household” and related terms. These definitions provide a basis for DOE 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 EPCA; such a classification would mean that DOE potentially could establish energy conservation requirements for the covered product. With the “household” definition in place, the Secretary may exercise statutory authority to classify as covered products additional qualifying consumer products beyond the products already specified in EPCA, and set test procedures and efficiency standards for them.

**DATES:** This rule is effective April 19, 2010.

**FOR FURTHER INFORMATION CONTACT:**

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#### I. Introduction

##### A. Authority

Part A of Title III of EPCA 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, energy conservation standards, and 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).

EPCA lists specific types of consumer products that are subject to this program, referring to them as “covered products,” and authorizes DOE to add other consumer products to the program as covered products. (42 U.S.C. 6292(a) and (b)) DOE 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 promulgates a rule that amends Title 10 of the Code of Federal Regulations (10 CFR) 430.2 to define “household,” as well as four related terms, three of which are used in defining “household.”

DOE may prescribe test procedures for any product it classifies as a “covered product.” (42 U.S.C. 6293(b)(1)(B)) If DOE 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, DOE 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))

With the household definition promulgated in this final rule, the Secretary may henceforth 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, DOE 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 A and A–1 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, DOE 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 DOE had been considering for coverage (e.g., ceiling fans and torchieres) became covered products with prescribed standards. The Energy Independence and Security Act of 2007 (EISA 2007), Public Law 110–140, prescribed standards for several consumer products and types of commercial and industrial equipment, and amended the schedule for DOE to update several standards.

Since the passage of EPACT 2005 and EISA 2007, as well as issuance of the Consent Decree for the consolidated cases of *New York v. Bodman*, No. 05 Civ. 7807 (S.D.N.Y. filed Sept. 7, 2005) and *Natural Resources Defense Council v. Bodman*, No. 05 Civ. 7808 (S.D.N.Y. filed Sept. 7, 2005), DOE has re-assessed its rulemaking procedures and scheduling decisions. DOE held a public meeting November 15, 2005, followed by a 30-day public comment period, to obtain public input. After considering the public comments, DOE released a five-year plan that described how DOE would 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. DOE has updated that plan in response to EISA 2007 and the Consent Decree, and an updated version of the plan is posted on the DOE Web page at: [http://www1.eere.energy.gov/buildings/appliance\\_standards/schedule\\_setting.html](http://www1.eere.energy.gov/buildings/appliance_standards/schedule_setting.html). The plan focuses on how DOE will complete rulemakings currently in process, catch up on a backlog of overdue rulemakings, and meet all rulemaking requirements contained in EPACT 2005 and EISA 2007 on time. The plan also addresses rulemaking deadlines set by the Consent Decree. In a memorandum for the Secretary of Energy, dated February 5, 2009 (74 FR 6537, Feb. 9, 2009), the President requested that DOE expeditiously finalize the rulemakings required by EPACT 2005, EISA 2007, and the Consent Decree. Given recent progress on expeditiously finalizing rulemakings, DOE now contemplates expanding the program to cover additional consumer products or commercial equipment. DOE is proceeding with this final rule to fill in a gap in DOE regulations so the Secretary can exercise statutory authority (as scheduling, priorities, and available resources permit) to expand

standards coverage to appropriate products. Particularly, as energy efficient technologies advance in the future, the Secretary may exercise DOE's authority to consider whether any other products should be classified as covered products.

As indicated above, a significant element of the required assessment for each of these products is whether its annual "per-household" energy use is likely to exceed 100 kilowatt-hours. DOE can classify a product as covered only if it determines that the product meets this criterion. To address the criterion, DOE needed to define the term "household." DOE may now apply the definition to any future evaluations of whether DOE can classify other consumer products as covered products. In addition, DOE may 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 Final Rule

The final 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 final 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 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 DOE's definition of "household." (42 U.S.C. 6292(a) and (b))

DOE is hereby providing 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 final 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 final 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. DOE 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 the 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 definitions, DOE 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 the 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 DOE is investigating. By not adhering to all of the details of the definitions used in the RECS, the definitions promulgated by this final

rule allow DOE sufficient flexibility to use other sources of information.

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)) DOE is hereby defining “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 backyard 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 DOE’s Residential Energy Consumption Survey*

Since 1978, 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/contents.html>. (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.

“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.

The definitions promulgated in this final rule contain the same concepts as the RECS definitions (see the 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. H150/07, American Housing Survey for the United States: 2007 at Appendix A, A-9-A-11 (2008) (2008 Housing Survey Report). Second, the RECS uses “household” and related terms for purposes very similar to those for which DOE would use the definitions promulgated in this final rule. These definitions provide a basis on which DOE 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 final rule incorporates 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. From 1984 to 2005, the Census Bureau’s housing survey used a similar approach: It did not treat as a household a group that occupies living quarters inhabited by nine or more unrelated persons. 2008 Housing Survey Report, App. C at C-7. Although DOE might possibly have used 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, DOE determined 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 promulgating this classification only for purposes of evaluating household energy consumption under EPCA. The final 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 definitions promulgated in this final rule are essentially the same in substance as the definitions the RECS uses for “household” and related terms, the final rule 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 this final rule does not identify such categories. The RECS gathers information as to the characteristics of the households it surveys, but DOE will not use the final rule’s 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 the final rule’s definition.

In addition, the definitions in this final rule 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 the final rule’s 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 the definitions promulgated in this final rule, DOE 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, the final rule's 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 concerns 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. DOE is defining "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. The final rule's 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 report does not include information as to household energy use in secondary residences. 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 historical 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, DOE sees no reason to adopt such a limitation in evaluating products for coverage and standards. Therefore, the definitions in this final rule 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 permits DOE 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, DOE intends to 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, DOE'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, DOE has adopted 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." DOE 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 DOE believes the definitions promulgated in this final rule are reasonable and consistent with data DOE intends to use in making its

determinations on household energy consumption.

## III. 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 rule making through submission of written data, views, or arguments with or without opportunity for oral presentation." DOE determined that a 45-day public comment period for written comments was sufficient and that a public meeting for oral presentation was unnecessary for this rulemaking. Since this rulemaking did not raise any issues of fact or law and merely provided a definition necessary for the Secretary to carry out authority already held by the Secretary under EPCA, this rulemaking was unlikely to have a substantial impact on the Nation's economy or large numbers of individuals or businesses.

### B. Public Comment Response

No comments were received during the public comment period that ended June 19, 2006. One comment was received from the Peoples Republic of China (China) after the close of the comment period. China recommended that the definition take into account the possibility that certain households may have non-residential energy uses, which should be excluded from consideration. Even if China's comment had been received during the comment period, DOE believes that the statutory provisions that direct DOE to consider the average annual per-household energy use of consumer products ensure that only residential energy uses will be considered. China also made suggestions regarding certain regulatory issues that are beyond the scope of this rulemaking.

DOE anticipated that this rulemaking would be non-controversial. This was confirmed, as evidenced by the receipt of only one public comment. Therefore, DOE is adopting the rule verbatim as originally proposed in the notice of proposed rulemaking and opportunity for public comment which was published in the **Federal Register** on May 4, 2006. (71 FR 26275)

#### IV. Procedural Requirements

##### A. Review Under Executive Order 12866

The Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB) 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 reviewed this rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. This final rule neither classifies any product as covered under EPCA, nor includes any requirement for any product. Thus, the final rule does not have any economic impact on any business or entity. On the basis of the foregoing, DOE certifies that the final rule does not impose a significant economic impact on a substantial number of small entities. Accordingly, DOE did not prepare a regulatory flexibility analysis for this rulemaking. DOE transmitted 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 of 1995

This rule was reviewed under the Paperwork Reduction Act. (44 U.S.C. 3501 *et seq.*) This rule concerns an element of the criteria DOE must use to determine whether it can regulate and adopt energy conservation standards for consumer products not already covered under EPCA. It does not require any

additional reports or recordkeeping. Accordingly, this action is not subject to review under the Paperwork Reduction Act.

##### D. Review Under the National Environmental Policy Act of 1969

In this rulemaking, DOE adopted definitions that provide a basis for DOE to determine whether products not currently covered by EPCA meet the requirements for DOE to classify a product as a "covered product" under EPCA, 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 DOE'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 was 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 final rule published today supplies an element of the criteria DOE must use to determine whether it can regulate and adopt energy conservation standards for consumer products not already covered under EPCA. This final 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 DOE covers and adopts standards for, under EPCA. If DOE 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 final rule but would be the result of later notice-and-comment rulemakings. Thus today's rule, by itself, does not pre-empt any state or local action.

For these reasons, DOE determined that this final rule does not preempt State law and does 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 final 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 final 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 DOE covers and adopts standards for under EPCA. DOE'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 promulgation of this final rule, however, and the rule imposes no mandates of any kind.

For these reasons, we have determined that this final rule does not provide for any Federal mandate that may result in estimated costs of \$100 million or more. Therefore, a cost benefit analysis was not required under the UMRA.

### *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 final rule does not have any impact on the autonomy or the integrity of the family as an institution. Accordingly, DOE concluded that it was not necessary to prepare a Family Policymaking Assessment.

### *I. Review Under Executive Order 12630*

DOE determined under Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights," 53 FR 8859 (March 18, 1988), that this 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). DOE reviewed this final rule under the OMB and DOE guidelines, and 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 final 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 a significant energy action, and DOE has not prepared a Statement of Energy Effects.

### *L. Congressional Notification*

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of today's rule prior to its effective date. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 804(2).

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

The Secretary of Energy has approved publication of today's rule.

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

Administrative practice and procedure, Energy conservation, Household appliances.

Issued in Washington, DC, on January 22, 2010.

**Cathy Zoi,**

*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 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.

\* \* \* \* \*

[FR Doc. 2010-6045 Filed 3-18-10; 8:45 am]

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## FEDERAL ELECTION COMMISSION

### 11 CFR Parts 100 and 106

[Notice 2010-08]

#### Funds Received in Response to Solicitations; Allocation of Expenses by Separate Segregated Funds and Nonconnected Committees

**AGENCY:** Federal Election Commission.

**ACTION:** Final rules.

**SUMMARY:** The Federal Election Commission ("Commission") is removing its rule regarding funds received in response to solicitations. The Commission is also removing two additional rules regarding the allocation of certain expenses by separate segregated funds and nonconnected committees. The United States District Court for the District of Columbia ordered that these rules are vacated, in accordance with a Court of Appeals decision. Further information is provided in the supplementary information that follows.

**DATES:** Effective: April 19, 2010.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert M. Knop, Assistant General Counsel, or Mr. Neven F. Stipanovic, Attorney, 999 E Street, NW.,

Washington, DC 20463, (202) 694-1650 or (800) 424-9530.

**SUPPLEMENTARY INFORMATION:** The Commission is revising its regulations to conform to the decision of the United States Court of Appeals for the District of Columbia Circuit in *EMILY's List v. FEC*, 581 F.3d 1 (DC Cir. 2009). On September 18, 2009, the court ruled that 11 CFR 100.57, 106.6(c), and 106.6(f) violated the First Amendment of the United States Constitution. See *EMILY's List v. FEC*, 581 F.3d 1 (DC Cir. 2009). The court also ruled that 11 CFR 100.57 and 106.6(f), as well as one provision of 106.6(c), exceeded the Commission's authority under the Federal Election Campaign Act ("Act"). See *id.* At the direction of the Court of Appeals, the United States District Court for the District of Columbia ordered that these rules are vacated. See *Final Order, EMILY's List v. FEC*, No. 05-0049 (D.D.C. Nov. 30, 2009).

The Commission published a Notice of Proposed Rulemaking ("NPRM") on December 29, 2009, in which it sought public comment on the proposed removal of rules at 11 CFR 100.57, 106.6(c), and 106.6(f). See Notice of Proposed Rulemaking on Funds Received in Response to Solicitations; Allocation of Expenses by Separate Segregated Funds and Nonconnected Committees, 74 FR 68720 (Dec. 29, 2009) ("NPRM"). The comment period closed on January 28, 2010. The Commission received two comments on the proposed rules, one of which was a comment from the Internal Revenue Service ("IRS") stating that the proposed rules did not conflict with Internal Revenue Code or IRS regulations. The comments are available on the Commission's website at [http://www.fec.gov/law/law\\_rulemakings.shtml#emilyslistrepeal](http://www.fec.gov/law/law_rulemakings.shtml#emilyslistrepeal).

For the reasons explained below, the Commission has decided to delete the rules at 11 CFR 100.57, 106.6(c), and 106.6(f). The Commission's final rules are identical to the proposed rules in the NPRM.

Under the Administrative Procedure Act, 5 U.S.C. 553(d) and the Congressional Review of Agency Rulemaking Act, 5 U.S.C. 801(a)(1), agencies must submit final rules to the Speaker of the House of Representatives and the President of the Senate and publish them in the **Federal Register** at least 30 calendar days before they take effect. The final rules that follow were transmitted to Congress on March 15, 2010.

## Explanation and Justification

### I. Deletion of 11 CFR 100.57—Funds Received in Response to Solicitations

The Commission promulgated 11 CFR 100.57 to specify when funds received in response to solicitations are considered to be contributions for purposes of the Act. Under paragraph (a) of section 100.57, funds provided in response to a communication were treated as contributions if the communication indicated that any portion of the funds received would be used to support or oppose the election of a clearly identified Federal candidate. Paragraph (b)(1) of section 100.57 provided that all funds received in response to a solicitation described in section 100.57(a) that referred to both a clearly identified Federal candidate and a political party, but not to any non-Federal candidates, had to be treated as contributions. Paragraph (b)(2) stated that if a solicitation described in section 100.57 referred to at least one clearly identified Federal candidate and one or more clearly identified non-Federal candidate, then at least fifty percent of the funds received in response to the solicitation had to be treated as contributions. Paragraph (c) of section 100.57 provided an exception for certain solicitations for joint fundraisers conducted between or among authorized committees of Federal candidates and the campaign organizations of non-Federal candidates.

The Commission is removing section 100.57 in its entirety from its regulations because the Court of Appeals held that section 100.57 is unconstitutional and that it exceeded the Commission's statutory authority under the Act. See *EMILY's List v. FEC*, 581 F.3d 1 (D.C. Cir. 2009). Accordingly, the District Court ordered that 11 CFR 100.57 is vacated. See *Final Order, EMILY's List v. FEC*, No. 05-0049 (D.D.C. Nov. 30, 2009).

The Commission received one comment on the proposal to remove section 100.57. That commenter agreed with the Commission that 11 CFR 100.57 should be removed in its entirety.

### II. Deletion of 11 CFR 106.6(c) and 106.6(f)—Allocation of Expenses Between Federal and Non-Federal Activities by Separate Segregated Funds and Nonconnected Committees

The Commission promulgated 11 CFR 106.6 to provide separate segregated funds (SSFs) and nonconnected committees making disbursements in connection with both Federal and non-Federal elections with instructions as to how to allocate their administrative