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[6450-01-P]

DEPARTMENT OF ENERGY

10 CFR Part 431

(Docket No. EERE-2012-BT-DET-0033)

RIN: 1904-AC83

Energy Conservation Program for Consumer Products and Certain Commercial and Industrial Equipment: Proposed Determination of Commercial and Industrial Compressors as Covered Equipment

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

ACTION: Proposed determination of coverage.

SUMMARY: The U.S. Department of Energy (DOE) proposes to determine that commercial and industrial compressors meet the criteria for covered equipment under Part A-1 of Title III of the Energy Policy and Conservation Act (EPCA), as amended. DOE proposes that classifying equipment of such type as covered equipment is necessary to carry out the purpose of Part A-1 of EPCA, which is to improve the efficiency of electric motors and pumps and certain other industrial equipment to conserve the energy resources of the nation.

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

ADDRESSES: Interested persons may submit comments, identified by docket number EERE-2012-BT-DET-0033 or RIN 1904-AC83, by any of the following methods:

- Federal eRulemaking Portal: www.regulations.gov Follow the instructions for submitting comments.
- E-mail: CompressorsDetermination2012DET0033@ee.doe.gov. Include EERE-2012-BT-DET-0033 and/or RIN 1904-AC83 in the subject line of the message.
- Mail: Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE-2J, Notice of Proposed Determination for Compressors, EERE-2012-BT-DET-0033 and/or RIN 1904-AC83, 1000 Independence Avenue SW, Washington, D.C. 20585-0121. Phone: (202) 586-2945. Please submit one signed paper original.
- Hand Delivery/Courier: Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Suite 600, 950 L'Enfant Plaza SW, Washington, D.C. 20024. Phone: (202) 586-2945. Please submit one signed paper original.

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

Docket: The docket is available for review at www.regulations.gov, including Federal Register notices, comments, and other supporting documents/materials. All documents in the docket are listed in the <http://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.

A link to the docket web page can be found at: www.regulations.gov docket no. EERE-2012-BT-DET-0033. This web page contains a link to the docket for this notice on the www.regulations.gov site. The www.regulations.gov web page contains instructions on how to access all documents, including public comments, in the docket. See section VII for further information on how to submit comments through www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Mr. James Raba, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies, EE-2J, 1000 Independence Avenue, SW., Washington, DC 20585-0121, Telephone: (202) 586-8654. E-mail: Jim.Raba@ee.doe.gov.

In the Office of General Counsel, contact Ms. Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, GC-71, 1000 Independence Avenue SW, Washington, D.C. 20585. Telephone: (202) 586-7796. E-mail: Elizabeth.Kohl@hq.doe.gov.

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I. Statutory Authority

Title III of the Energy Policy and Conservation Act of 1975 (EPCA), as amended (42 U.S.C. 6291 *et seq.*), sets forth various provisions designed to improve energy efficiency. Part C of Title III of EPCA (42 U.S.C. 6311-6317), which was re-designated for editorial reasons as Part A-1 upon codification in the U.S. Code, establishes the “Energy Conservation Program for Certain Industrial Equipment,” which covers certain commercial and industrial equipment (hereafter referred to as “covered equipment”).

EPCA specifies a list of equipment that constitutes covered commercial and industrial equipment. (42 U.S.C. 6311(1)(A)–(L)). The list identifies 11 types of equipment and sets forth a twelfth provision for any other type of industrial equipment which the Secretary of Energy (Secretary) classifies as covered equipment. EPCA also specifies the types of industrial equipment that can be classified as covered in addition to the equipment enumerated in 42 U.S.C. 6311(1). This equipment includes compressors. (42 U.S.C. 6311(2)(B)(i)). Industrial equipment must also, without regard to whether such equipment is in fact distributed in commerce for industrial or commercial use, be of a type that:

- (1) In operation consumes, or is designed to consume, energy in operation;
- (2) to any significant extent, is distributed in commerce for industrial or commercial use;
and
- (3) is not a covered product as defined in 42 U.S.C. 6291(a)(2) of EPCA, other than a component of a covered product with respect to which there is in effect a determination under 42 U.S.C. 6312(c). (42 U.S.C. 6311 (2)(A)).

To classify equipment as covered commercial or industrial equipment, the Secretary must determine that classifying the equipment as covered equipment is necessary for the purposes of Part A-1 of EPCA. The purpose of Part A-1 is to improve the efficiency of electric motors, pumps and certain other industrial equipment to conserve the energy resources of the nation. (42 U.S.C. 6312 (a), (b))

II. Current Rulemaking Process

DOE has not previously conducted an energy conservation standard rulemaking for compressors. If after public comment, DOE issues a final determination of coverage for this equipment, DOE would consider both test procedures and energy conservation standards for this equipment.

With respect to test procedures, DOE would consider proposed test procedures for measuring the energy efficiency, energy use, or estimated annual operating cost of compressors during a representative average use cycle or period of use that are not unduly burdensome to conduct. (42 U.S.C. 6314(a)(2)) In a test procedure rulemaking, DOE initially prepares a test procedure notice of proposed rulemaking (NOPR) and allows interested parties to present oral

and written data, views, and arguments with respect to such procedures. In prescribing new test procedures, DOE takes into account relevant information including technological developments relating to energy use or energy efficiency of compressors.

With respect to energy conservation standards, DOE typically prepares initially an energy conservation standards rulemaking framework document (the framework document). The framework document explains the issues, analyses, and process that it is considering for the development of energy conservation standards for compressors. After DOE receives comments on the framework document, DOE typically prepares an energy conservation standards rulemaking preliminary analysis and technical support document (the preliminary analysis). The preliminary analysis typically provides initial draft analyses of potential energy conservation standards on consumers, manufacturers, and the nation. Neither of these steps is legally required.

DOE is required to publish a NOPR setting forth DOE's proposed energy conservation standards and a summary of the results of DOE's supporting technical analysis. The details of DOE's analysis are provided in a technical support document (TSD) that describes the details of DOE's analysis of both the burdens and benefits of potential standards, pursuant to 42 U.S.C. 6295(o). DOE affords interested persons an opportunity during a period of not less than 60 days after the publication of the NOPR to provide oral and written comment. (42 U.S.C. 6295(p)(2)) After receiving and considering the comments on the NOPR and not less than 90 days after the publication of the NOPR, DOE would issue the final rule prescribing any new energy conservation standards for compressors. (42 U.S.C. 6295(p)(3))

III. Definition(s)

DOE is considering a definition for “Commercial and Industrial Compressors” to clarify coverage of any potential test procedure or energy conservation standard that may arise from today’s proposed determination. There is currently no statutory definition of compressors, and DOE is considering the following definition of compressors to provide clarity for interested parties as it continues its analyses:

Compressor:

A compressor is an electric-powered device that takes in air or gas at atmospheric pressure and delivers the air or gas at a higher pressure.¹ Compressors typically have a specific ratio, the ratio of delivery pressure to supply pressure, greater than 1.20. Compressors are classified as positive-displacement, dynamic, or hybrid. A positive-displacement compressor increases the pressure of the intake air pressure through a compression container. A dynamic compressor increases pressure of the air it intakes by continuously imparting velocity energy into the air flow, which is then converted into pressure energy. A hybrid compressor is some combination of positive-displacement and dynamic compressors.

A compressor may have some or all of the following components: piston, roller, rotor(s), impeller wheel, spiral disks, cylinder(s), lubricant, motor and transmission, controls, treatment equipment (after cooler and lubricant cooler), filter(s), and/or a lubricant/air separator.

¹ Compressors are mostly driven by electric motors but may also be driven by diesel or natural gas, and steam or combustion engines. At present, DOE envisions including compressors driven only by electric motors as covered equipment.

DOE seeks feedback from interested parties on this definition for compressors.

IV. Evaluation of Compressors as a Covered Equipment

The following sections describe DOE's evaluation of whether compressors fulfill the criteria for being added as covered equipment pursuant to 42 U.S.C. 6311(2) and 42 U.S.C. 6312.

Compressors are listed as a type of industrial equipment at 42 U.S.C. 6311(2)(B)(i). The following discussion addresses DOE's consideration of the three requirements of 42 U.S.C. 6311(2)(A) and 42 U.S.C. 6312.

A. Energy Consumption in Operation

Data from the 2002 United States Industrial Electric Motor Systems Market Opportunities Assessment estimate total annual industrial compressor energy use (from Manufacturing SIC codes 20–39) at 91,050 million kWh per year.² Since industrial activity in 2012 is greater than it was in 2002, it is likely that current annual compressor energy use is higher than this figure.

B. Distribution in Commerce

Compressors are distributed in commerce for both the industrial and commercial sectors.

Based on the 2011 International Energy Agency (IEA) Survey, DOE estimated that 1.3 million

² U.S. DOE Office of Industrial Technologies. *United States Industrial Electric Motor Systems Market Opportunities Assessment*. December 2002.

motors are shipped annually to drive compressors in the U.S. commercial and industrial sectors.³ Based on additional 2004 U.S. Census data,⁴ DOE assumes that only a small fraction of these motors are used as a motor only replacement in compressor systems. Therefore, DOE estimates that there are nearly 1.3 million compressors distributed in commerce annually for industrial or commercial use.

C. Prior Inclusion as a Covered Product

Compressors are not currently included as covered products under Title 10 of the Code of Federal Regulations, Part 430 (10 CFR Part 430).

D. Coverage Necessary to Carry Out Purposes of Part A-1 of the Energy Policy and Conservation Act

The purpose of Part A-1 of EPCA is to improve the energy efficiency of electric motors, pumps and certain other industrial equipment to conserve the energy resources of the nation. Coverage of compressors is necessary to carry out the purposes of Part A-1 of EPCA because coverage will promote the conservation of energy supplies. Efficiency standards that may result from coverage would help to capture some portion of the potential for improving the efficiency of compressors.

³ International Energy Agency. Energy-Efficiency Policy Opportunities for Electric Motor-Driven Systems. Paris, 2011.

⁴ U.S. Census Bureau, MA335H(03)-1, issued Nov 2004

Based on the information in section IV of this notice, DOE proposes to determine that commercial and industrial compressors qualify as covered equipment under Part A–1 of Title III of EPCA, as amended (42 U.S.C. 6311 *et seq.*).

V. Procedural Issues and Regulatory Review

DOE has reviewed its proposed determination of compressors under the following executive orders and acts.

A. Review Under Executive Order 12866

The Office of Management and Budget has determined that coverage determination rulemakings do not constitute “significant regulatory actions” under section 3(f) of Executive Order 12866, Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993). Accordingly, this proposed action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB).

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996), requires preparation of an initial regulatory flexibility analysis for any rule that, by law, must be proposed for public comment, unless the agency certifies that the proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. A regulatory flexibility analysis examines the impact of the rule on small entities and considers alternative ways of reducing negative effects. Also, as required by E.O. 13272, “Proper Consideration of Small Entities in Agency

Rulemaking” 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impact of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990 (February 19, 2003). DOE makes its procedures and policies available on the Office of the General Counsel’s website at <http://energy.gov/gc/office-general-counsel>.

DOE reviewed today’s proposed determination under the provisions of the Regulatory Flexibility Act and the policies and procedures published on February 19, 2003. If adopted, today’s proposed determination would set no standards and would only positively determine that future standards may be warranted and should be explored in an energy conservation standards rulemaking. The proposed determination also does not establish any test procedures. If a positive determination is made, DOE would consider test procedures in a subsequent rulemaking. Economic impacts on small entities would be considered in the context of such rulemakings. On the basis of the foregoing, DOE certifies that the proposed determination, if adopted, would have no significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this proposed determination. DOE will transmit this certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act of 1995

This proposed determination, which proposes to determine that compressors meet the criteria for classification as covered equipment, will impose no new information or record-

keeping requirements. Accordingly, the Office of Management and Budget (OMB) clearance is not required under the Paperwork Reduction Act. (44 U.S.C. 3501 et seq.)

D. Review Under the National Environmental Policy Act of 1969

In this notice, DOE proposes to positively determine that compressors meet the criteria for classification as covered equipment. Environmental impacts would be explored in any future energy conservation standards rulemaking for compressors. DOE has determined that review under the National Environmental Policy Act of 1969 (NEPA), Pub. L. 91-190, codified at 42 U.S.C. 4321 et seq. is not required at this time. NEPA review can only be initiated “as soon as environmental impacts can be meaningfully evaluated” (10 CFR 1021.213(b)). This proposed determination would only determine that compressors meet the criteria for classification as covered equipment, but would not itself propose to set any specific standard. DOE has, therefore, determined that there are no environmental impacts to be evaluated at this time. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order (E.O.) 13132, “Federalism” 64 FR 43255 (August 10, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to assess carefully the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in developing regulatory policies that have Federalism

implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process that it will follow in developing such regulations. 65 FR 13735 (March 14, 2000). DOE has examined today's proposed determination and concludes that it would not preempt State law or have substantial direct effects on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the equipment that is the subject of today's proposed determination. States can petition DOE for exemption from such preemption to the extent permitted, and based on criteria, set forth in EPCA. (42 U.S.C. 6297) No further action is required by E.O. 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of E.O. 12988, "Civil Justice Reform" 61 FR 4729 (February 7, 1996), imposes on Federal agencies the duty to: (1) eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Section 3(b) of E.O. 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation specifies the following: (1) the preemptive effect, if any; (2) any effect on existing Federal law or regulation; (3) a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) the retroactive effect, if any; (5) definitions of key terms; and (6) other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of E.O. 12988 requires Executive

agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether these standards are met, or whether it is unreasonable to meet one or more of them. DOE completed the required review and determined that, to the extent permitted by law, this proposed determination meets the relevant standards of E.O. 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4, codified at 2 U.S.C. 1501 et seq.) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and tribal governments and the private sector. For regulatory actions likely to result in a rule that may cause expenditures by State, local, and tribal governments, in the aggregate, or by the private sector of \$100 million or more in any 1 year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a) and (b)) UMRA requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and tribal governments on a proposed “significant intergovernmental mandate.” UMRA also requires an agency plan for giving notice and opportunity for timely input to small governments that may be potentially affected before establishing any requirement that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820 (March 18, 1997). (This policy also is available at <http://energy.gov/gc/office-general-counsel>). DOE reviewed today’s proposed determination pursuant to these existing authorities and its policy statement and determined that the proposed

determination contains neither an intergovernmental mandate nor a mandate that may result in the expenditure of \$100 million or more in any year, so the UMRA requirements do not apply.

H. Review Under the Treasury and General Government Appropriations Act of 1999

Section 654 of the Treasury and General Government Appropriations Act of 1999 (Pub. L. 105-277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This proposed determination would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

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

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

The Treasury and General Government Appropriation Act of 2001 (44 U.S.C. 3516, note) requires agencies to review most disseminations of information they make to the public under guidelines established by each agency pursuant to general guidelines issued by the Office of Management and Budget (OMB). The OMB’s guidelines were published at 67 FR 8452 (February 22, 2002), and DOE’s guidelines were published at 67 FR 62446 (October 7, 2002).

DOE has reviewed today's proposed determination under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

E.O. 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgates a final rule or is expected to lead to promulgation of a final rule, and that: (1) is a significant regulatory action under E.O. 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of the Office of Information and Regulatory Affairs (OIRA) as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use if the proposal is implemented, and of reasonable alternatives to the proposed action and their expected benefits on energy supply, distribution, and use.

DOE has concluded that today's regulatory action proposing to determine that compressors meet the criteria for classification as covered equipment would not have a significant adverse effect on the supply, distribution, or use of energy. This action is also not a significant regulatory action for purposes of E.O. 12866, and the OIRA Administrator has not designated this proposed determination as a significant energy action under E.O. 12866 or any successor order. Therefore, this proposed determination is not a significant energy action.

Accordingly, DOE has not prepared a Statement of Energy Effects for this proposed determination.

L. Review Under the Information Quality Bulletin for Peer Review

On December 16, 2004, OMB, in consultation with the Office of Science and Technology Policy (OSTP), issued its Final Information Quality Bulletin for Peer Review (the Bulletin). 70 FR 2664 (January 14, 2005). The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal government, including influential scientific information related to agency regulatory actions. The purpose of the Bulletin is to enhance the quality and credibility of the Government's scientific information. DOE has determined that the analyses conducted for this rulemaking do not constitute "influential scientific information," which the Bulletin defines as "scientific information the agency reasonably can determine will have or does have a clear and substantial impact on important public policies or private sector decisions." 70 FR 2667 (January 14, 2005). The analyses were subject to pre-dissemination review prior to issuance of this rulemaking.

DOE will determine the appropriate level of review that would be applicable to any future rulemaking to establish energy conservation standards for compressors.

VI. Public Participation

A. Submission of Comments

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

the comment period, DOE will review the comments received and determine whether compressors are covered equipment under EPCA.

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

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

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

B. Issues on which the Department of Energy Seeks Comments

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

- Definition of compressors;
- Whether classifying compressors as covered equipment is necessary to carry out the purposes of Part A-1 of EPCA;
- Availability or lack of availability of technologies for improving the energy efficiency of compressors.

DOE invites all interested parties to submit, in writing and by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, comments and information on matters addressed in this notice and on other matters relevant to a determination for compressors. DOE is also interested in receiving views concerning other issues relevant to establishing a test procedure and energy conservation standard for compressors.

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. If DOE determines that compressors qualify as covered equipment, DOE will consider a test procedure and energy conservation standards for compressors. Members of the public will be given an opportunity to submit written and oral

comments on any proposed test procedure and standards.

List of Subjects in 10 CFR Part 431

Administrative practice and procedure, Confidential business information, Energy conservation, Reporting and recordkeeping requirements.

Issued in Washington, D.C., on December 21, 2012.

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

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