



DEPARTMENT OF ENERGY

10 CFR Part 430

[EERE-2025-BT-DET-0004]

RIN 1904-AF74

Energy Conservation Program: Proposed Withdrawal of Determination of Portable Electric Spas as a Covered Consumer Product

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

ACTION: Notice of proposed rulemaking; proposed withdrawal of determination.

SUMMARY: DOE is proposing to withdraw its prior determination that portable electric spas (“PESs”) qualify as covered products under Part A of Title III of the Energy Policy and Conservation Act, as amended (“EPCA”).

DATES: Written comments, data, and information are requested and will be accepted on or before [INSERT DATE 30 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 under docket number EERE-2025-BT-DET-0004. Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE-2025-BT-DET-0004, by any of the following methods:

(1) *Email:* PES2025DET0004@ee.doe.gov. Include the docket number EERE-2025-BT-DET-0004 in the subject line of the message.

(2) *Postal Mail:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, Mailstop EE-5B, 1000 Independence Avenue SW, Washington, DC 20585-0121. Telephone: (202) 287-1445. If possible, please submit

all items on a compact disc (“CD”), in which case it is not necessary to include printed copies.

(3) *Hand Delivery/Courier*: Appliance and Equipment Standards Program, U.S.

Department of Energy, Building Technologies Office, 1000 Independence Avenue SW, Washington, DC 20585-0121. Telephone: (202) 287-1445. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

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

Docket: The docket for this activity, which includes *Federal Register* notices, public meeting attendee lists and transcripts (if a public meeting is held), 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-2025-BT-DET-0004. The docket web page contains instructions on how to access all documents, including public comments, in the docket. See section [III of this document](#) for information on how to submit comments through www.regulations.gov.

FOR FURTHER INFORMATION CONTACT:

Dr. Carl Shapiro, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE-5B, 1000 Independence Avenue, SW., Washington, DC, 20585-0121. Telephone: (240) 315-4339. Email: ApplianceStandardsQuestions@ee.doe.gov.

Ms. Kristin Koernig, U.S. Department of Energy, Office of the General Counsel, GC-33, 1000 Independence Avenue, SW., Washington, DC, 20585-0121. Telephone: (202) 586-4798. Email: Kristin.koernig@hq.doe.gov.

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I. General Discussion

Under EPCA, DOE may add consumer products to the list of covered products for which energy conservation standards can be established. 42 U.S.C. 6292(b)(1) The coverage determination procedures require DOE to conclude that classifying products of such type as covered products is necessary or appropriate to carry out the purposes of this chapter, among other requirements. *Id.* at 42 U.S.C. 6292(b)(1)(A). Only after coverage is determined, DOE may then adopt standards and test procedures regulating such products, pursuant to the requirements set out in the statute. See generally 42 U.S.C. 6293, 6295.

On February 16, 2022, DOE published in the *Federal Register* a notice of proposed determination (“NOPD”) that proposed to determine coverage for PESs. 87 FR 8745 (February 16, 2022) (“February 2022 NOPD”). After considering public comments, data, and information from interested parties submitted in response to the February 2022 NOPD, DOE finalized the

coverage determination for PESs. 87 FR 54123 (Sept. 2, 2022) (“September 2022 Determination”). As part of the determination, DOE adopted a definition of “portable electric spa.”¹

DOE has reevaluated whether including portable electric spas as a covered product is necessary and appropriate to carry out the purposes of EPCA. Based on that evaluation, DOE has tentatively determined that, at this time, it is not necessary or appropriate to classify portable electric spas as a covered product to carry out the purposes of EPCA. EPCA provides the Secretary discretion in classifying a type of consumer product as a covered product as the Secretary *may* classify if certain requirements are met. (See 42 U.S.C. 6292(b) (emphasis added)). While DOE found in the September 2022 Determination that classifying PESs as a covered product was needed to set energy conservation standards for PESs and carry out EPCA’s purposes to conserve energy supplies and provide for improved energy efficiency of other consumer products, DOE has reevaluated that determination. See 87 FR 54123, 54126. Using the discretion provided by EPCA for classifying additional covered products, DOE has tentatively determined that there are other avenues to conserve energy supplies than classifying PESs as a covered product and establishing standards. Therefore, DOE has tentatively found that classifying PESs as a covered product is not necessary or appropriate to carry out the purposes of EPCA

DOE requests comment on its proposal to withdraw coverage for portable electric spas.

¹ DOE defined “portable electric spa” as a factory-built electric spa or hot tub, supplied with equipment for heating and circulating water at the time of sale or sold separately for subsequent attachment. See 10 CFR 430.2.

II. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866 and 13563

Executive Order (“E.O.”) 12866, “Regulatory Planning and Review,” as supplemented and reaffirmed by E.O. 13563, “Improving Regulation and Regulatory Review, 76 FR 3821 (Jan. 21, 2011), requires agencies, to the extent permitted by law, to (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public. DOE emphasizes as well that E.O. 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, the Office of Information and Regulatory Affairs (“OIRA”) in the Office of Management and Budget (“OMB”) has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in the preamble, this proposed regulatory action is consistent with these principles.

Section 6(a) of E.O. 12866 also requires agencies to submit “significant regulatory actions” to OIRA for review. OIRA has determined that this proposed regulatory action does not

constitute a “significant regulatory action” under section 3(f) of E.O. 12866. Accordingly, this proposed action was not submitted to OIRA for review under E.O. 12866.

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”) and a final regulatory flexibility analysis (“FRFA”) 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 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 impacts of its rules on small entities are properly considered during the 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-general-counsel).

DOE reviewed this proposed withdrawal of determination under the provisions of the Regulatory Flexibility Act and the policies and procedures published on February 19, 2003. This proposal does not establish test procedures or standards for PESs, and, if adopted, DOE would no longer have the authority to consider establishing or amending such measures. Therefore, DOE initially concludes that the impacts of the proposed withdrawal of 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 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

This proposed withdrawal of determination, which proposes that PESs do not meet the criteria for a covered product for which the Secretary may consider prescribing energy conservation standards pursuant to 42 U.S.C. 6295(o) and (p), imposes no new information or record-keeping requirements. Accordingly, the 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

Pursuant to the National Environmental Policy Act of 1969 (“NEPA”), DOE is analyzing this proposed withdrawal of determination in accordance with NEPA and DOE's NEPA implementing regulations (10 CFR part 1021). DOE's regulations include a categorical exclusion for rulemakings that are strictly procedural. See 10 CFR part 1021, subpart D, appendix A6. DOE anticipates that this proposed 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 1021.410. DOE will complete its NEPA review before issuing the final determination.

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 it will follow in the development of such regulations. 65 FR 13735. DOE has examined this proposed withdrawal of determination and has tentatively determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this proposed withdrawal of 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, (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 E.O. 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent

permitted by law, this proposed withdrawal of 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. Pub. L. 104-4, sec. 201 (codified at 2 U.S.C. 1531). For a 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 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 “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 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 withdrawal of determination according to UMRA and its statement of policy and determined that the proposed withdrawal of 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, 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. This proposed withdrawal of 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 18, 1988), DOE has determined that this proposed withdrawal of 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, 2001

Section 515 of the Treasury and General Government Appropriations 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 proposed withdrawal of 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 OIRA at OMB, a Statement of Energy Effects for any 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 is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) is designated by the Administrator of OIRA as a significant energy action. For any 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 withdrawal of determination, which does not amend or establish energy conservation standards for PESs, is not a significant regulatory action under E.O. 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 at OIRA. Accordingly, DOE has not prepared a Statement of Energy Effects.

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 (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.

Under the Bulletin, the energy conservation standards rulemaking analyses are “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 2664, 2667.

In response to OMB’s Bulletin, DOE conducted formal peer reviews of the energy conservation standards development process and the analyses that are typically used and prepared a report describing that peer review.² Generation of this report involved a rigorous, formal, and documented evaluation using objective criteria and qualified and independent reviewers to make a judgment as to the technical/scientific/business merit, the actual or anticipated results, and the productivity and management effectiveness of programs and/or projects. Because available data, models, and technological understanding have changed since 2007, DOE has engaged with the National Academy of Sciences to review DOE’s analytical methodologies to ascertain whether modifications are needed to improve the Department’s analyses. DOE is in the process of evaluating the resulting report.³

M. Review Under Additional Executive Orders and Presidential Memoranda

DOE has examined this proposed withdrawal of determination and has tentatively determined that it is consistent with the policies and directives outlined in E.O. 14154 “Unleashing American Energy,” E.O. 14192, “Unleashing Prosperity Through Deregulation,” and Presidential Memorandum, “Delivering Emergency Price Relief for American Families and

² The 2007 “Energy Conservation Standards Rulemaking Peer Review Report” is available at the following website: www.energy.gov/eere/buildings/downloads/energy-conservation-standards-rulemaking-peer-review-report-0 (last accessed July 1, 2022).

³ The report is available at www.nationalacademies.org/our-work/review-of-methods-for-setting-building-and-equipment-performance-standards.

Defeating the Cost-of-Living Crisis.” This proposed withdrawal of determination, if finalized as proposed, is expected to be an E.O. 14192 deregulatory action.

III. 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 in 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 web page 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 to *www.regulations.gov* information 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. Comments received 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 in 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. No faxes will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, 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 withdrawal of determination. DOE is particularly interested in receiving comments and views of interested parties concerning whether withdrawing the coverage determination of portable electric spas as a covered product is consistent with the purposes of EPCA.

DOE is also interested in receiving views concerning other relevant issues that participants believe would affect the tentative conclusions presented in this document.

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 may prepare a final withdrawal of the coverage determination for PESs.

IV. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notice of proposed rulemaking; proposed withdrawal of determination.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Intergovernmental relations, Reporting and recordkeeping requirements, and Small businesses.

Signing Authority

This document of the Department of Energy was signed on April 11, 2025, by Louis Hrkman, Principal Deputy 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 April 15, 2025.

Treena V. Garrett,
Federal Register Liaison Officer,
U.S. Department of Energy.

For the reasons set forth in the preamble, DOE is proposing to amend part 430 of chapter II, subchapter D, of title 10 of the Code of Federal Regulations, to read 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. Amend § 430.2 by:

- a. Revising the definition of “Covered product”; and
- b. Removing the definition of “Portable electric spa”.

The revision reads as follows:

§ 430.2 Definitions

* * * * *

Covered product means a consumer product—

(1) Of a type specified in section 322 of the Act; or

(2) That is an air cleaner, battery charger, ceiling fan, ceiling fan light kit, dehumidifier, external power supply, medium base compact fluorescent lamp, miscellaneous refrigeration product, portable air conditioner, or torchiere.

* * * * *