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BEFORE THE UNITED STATES

DEPARTMENT OF ENERGY

IN THE MATTER OF ENERGY
CONSERVATION STANDARDS FOR
COMPUTER AND BATTERY BACKUP
SYSTEMS

Docket EERE-2014-BT-STD-0025-0002

RIN No. 1904-AD04

**COMMENTS OF THE TELECOMMUNICATIONS INDUSTRY ASSOCIATION
REGARDING THE FRAMEWORK DOCUMENT FOR ENERGY CONSERVATION
STANDARDS FOR COMPUTER AND BATTERY BACKUP SYSTEMS**

I. INTRODUCTION

The Telecommunications Industry Association (TIA) appreciates the opportunity to provide comments in response to the Framework Document for Energy Conservation Standards for Computer and Battery Backup Systems (“Framework Document”).¹ TIA represents hundreds of information and communications technology (ICT) manufacturer, vendor, and supplier companies in standards, government affairs and market intelligence. TIA’s member companies’ products and services empower communications in every industry and market, including healthcare, education, security, public safety, transportation, energy, government, the military, and entertainment. TIA’s members produce the equipment and solutions that make up

¹ See U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Energy Efficiency Program for Consumer Products: Energy Conservation Standards for Computer and Battery Backup Systems, 79 Fed. Reg. 41656-41658 (July 17, 2014), available at www.regulations.gov/#!docketDetail;D=EERE-2014-BT-STD-0025.

our Nation's rapidly evolving communications networks and are affected by a number of issues in the Framework Document.

The Framework Document raises numerous concerns. TIA does not believe that an EPCA regulatory approach is well-suited or capable of improving the energy efficiency of ICT equipment contemplated in the Framework Document. Specifically, the Framework Document improperly combines computers, servers, and battery backup systems as one covered product. The scope of the rulemaking is overly broad and should explicitly exclude mobile devices, such as laptop/notebook/netbook computers, smart phones and tablets. TIA agrees with the determination that the scope of the regulation should be narrowed to exclude commercial products. Voluntary public-private partnerships focused on disclosure of energy use such as the ENERGY STAR program are the most effective vehicle moving forward for improving the energy efficiency of computers, servers and battery backup systems.

II. DISCUSSION

1. THE RULEMAKING IMPROPERLY COMBINES COMPUTERS, SERVERS AND BATTERY BACKUP SYSTEMS AS ONE COVERED PRODUCT.

The Framework Document proposes for the purposes of the scope of the rulemaking to invent by regulation a new covered product called a "computer system" that includes computers, computer servers, and battery backup systems.² The Framework Document defines a computer system as follows: "A consumer product whose primary function is to perform logical operations and process data, or equipment whose primary function is to maintain continuity of load power

² See Framework Document at 14.

for such products in case of input power failure.”³ As TIA pointed out in previous comments, this definition is “proposing regulation of a broad, undefined category of products acknowledging an inability to know where energy use will be taking place or what individual products will be included within the definition of the covered product in the future.”⁴ The Framework Document states, “While this definition may be broad and include several products, DOE intends to narrow the scope of this rulemaking.”⁵ The Framework Document then goes on to attempt to narrow the scope by providing separate definitions for the different products.

The regulatory invention of a “computer system,” that consolidates disparate products (computers, servers, and UPSs) with completely different functions and intended uses as a single covered consumer product appears to be contrary to EPCA, which defines a class of covered products to mean a group of covered products, the functions or intended uses of which are similar.⁶ In reviewing products covered by EPCA, TIA is not aware of any precedent in which DOE has attempted to invent a covered product for regulatory purposes by consolidating disparate products that differ so dramatically by function or intended use. The separate definitions of computers, servers, and UPSs provided in the Framework Document confirm that these products differ completely in both function and intended use.⁷ EPCA does not grant DOE authority to regulate a group or consumer products consisting of different product types. To the contrary, EPCA defines a consumer products governed by product as “any article...of a type.”⁸

³ See U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Proposed Determination of Computer and Battery Backup Systems as a Covered Consumer Product, 79 Fed. Reg. 11345-11350 (Feb. 28, 2014), available at www.gpo.gov/fdsys/pkg/FR-2014-02-28/html/2014-04423.htm.

⁴ See Comments of the Telecommunications Industry Association (Apr 15, 2014), available at www.tiaonline.org/sites/default/files/pages/4-15-14%20TIA%20Comments%20DOE%20Proposed%20Determination%20Computer%20Systems.pdf.

⁵ See Framework Document at 14.

⁶ See 42 U.S.C. Section 6291 (9).

⁷ See Framework Document, 14-16.

⁸ See 42 U.S.C. Section 6291 (1).

Interpreting the statute to allow DOE the authority to regulate any consumer products in a group because they are sometimes used together would place no limit on DOE's authority to regulate the entire universe of consumer products, which is clearly not the intent of the statute. For these reasons, TIA believes the consolidation of computers, servers, and UPSs into a singled covered product for the purpose of this rulemaking is improper.

2. THE RULEMAKING SHOULD EXPLICITLY EXCLUDE MOBILE DEVICES SUCH AS LAPTOP/NOTEBOOK/ NETBOOK COMPUTERS, SMARTPHONES AND TABLETS

The Framework Document defines computers as follows:

“Computer means a consumer product powered by mains power with the primary function of performing logical operations and processing data. At a minimum, a computer is composed of the following:

- (1) A central processing unit (CPU) to perform operations, or the ability to function as a client gateway to a server that acts as a computational CPU;
- (2) User input devices such as a keyboard, mouse or touchpad; and
- (3) An integrated display and/or the ability to support an external display screen to output information.

This definition excludes products that may perform similar operations but have different primary functions, including but not limited to: playing video games, displaying television signals, making phone calls, taking pictures, or outputting audio signals.”

The proposed definition and exclusion list needs to be clarified and narrowed to ensure that mobile devices such as laptop/notebook/netbook computers, smartphones and tablets are not included in the rulemaking. TIA does not believe that a primary function test to determine the scope of the rulemaking will provide regulatory certainty as to which products are or are not covered. Consumer use of mobile devices is in a constant state of flux as functions provided by these devices continue to integrate and consolidate in unexpected ways. Rather than trying to determine the primary function of disparate devices with overlapping uses, TIA recommends that the DOE explicitly exclude mobile devices, such as laptops/netbooks/notebooks, smartphones

and tablets from the proposed definition. Some suggestions for a proposed exclusion include: a device that is ultra-portable operated primarily on a battery, a device that has solely a wireless network connection and an internal battery, or a device that is infrequently connected to a power supply.

Market and consumer demand requires mobile devices to be designed to ensure power consumption is kept to a minimum to enhance battery life. For mobile devices, there is no technology available that industry is not already utilizing that a mandatory rulemaking would help accelerate to improve the energy efficiency of this product category. In terms of testing, computers and mobile devices such as smartphones and tablets cannot be included in the same rulemaking. Computers are typically measured entirely differently from a mobile device due to the nature of their operation, for example having many different power consumption states. Additionally, mobile devices will already be covered under the DOE Battery Charger System regulation, which would make another layer of regulation duplicative of an existing DOE regulation.

3. TIA AGREES THAT THE SCOPE OF THE PROPOSED DETERMINATION SHOULD BE NARROWED TO EXCLUDE COMMERCIAL PRODUCTS

In the Framework Document, DOE again clarifies that the proposed scope of coverage for this rulemaking specific to servers relates only to consumer products. TIA agrees that commercial equipment should be excluded. Commercial servers differ so dramatically in terms of features, characteristics, usage and distribution from servers sold to individuals for use in the home that they cannot be considered the same type of covered product. Interpreting the definition as broadly as would be required to classify commercial servers as consumer products would provide virtually no limitation on DOE's authority to make determinations that

commercial products are subject to regulation as consumer products under EPCA, which is clearly contrary to the legislative intent of EPCA that provides a clear distinction between commercial and consumer products. In addition to the regulation of commercial products being outside of DOE's regulatory authority, mandating a one size fits all energy use standard and associated level of performance for commercial equipment would have an extremely negative impact on both the energy efficiency and innovation of commercial equipment. TIA and our members are actively engaged with the ENERGY STAR program and other industry consortia to continually improve the energy efficiency of both consumer and commercial network equipment.

4. VOLUNTARY PUBLIC-PRIVATE PARTNERSHIPS FOCUSED ON DISCLOSURE OF ENERGY USE SUCH AS THE ENERGY STAR PROGRAM ARE THE MOST EFFECTIVE VEHICLE MOVING FORWARD FOR IMPROVING THE ENERGY EFFICIENCY OF COMPUTER AND BATTERY BACKUP SYSTEMS

As stated above, voluntary public-private partnerships such as the ENERGY STAR program have played an important role in encouraging industry adoption of energy efficient practices without impeding innovation of next generation products. TIA and our members have long been supporters of the ENERGY STAR program in a variety of product categories and commend the program as a successful partnership between the EPA, DOE and industry to recognize and reward innovation in energy efficiency. Industry is actively engaged with the ENERGY STAR program in developing leading energy efficiency standards for products contemplated by the DOE in this rulemaking, which provide disclosure of energy use. A voluntary approach educates buyers about the energy use profile of the products while allowing industry to continue to innovate new technology in the future. A mandated approach, focused on minimum standards and without the flexibility provided by the ENERGY STAR Program, would not be able to achieve efficiency gains achievable through industry working with ENERGY STAR. Additionally, DOE development of a mandated standard has the potential to severely limit the

ability of the ENERGY STAR program to modify specifications and test procedures for products contemplated under this rulemaking.

Specific to the ICT industry, the flexibility provided by the ENERGY STAR program and other voluntary public-private partnerships is critical for the product categories contemplated in this rulemaking as we continue to see innovation that far outpaces a regulatory rulemaking process. The set-top box voluntary agreement is an example of an effective approach to improve the energy efficiency of an ICT equipment product category while allowing industry the flexibility to innovate new products. TIA strongly recommends that DOE look to voluntary approaches and the ENERGY STAR program as vehicles for improving the efficiency of ICT equipment rather than mandating efficiency standards.

5. IF THE DOE DECIDES TO PROCEED WITH THE RULEMAKING, TIA STRONGLY RECOMMENDS THAT DOE RELEASE PRELIMINARY ANALYSIS PRIOR TO RELEASING THE NOTICE OF PROPOSED RULE (NOPR)

In the rulemaking process, DOE has the option to release Preliminary Analysis following the release of the Framework Document and prior to the release of the Notice of Proposed Rulemaking (NOPR). Given the complexity of ICT equipment, TIA recommends that if DOE decides to continue with the rulemaking with products either separately or combined, DOE utilize this optional step to allow additional stakeholder review prior to proceeding to the NOPR.

III. CONCLUSION

TIA appreciates the opportunity to provide input on the Framework Document and looks forward to working with the Department of Energy and other stakeholders on these issues in the future.

Respectfully signed and submitted on October 2, 2014.

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