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Energy Conservation Program for Consumer Products; Central Air Conditioners and Heat Pumps
Energy Conservation Standards

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DEPARTMENT OF ENERGY
Office of Energy Efficiency and Renewable Energy
10 CFR Part 430
[Docket Number EE-RM-98-440]
RIN 1904-AB46

Energy Conservation Program for Consumer Products; Central Air
Conditioners and Heat Pumps Energy Conservation Standards

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of
Energy.
ACTION: Final rule; technical amendment.

SUMMARY: The Department of Energy (DOE) is revising the Code of Federal
Regulations to incorporate certain energy conservation standards that
will apply to residential central air conditioners and central air
conditioning heat pumps beginning on January 23, 2006. More
specifically, this technical amendment replaces standard levels
currently in the Code of Federal Regulations, which were established by
a final rule published by DOE on May 23, 2002, with standard levels
that were set forth in a final rule published by DOE on January 22,
2001. As explained in the Supplementary Information section of this
notice, the U.S. Court of Appeals for the Second Circuit has ruled that
DOE's withdrawal of the rule published on January 22, 2001, was
unlawful, and, therefore, that certain standards promulgated in the May
23, 2002, final rule are invalid. DOE has decided not to seek further
review of that ruling. Consequently, DOE is now revising its
regulations consistent with the court's ruling.

EFFECTIVE DATE: February 21, 2001.

ADDRESSES: For access to the docket to read background documents or comments received, go to http://www.eere.energy.gov/buildings/appliance_standards/residential/ac_central.html and/or visit the U.S. Department of Energy, Forrestal Building, Room 1J-018 (Resource Room of the Building Technologies Program), 1000 Independence Avenue, SW., Washington, DC, (202) 586-9127, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards-Jones at the above telephone number for additional information regarding visiting the Resource Room. Please note: The Department's Freedom of Information Reading Room (formerly Room 1E-190 at the Forrestal Building) is no longer housing rulemaking materials.

FOR FURTHER INFORMATION CONTACT: Michael Raymond, Project Manager, Energy Conservation Standards for Central Air Conditioners and Heat Pumps, Docket No. EERM-440, EE-2J/Forrestal Building, U.S. Department of Energy, Office of Building Technologies, EE-2J, 1000 Independence Avenue, SW., Washington, DC 20585-0121, (202) 586-9611. E-mail: michael.raymond@ee.doe.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The National Appliance Energy Conservation Act of 1987 (NAECA) (Pub. L. 100-12) established energy efficiency standards for various consumer products, including residential central air conditioners, and directed DOE to undertake periodic rulemakings to decide whether to amend those standards. NAECA also amended the Energy Policy and Conservation Act (EPCA) to provide, in section 325(o)(1), that when DOE reviews efficiency standards, it ``may not prescribe any amended standard which increases the maximum allowable energy use * * * or decreases the minimum required energy efficiency'' of a covered product (42 U.S.C. 6295(o)(1)).

On January 22, 2001, DOE published a rule in the Federal Register amending the efficiency standard for central air conditioners established by NAECA by increasing the standard from 10 to 13 SEER (``seasonal energy efficiency ratio''), a 30% increase in energy efficiency. 66 FR 7170. The rule stated it would become effective on February 21, 2001, but manufacturers' products would not have to meet the 13 SEER standard until January 23, 2006. On January 24, 2001, the President's Chief of Staff issued a memorandum asking Executive Branch agencies to review ongoing rulemaking proceedings and to postpone the effective dates of any new regulations already published in the Federal Register but not yet effective, pending completion of such review. DOE accordingly issued a rule delaying the effective date of the central air conditioner rule published on January 22, 2001, in order to conduct that review. 66 FR 8745. DOE also received a petition from the Air-Conditioning and Refrigeration Institute (ARI), an association of air conditioner manufacturers, asking DOE to reconsider the 13 SEER standard. On May 23, 2002, DOE withdrew the 13 SEER rule and promulgated a new rule establishing a 12 SEER efficiency standard, a 20% increase in energy efficiency. 67 FR 36368.

The Natural Resources Defense Council (NRDC) and various public interest groups, joined by several state Attorneys General, filed suit in federal district court, and alternatively in the U.S. Court of Appeals for the Second Circuit, challenging DOE's withdrawal of the 13 SEER rule and promulgation of the 12 SEER standard. Among other things,

they alleged that section 325(o)(1) of EPCA precluded DOE from adopting the 12 SEER rule.

On January 13, 2004, the U.S. Court of Appeals for the Second Circuit decided that once DOE published the 13 SEER rule for central air conditioners in the Federal Register, DOE was precluded from subsequently adopting a lower standard for those products. Thus, DOE's actions of withdrawing the 13 SEER standard and promulgating the 12 SEER standard violated section 325(o)(1). Natural Resources Defense

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Council, et al. v. Abraham, 355 F.3d 179 (2nd Cir. 2004). The court's written opinion disclaimed any intent to affect a challenge to the 13 SEER standard that ARI and certain manufacturers had filed in the U.S. Court of Appeals for the Fourth Circuit. Nonetheless, ARI and the manufacturers who joined it in the Fourth Circuit lawsuit subsequently withdrew their challenge to the 13 SEER rule, citing the need for regulatory certainty.

On April 2, 2004, DOE publicly announced that, in the interest of giving all affected persons regulatory certainty, DOE would not appeal or seek further review of the ruling of the U.S. Court of Appeals for the Second Circuit. As a result, the 13 SEER standard will apply to covered conventional central air conditioners and central air conditioning heat pumps manufactured on or after January 23, 2006. Today's technical amendment places those standards in the Code of Federal Regulations.

II. Summary of Today's Action

DOE is revising the energy conservation standards for split system and single package central air conditioners and central air conditioning heat pumps in 10 CFR 430.32(c)(2). The standards currently set forth in the Code of Federal Regulations are 12 SEER for split system and single package air conditioners, and 12 SEER, 7.4 HSPF ('`heating system performance factor'') for split system and single package heat pumps. DOE is replacing these standards with the following standards established in the January 22, 2001 final rule: 13 SEER for split system and single package air conditioners, and 13 SEER, 7.7 HSPF for split system and single package heat pumps.

The January 22, 2001, final rule also established a separate product class of '`space constrained products,'' but it did not establish amended standard levels for those products. DOE explained in the preamble to the January 22, 2001, final rule that it was concerned that air conditioners and heat pumps intended to serve applications with severe space constraints would have difficulty in meeting the 13 SEER standard. 66 FR 7196. Therefore, DOE established a separate product class for space constrained products and reserved setting standard levels for that class pending completion of later rulemaking proceedings. Subsequently, in the rulemaking culminating in the May 23, 2002, final rule, DOE determined that 12 SEER was the appropriate standard level for all space constrained products except those with through-the-wall condensers, and the final rule established lower standards for through-the-wall products. 67 FR 36402-03, 36406. The standards established for space constrained products in the May 23, 2002, final rule are unaffected by the January 13, 2004, ruling of the U.S. Court of Appeals for the Second Circuit because the January 22, 2001, final rule set no standards for these products and, thus, section

325(o)(1) of EPCA does not affect the validity of the standards for these products that were published on May 23, 2002.

The May 23, 2002, final rule set forth a compliance date of January 23, 2006, for all of the efficiency standards promulgated in that rule, including the standards for space-constrained products. This is the same compliance date set forth in the January 22, 2001, final rule for the standards promulgated in that rule. The May 23, 2002, rule's preamble discussed why DOE was adopting the January 23, 2006, compliance date. 67 FR 36394. DOE recognized that by adopting that date, the time between publication of the May 23, 2002 rule and the compliance date would be less than the five-year interval provided in the statute (42 U.S.C. 6295(d)(3)(A)). DOE explained that when it cannot meet a statutory deadline to promulgate a rule (as was the case with the products covered by the January 22, 2001, and May 23, 2002, final rules), it generally will adjust the date such rule becomes enforceable to allow for the same amount of lead time as provided in the statute, but that in special circumstances DOE will not follow that practice. DOE stated it would set the effective date for the standards adopted in the May 23, 2002, final rule at less than five years from the date of publication because all of the participants in the rulemaking, including representatives of the manufacturers who would have to comply with the standards and who had expressed a view about the matter, had agreed that five years of lead time was not needed for central air conditioner manufacturers to come into compliance with the standards adopted in the May 23, 2002, final rule. DOE stated, however, that if, as a result of unforeseen circumstances, a particular manufacturer could show hardship, inequity, or unfair distribution of burdens, the effective date would be subject to case-by-case exception pursuant to the authority of the DOE Office of Hearings and Appeals under section 504 of the Department of Energy Organization Act (42 U.S.C. 7194), as implemented at subpart B of 10 CFR part 1003.

DOE is today adding to Sec. 430.2 the definition of ``space constrained product'' that was contained in the January 22, 2001, final rule and adding the following standard levels set in the May 23, 2002, final rule: 12 SEER for space constrained air conditioners, and 12 SEER, 7.4 HSPF for space constrained heat pumps. The standards for through-the-wall air conditioners and heat pumps, which fall within the definition of ``space constrained product,'' were set in the May 23, 2002, final rule, and are: 10.9 SEER, 7.1 HSPF for split systems and 10.6 SEER, 7.0 HSPF for single package systems. The definition of ``through-the-wall air conditioner and heat pump'' in Sec. 430.2 provides that this product class exists only for products manufactured prior to January 23, 2010. After that date, the standards for space constrained products will apply to these through-the-wall air conditioners and heat pumps.

The January 22, 2001, final rule did not establish a separate product class for covered central air conditioners that are small duct, high velocity systems, and the rule did not establish separate standards for them; nor are these products ``space constrained products'' (see discussion at 66 FR 7197). Therefore, small duct, high velocity systems are covered by the 13 SEER standard. However, in the May 23, 2002, notice of final rulemaking, DOE explained that information obtained in the rulemaking proceeding indicated that the special characteristics of small duct, high velocity systems made it unlikely such systems could even meet the 12 SEER/7.4 HSPF standard established for conventional products. 67 FR 36396. As a result, DOE included the NAECA-prescribed values for small duct, high velocity

systems in the Code of Federal Regulations pending a later rulemaking to establish appropriate standards for that product class. Because the Second Circuit's ruling prevents DOE from adopting a standard lower than 13 SEER for small duct, high velocity systems, despite DOE's later conclusion that it is unlikely such systems can meet even the lower 12 SEER standard, DOE has advised the two manufacturers of these systems of the procedure available to affected persons under section 504 of the Department of Energy Organization Act (42 U.S.C. 7194), which allows them to request relief from hardship or inequity caused by a regulation issued under EPCA.

Lastly, DOE is revising Sec. 430.2 to remove several definitions that were included to implement DOE's interpretation of section 325(o)(1) of EPCA contained in the preamble of the May 23, 2002, final rule. Because its

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interpretation has been rejected by the U.S. Court of Appeals for the Second Circuit, DOE is removing the definitions of ``effective date,`` ``maximum allowable energy use,`` ``maximum allowable water use,`` and ``minimum required energy efficiency.``

III. Procedural Requirements

A. Public Comment

Section 553 of the Administrative Procedure Act (5 U.S.C. 553) generally requires agencies to provide notice and an opportunity for public comment on substantive rules. The requirement does not apply, however, if the agency determines that notice and opportunity for public comment is ``impracticable, unnecessary, or contrary to the public interest.`` DOE finds that good cause exists for dispensing with notice and opportunity for public comment in issuing today's rule because those procedures are unnecessary where, as here, the agency has no discretion in fashioning its rule. Today's final rule simply conforms the Code of Federal Regulations to the order of the U.S. Court of Appeals for the Second Circuit, and DOE has no discretion to deviate from the court's ruling. For this reason, DOE has characterized today's rule as a ``technical amendment`` in the Action line at the beginning of this notice of final rulemaking.

B. Review Under Executive Order 12866

The Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB) has determined that today's regulatory action is a ``significant regulatory action`` under Executive Order 12866, ``Regulatory Planning and Review,`` 58 FR 51735 (October 4, 1993). Accordingly, DOE submitted today's notice to OMB for clearance under the Executive Order. OMB has completed its review.

C. 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 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 General Counsel's Web site: <http://www.gc.doe.gov>. **EXIT Disclaimer** DOE today is simply revising the Code of Federal Regulations to comply with the order of the U.S. Court of Appeals for the Second Circuit. Because the energy conservation standards in this rule were established in prior final rules that have taken effect, today's rule does not establish any new requirements for any entity. On this basis, DOE certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

D. Review Under the Paperwork Reduction Act

This rulemaking will impose no new information or recordkeeping requirements. Accordingly, OMB clearance is not required under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

E. Review Under the National Environmental Policy Act

DOE has 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 the Department's implementing regulations at 10 CFR part 1021. This rule is a technical amendment that reinstates, pursuant to court order, amended energy conservation standards for central air conditioners and heat pumps that were published in the Federal Register on January 22, 2001. DOE has therefore determined that this rule is covered by the Categorical Exclusion in paragraph A6 to subpart D, 10 CFR part 1021, which applies to rulemakings that are strictly procedural. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

F. 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 requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and 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 today's final rule and has determined that it 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. State regulations that may have existed on the products that are the subject of today's final rule were preempted by the Federal standards

established in NAECA. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. No further action is required by Executive Order 13132.

G. 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.

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H. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) 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 the Act 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)). The Act 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 the Act (62 FR 12820) (also available at <http://www.gc.doe.gov> EXIT Disclaimer). The rule published today does not contain any Federal mandate; it only incorporates into the Code of Federal Regulations standards set forth in rules promulgated in 2001 and 2002.

I. 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 rule 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.

J. Review Under Executive Order 12630

DOE has determined pursuant to 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.

K. 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 pursuant to general guidelines issued by OMB. 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 final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

L. 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 promulgated 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 Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Today's regulatory action would not have a significant adverse effect on the supply, distribution, or use of energy and, therefore, is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

M. 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).

N. 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 August 4, 2004.

David K. Garman,
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:

? a. Removing the definitions for ``effective date,'' ``maximum allowable energy use,'' ``maximum allowable water use,'' and ``minimum required energy efficiency''; and

? b. Adding a definition of ``space constrained product'' in alphabetical order to read as follows:

Sec. 430.2 Definitions.

* * * * *

Space constrained product means a central air conditioner or heat pump:

(1) That has rated cooling capacities no greater than 30,000 BTU/hr;

(2) That has an outdoor or indoor unit having at least two overall exterior dimensions or an overall displacement that:

(i) Is substantially smaller than those of other units that are:

(A) Currently usually installed in site-built single family homes; and

(B) Of a similar cooling, and, if a heat pump, heating capacity; and

(ii) If increased, would certainly result in a considerable increase in the usual cost of installation or would certainly result in a significant loss in the utility of the product to the consumer; and

(3) Of a product type that was available for purchase in the United States as of December 1, 2000.

* * * * *

? 3. Section 430.32 of subpart C is amended by revising paragraph (c)(2) to read as follows:

Sec. 430.32 Energy and water conservation standards and effective dates.

* * * * *

(c) * * *

(2) Central air conditioners and central air conditioning heat pumps manufactured on or after January 23,

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2006, shall have Seasonal Energy Efficiency Ratio and Heating Seasonal Performance Factor no less than:

Product class	Seasonal energy efficiency ratio (SEER)	Heating seasonal performance factor (HSPF)
(i) Split system air conditioners.....	13
(ii) Split system heat pumps.....	13	7.7
(iii) Single package air conditioners..	13
(iv) Single package heat pumps.....	13	7.7
(v)(A) Through-the-wall air conditioners and heat pumps-split system \1\.....	10.9	7.1
(v)(B) Through-the-wall air conditioners and heat pumps-single package \1\.....	10.6	7.0
(vi) Small duct, high velocity systems.	13	7.7
(vii)(A) Space constrained products-air conditioners.....	12
(vii)(B) Space constrained products-heat pumps.....	12	7.4

\1\ As defined in Sec. 430.2, this product class applies to products manufactured prior to January 23, 2010.

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