



6450-01-P

DEPARTMENT OF ENERGY

10 CFR Part 430

[EERE-2014-BT-STD-0048]

RIN 1904-AD37

Energy Conservation Program: Energy Conservation Standards for Residential Central Air Conditioners and Heat Pumps

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

ACTION: Confirmation of effective date and compliance date for direct final rule.

SUMMARY: On January 6, 2017, the U.S. Department of Energy (“DOE”) published in the *Federal Register* a direct final rule to establish new energy conservation standards for residential central air conditioners and heat pumps. DOE has determined that the comments received in response to that direct final rule do not provide a reasonable basis for withdrawing it. Therefore, DOE is providing notice confirming the adoption of the energy conservation standards established in that direct final rule and announces the effective dates of those standards.

DATES: The direct final rule for residential air conditioners and heat pumps published on January 6, 2017 (82 FR 1786) became effective on May 8, 2017. Compliance with the residential

air conditioners and heat pumps standards in the direct final rule will be required on January 1, 2023.

ADDRESSES: The docket for this rulemaking, which includes *Federal Register* notices, public meeting attendee lists and transcripts, 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 <https://www.regulations.gov/docket?D=EERE-2014-BT-STD-0048>. The docket web page contains simple instructions on how to access all documents, including public comments, in the docket.

For further information on how to review the docket, contact the Appliance and Equipment Standards Program staff at (202) 586-6636 or by email: ApplianceStandardsQuestions@ee.doe.gov.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

I. Authority

As amended by the Energy Efficiency Improvement Act of 2015, Public Law 114-11 (April 30, 2105), the Energy Policy and Conservation Act (“EPCA” or, in context, “the Act”), Public Law 94-163 (42 U.S.C. 6291–6309, as codified), authorizes DOE to issue a direct final rule establishing an energy conservation standard for a product on receipt of a statement submitted jointly by interested persons that are fairly representative of relevant points of view (including representatives of manufacturers of covered products, States, and efficiency advocates) as determined by the Secretary of Energy (“Secretary”). That statement must contain recommendations with respect to an energy or water conservation standard that are in accordance with the provisions of 42 U.S.C. 6295(o) or 42 U.S.C. 6313(a)(6)(B), as applicable. A notice of proposed rulemaking (“NOPR”) that proposes an identical energy efficiency standard must be published simultaneously with the direct final rule and a public comment period of at least 110 days provided. 42 U.S.C. 6295(p)(4). Not later than 120 days after issuance of the direct final rule, if DOE receives one or more adverse comments or an alternative joint recommendation is received relating to the direct final rule, the Secretary must determine whether the comments or alternative recommendation may provide a reasonable basis for withdrawal under 42 U.S.C. 6295(o) or other applicable law.

When making a determination whether to withdraw a direct final rule, DOE considers the substance, rather than the quantity, of comments. To this end, DOE weighs the substance of any adverse comment(s) received against the anticipated benefits of the consensus recommendations and the likelihood that further consideration of the comment(s) would change the results of the rulemaking. DOE notes that to the extent an adverse comment had been previously raised and addressed in the rulemaking proceeding, such a submission will not typically provide a basis for withdrawal of a direct final rule. If the Secretary makes such a determination, DOE must withdraw the direct final rule and proceed with the simultaneously published NOPR. DOE must publish in the *Federal Register* the reasons why the direct final rule was withdrawn.

DOE determined that it did not receive any adverse comments providing a basis for withdrawal as described above for the direct final rule that is the subject of this document -- residential central air conditioners (“CACs”) and heat pumps (“HPs”). As such, DOE did not withdraw the direct final rule and allowed it to go final on its effective date. Although not required under EPCA, DOE customarily publishes a summary of the comments received during the 110-day comment period and its responses to those comments.¹ This document contains such a summary, as well as DOE’s responses.

¹ See, e.g., Notice of effective date and compliance dates for direct final rule, 76 FR 67037 (Oct. 31, 2011).

II. Background

During the rulemaking proceeding to consider amended energy conservation standards for CACs and HPs, DOE received a statement submitted by an Appliance Standards and Rulemaking Federal Advisory Committee (“ASRAC”) that a consensus had been reached by a negotiated rulemaking working group for CACs and HPs (the “the CAC/HP Working Group” or, in context, the “Working Group”). The CAC/HP Working Group consisted of 15 members, including one member from ASRAC and one DOE representative, with the balance comprising representatives of manufacturers of the covered products at issue, efficiency advocates, and utility representatives. The CAC/HP Working Group submitted to ASRAC a Term Sheet, that, in the commenters’ view, would satisfy the EPCA requirements at 42 U.S.C. 6295(o), and ASRAC voted unanimously to adopt these consensus recommendations. (CAC/HP Term Sheet, Docket No. EERE-2014-BT-STD-0048, No. 0076)

After careful consideration of the Term Sheet related to amended energy conservation standards for CACs and HPs, the Secretary has determined that the recommendations contained therein are compliant with 42 U.S.C. 6295(o), and were submitted by interested persons who are fairly representative of relevant points of view on this matter, as required by 42 U.S.C. 6295(p)(4)(A)(i) for the issuance of a direct final rule.

DOE conducted separate test procedure rulemakings simultaneously with the energy conservation standard rulemaking to amend the DOE central air conditioners and heat pumps test

procedure. As per the request of the CAC/HP Working Group, the analyses documented in this direct final rule are based on the DOE test procedure at the time of the 2015-2016 Negotiations. Efficiency levels selected on the basis of these analyses were then translated to efficiency levels based on the amended test procedure. This methodology was first advocated by Carrier/United Technologies Corporation (“UTC”) and adopted by stakeholders during the Negotiations. (ASRAC Public Meeting, No. 87 at p. 48) This methodology is also reflected in the CAC/HP Term Sheet. Thus, DOE notes that while amended standard levels presented in Table III-1 in this notice (and in the Table I-1 of the direct final rule) are in terms of the test procedure that was in place at the time of the CAC/HP Working Group Negotiations, the standard levels added to the regulatory text are in terms of the test procedure as amended.

Ultimately, DOE found that the standard levels recommended in the Term Sheet would result in significant energy savings and are technologically feasible and economically justified. Table II-1 documents the amended standards for central air conditioners and heat pumps based on the DOE test procedure at the time of the 2015-2016 Negotiations. The amended standards correspond to the recommended trial standard level (“TSL”) and are expressed in terms of Seasonal Energy Efficiency Ratio (“SEER”), Energy Efficiency Ratio (“EER”), and Heating Seasonal Performance Factor (“HSPF”). The amended standards are the same as those recommended by the Working Group. These amended standards will apply to all central air conditioners and heat pumps listed in Table II-1 and manufactured in, or imported into, the United States starting on January 1, 2023. The amended standards listed in Table II-1 will result in less energy consumption for these products than the current standards, which remain in effect until January 1, 2023.

Table II-1 Amended Energy Conservation Standards for Residential Central Air Conditioners and Heat Pumps Based on the DOE Test Procedure at the Time of the 2015-2016 Negotiations (Recommended TSL)

Product Class	National		Southeast*	Southwest**	
	SEER	HSPF	SEER	SEER	EER
Split-System Air Conditioners with a Certified Cooling Capacity <45,000 Btu/h	14		15	15	12.2/10.2***
Split-System Air Conditioners with a Certified Cooling Capacity ≥45,000 Btu/h	14		14.5	14.5	11.7/10.2***
Split-System Heat Pumps	15	8.8			
Single-Package Air Conditioners [†]	14				11.0
Single-Package Heat Pumps [†]	14	8.0			
Space-Constrained Air Conditioners [†]	12				
Space-Constrained Heat Pumps [†]	12	7.4			
Small-Duct High-Velocity Systems [†]	12	7.2			

* Southeast includes: The states of Alabama, Arkansas, Delaware, Florida, Georgia, Hawaii, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, Puerto Rico, South Carolina, Tennessee, Texas, Virginia, the District of Columbia, and the U.S. territories.

** Southwest includes the states of Arizona, California, Nevada, and New Mexico.

*** The 10.2 EER amended energy conservation standard applies to split-system air conditioners with a seasonal energy efficiency ratio greater than or equal to 16.

† The energy conservation standards for single-package, small-duct high-velocity and space-constrained product classes remain unchanged from current levels.

III. Comments on the CAC/HP Direct Final Rule

Of the 24 substantive comments received in response to the direct final rule, 20 were from interested parties that expressed support for the direct final rule and its outcome. (All comments are available for public viewing at <https://www.regulations.gov/docket?D=EERE-2014-BT-STD-0048>.) Among these commenters, eight manufacturers and one trade group all commented positively on finalizing the rule based on manufacturing certainty.

Three consumer groups, three utility representatives, three State representatives, and six environmental advocacy groups all commented in support of the significant economic benefits to consumers and ratepayers that the direct final rule would provide. In particular, the three consumer groups stated that that withdrawing the rule would increase the cost to taxpayers in initiating further rulemaking activity. The consumer groups also pointed out that life-cycle cost savings published in the direct final rule are realized in every region of the country and that total cost of ownership is lower with the amended standard. The utility representatives, states, and environmental advocates agreed, observing that the lower standard in the northern climate would alleviate costs to those customers, while the EER requirement in the hot southwest would reduce stress on the grid and other reliability problems with peak demand. The environmental advocates suggested that DOE had underestimated the benefits of the rule to consumers, due to the alignment of the refrigerant phase-outs.

Other interested parties submitted comments that did not support the CAC/HP direct final rule. The following sections discuss these specific comments and DOE's determination that the comments do not provide a reasonable basis for withdrawal of the direct final rule.

A. Manufactured Housing

DOE received a comment from a manufacturer that attended many of the Working Group meetings. The manufacturer stated in its comments that it supported the rule generally but that the Working Group and the direct final rule should have excluded manufactured housing air conditioners based on the niche nature of the product and the potential inability of these products

to meet the adopted efficiency levels. In response, DOE notes that the Working Group discussed this issue in detail. In recognition of the unique installation characteristics of manufactured home products that impact efficiency, the Working Group agreed to amend the accompanying test procedure to the direct final rule to require a lower default fan power value for manufactured homes (406 W/1000 CFM) compared to more conventional products addressed by the direct final rule (i.e. split systems). This difference will enable manufacturers of these products to obtain more representative results under the modified test procedure by accounting for the unique characteristics of these systems – the net effect of which would be to mitigate the penalizing effect of the current procedure. DOE proposed the new, unique default fan power value for manufactured home products in a related August 2016 CAC/TP test procedure supplemental notice of proposed rulemaking and received comments in support of its approach from other manufacturers of manufactured housing air conditioners, leading it to finalize it in the January 2017 CAC/HP test procedure final rule. See 82 FR 1426 (Jan. 5, 2017). Thus, because the comment has already been accounted for in other rulemaking proceedings, DOE does not consider this comment to provide a basis for withdrawal.

B. Cost/Benefit Analysis

Two think tanks and one individual generally commented that the costs (regulatory and consumer) published in the CAC/HP direct final rule were too high. In particular, one commenter suggested that the high conversion costs required from manufacturers could result in an INPV decline and manufacturers would move production outside the United States. Two other commenters noted that consumers could see price increases in central air conditioners due to higher installed costs; one commenter additionally noted that the percent of negatively impacted

consumers did not justify the TSL levels published in the CAC/HP direct final rule. Finally, one commenter stated that DOE did not meet the rebuttable presumption laid out in EPCA.

In response, DOE notes that all of these issues were discussed in detail during the Working Group negotiations. Those discussions recognized that, although consumers in some regions would bear a higher net cost than consumers in other regions, the national average at the recommended TSL is cost-justified when examining the standard articulated in the direct final rule as a whole. DOE notes that EPCA does not require it to choose the standard level with the least consumer cost, or the least cost to manufacturers, but only to assess those, among other costs and benefits (using the 7 factors articulated at 42 U.S.C. 6295(o)) and determine whether the burdens outweigh the benefits. In this case, the recommended TSL met that standard, and DOE's analysis and conclusions would not change based on the comments received. Thus, DOE does not consider these comments to provide a basis to justify a withdrawal of this direct final rule under EPCA.

C. Consumer Groups as Interested Parties

DOE received a comment from an individual who commented that consumers and those representing consumers' interests did not have input in the rulemaking process, and thus the Working Group Term Sheet was not a "statement submitted jointly by interested persons that are fairly representative of relevant points of view." In response, DOE disagrees and believes that 1) consumers' interests were represented in the rulemaking process and; 2) that the Working Group Term Sheet was a consensus recommendation made by interested persons fairly representative of relevant points of view. Although consumer groups were not direct signatories to the Term

Sheet, the ASRAC Committee approving the CAC/HP Working Group’s recommendations included one member representing Consumers’ Union. In addition, representatives of State governments participated in the Working Group, who directly represent the consumers that live in those states. DOE also received many comments from members of the public and other consumer advocacy groups in support of the direct final rule.

IV. Department of Justice Analysis of Competitive Impacts

EPCA directs DOE to consider any lessening of competition that is likely to result from new or amended standards. It also directs the Attorney General of the United States (“Attorney General”) to determine the impact, if any, of any lessening of competition likely to result from a proposed standard and to transmit such determination to the Secretary within 60 days of the publication of a proposed rule, together with an analysis of the nature and extent of the impact. (42 U.S.C. 6295(o)(2)(B)(i)(V) and (B)(ii)) For the direct final rule discussed in this document, DOE published a NOPR containing energy conservation standards identical to those set forth the direct final rule and transmitted a copy of the direct final rule and the accompanying technical support document (“TSD”) to the Attorney General, requesting that the U.S. Department of Justice (“DOJ”) provide its determination on this issue. DOE has published DOJ’s comments at the end of this document.

DOJ reviewed the new standards in the direct final rule and the direct final rule TSD discussed in this document. As a result of its analysis, DOJ concluded that the new standards issued in this direct final rule are unlikely to have a significant adverse impact on competition. DOJ further noted that the standards established in this direct final rule were the same as

recommended standards submitted in the consensus recommendations signed by industry participants who believed they could meet the standards (as well as other interested parties).

V. Social Cost of Carbon

DOE notes that the direct final rule discussed in this notice preceded Executive Order 13783's requirement to revise future analyses involving carbon monetization. See 82 FR 16093 (March 31, 2017). The direct final rule included an analysis that examined the impacts associated with the social cost of carbon. These values, which were ancillary to the primary analyses that DOE conducted to determine whether the standards adopted in the rule were justified under the statutory criteria prescribed under 42 U.S.C. 6295(o), did not change the results of DOE's analyses. Accordingly, while the inclusion of these values helped in providing additional detail regarding the impacts from the rule, those details played no role in determining the outcome of DOE's decision under EPCA.

VI. National Environmental Policy Act

Pursuant to the National Environmental Policy Act of 1969 ("NEPA"), DOE has determined that this direct final rule fits within the category of actions included in Categorical Exclusion ("CX") B5.1 and otherwise meets the requirements for application of a CX. See 10 CFR part 1021, App. B, B5.1(b); 1021.410(b) and Appendix B, B(1)–(5). This rule fits within the category of actions because it is a rulemaking establishing energy conservation standards for consumer products or industrial equipment, and for which none of the exceptions identified in CX B5.1(b) apply. Therefore, DOE has made a CX determination for this rulemaking, and DOE

does not need to prepare an Environmental Assessment or Environmental Impact Statement for them. DOE's CX determination that applies to this direct final rule is available at <http://energy.gov/nepa/categorical-exclusion-cx-determinations-cx>.

VII. Conclusion

In summary, based on the discussion above, DOE has determined that the comments received in response to the direct final rule for new energy conservation standards for CAC and HPs do not provide a reasonable basis for withdrawal of the direct final rule. As a result, the energy conservation standards set forth in this direct final rule became effective on May 8, 2017. Compliance with the standards articulated in this direct final rule will be required on January 1, 2023.

Issued in Washington, DC, on May 22, 2017.

Daniel R Simmons
Acting Assistant Secretary
Energy Efficiency and Renewable Energy

Appendix

[The following letter will not appear in the Code of Federal Regulations]

U.S. DEPARTMENT OF JUSTICE
Antitrust Division

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March 7, 2017

Daniel Cohen
Assistant General Counsel
Department of Energy
Washington, DC 20585

Dear Assistant General Counsel Cohen:

I am responding to your January 13, 2017, letter seeking the views of the Attorney General about the potential impact on competition of proposed energy conservation standards for residential central air conditioners and heat pumps. Your request was submitted under Section 325(o)(2)(B)(i)(V) of the Energy Policy and Conservation Act, as amended (ECPA), 42 U.S.C. 6295(o)(2)(B)(i)(V) and 43 U.S.C. 6316(a), which requires the Attorney General to make a determination of the impact of any lessening of competition that is likely to result from the imposition of proposed energy conservation standards. The Attorney General's responsibility for responding to requests from other departments about the effect of a program on competition has been delegated to the Assistant Attorney General for the Antitrust Division in 28 CFR § 0.40(g). In conducting its analysis, the Antitrust Division examines whether a proposed standard may lessen competition, for example, by substantially limiting consumer choice or increasing industry concentration. A lessening of competition could result in higher prices to manufacturers and consumers.

We have reviewed the proposed standards contained in the Direct Final Rule (82 Fed. Reg. 1786, January 6, 2017). We have also reviewed supplementary information submitted to the Attorney General by the Department of Energy. Based on this review, our conclusion is that the proposed energy conservation standards for residential central air conditioners and heat pumps are unlikely to have a significant adverse impact on competition.

Sincerely,
Brent Snyder

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