DEPARTMENT OF ENERGY

10 CFR Part 431

[EERE-2019-BT-STD-0042]

RIN 1905-AE59

Energy Conservation Program: Energy Conservation Standards for Commercial Warm Air Furnaces

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

ACTION: Final determination.

SUMMARY: The Energy Policy and Conservation Act, as amended ("EPCA"), prescribes energy conservation standards for various consumer products and certain commercial and industrial equipment, including commercial warm air furnaces ("CWAFs"). EPCA also requires the U.S. Department of Energy ("DOE" or "the Department") to periodically review standards to determine whether more-stringent, amended standards would be technologically feasible and economically justified, and would result in significant additional energy savings. In the case of CWAFs, DOE has determined that it lacks clear and convincing evidence that amended energy conservation standards would be economically justified. As such, in this final determination, DOE has determined not to amend the energy conservation standards for CWAFs.

DATES: The final determination is effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: The docket for this activity, 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, some documents listed

in the index, such as information that is exempt from public disclosure, may not be publicly available.

The docket webpage can be found at *www.regulations.gov/docket/EERE-2019-BT-STD-0042*. The docket webpage contains instructions on how to access all documents, including public comments, in the docket.

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SUPPLEMENTARY INFORMATION:

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I. Synopsis of the Final Determination

The Energy Policy and Conservation Act, Pub. L. 94-163 (42 U.S.C. 6291–6317, as codified), as amended ("EPCA"),[1] authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. Title III, Part C[2] of EPCA, established the Energy Conservation Program for Certain Industrial Equipment. (42 U.S.C. 6311–6317) Such equipment includes CWAFs, which are the subject of this final determination.[3] (42 U.S.C. 6311(J))

Pursuant to EPCA, DOE is triggered to consider amending the energy efficiency standards for certain types of commercial and industrial equipment, including the equipment at issue in this document, whenever the American Society of Heating, Refrigerating, and Air Conditioning Engineers ("ASHRAE") amends the standard levels or design requirements prescribed in ASHRAE Standard 90.1, "Energy Standard for Buildings Except Low-Rise Residential Buildings" ("ASHRAE Standard 90.1"). Under a

[1] All references to EPCA in this document refer to the statute as amended through the Energy Act of 2020, Pub. L. 116-260 (Dec. 27, 2020), which reflect the last statutory amendments that impact Parts A and A-1 of EPCA.
[2] For editorial reasons, upon codification in the U.S. Code, Part C was re-designated Part A-1.
[3] Air-cooled commercial package air conditioning and heating equipment (referred to as "air-cooled unitary air conditioners and air-cooled unitary heat pumps" or "ACUACs and ACUHPs") were also included in the scope of the request for information ("RFI") published by DOE in the *Federal Register* on May 12, 2020 ("May 2020 RFI") that preceded the NOPD for this rulemaking. 85 FR 27941. However, DOE only addresses CWAFs in this final determination. DOE will address ACUACs and ACUHPs in a separate proceeding.

separate provision of EPCA, DOE is required to review the existing energy conservation standards for those types of covered equipment subject to ASHRAE Standard 90.1, at a minimum, every six years after issuance of any final rule establishing or amending a standard (42 U.S.C. 6313(a)(6)(A)-(C)). DOE is conducting this review of the energy conservation standards for CWAFs under EPCA's six-year-lookback authority. (42 U.S.C. 6313(a)(6)(C))

For this final determination, DOE considered CWAFs subject to the current Federal energy conservation standards specified in the Code of Federal Regulations ("CFR") at 10 CFR 431.77. The current standards were adopted in a direct final rule published in the *Federal Register* on January 15, 2016 ("January 2016 final rule"), through which DOE, in relevant part, adopted amended CWAF standards for which compliance is required beginning on January 1, 2023. 81 FR 2420, 2529. DOE has determined that there is significant uncertainty regarding whether more-stringent CWAF standards would be economically justified at this time, a matter which the Department discusses in more detail in section III.D of this document. Therefore, DOE has determined that the energy conservation standards for CWAFs do not need to be amended because there is not clear and convincing evidence that amended standards would be economically justified, as required by EPCA to establish a more-stringent standard. (42 U.S.C. 6313(a)(6)(A)(ii)(II))

II. Introduction

The following section briefly discusses the statutory authority underlying this final determination, as well as the historical background relevant to the establishment of energy conservation standards for CWAFs.

A. Authority

EPCA, Pub. L. 94-163 (42 U.S.C. 6291-6317, as codified), among other things, authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. Title III, Part C of EPCA, added by Pub. L. 95-619, Title IV, section 441(a) (42 U.S.C. 6311-6317, as codified), established the Energy Conservation Program for Certain Industrial Equipment, which sets forth a variety of provisions designed to improve energy efficiency. This equipment includes CWAFs, the subject of this document. (42 U.S.C. 6311(J))

The energy conservation program under EPCA consists essentially of four parts: (1) testing, (2) labeling, (3) the establishment of Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA include definitions (42 U.S.C. 6311), energy conservation standards (42 U.S.C. 6313), test procedures (42 U.S.C. 6314), labeling provisions (42 U.S.C. 6315), and the authority to require information and reports from manufacturers (42 U.S.C. 6316).

Federal energy conservation requirements for covered equipment established under EPCA generally supersede State laws and regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6316(a) and 42 U.S.C. 6316(b); 42 U.S.C. 6297) DOE may, however, grant waivers of Federal preemption in limited circumstances for particular State laws or regulations, in accordance with the procedures and other provisions set forth under EPCA. (42 U.S.C. 6316(b)(2)(D), which incorporates the preemption waiver provisions of 42 U.S.C. 6297(d))

EPCA prescribed initial mandatory energy conservation standards for CWAFs. (42 U.S.C. 6313(a)(4)) In doing so, EPCA established Federal energy conservation standards that generally corresponded to the levels in the ASHRAE Standards 90.1 in effect on October 24, 1992 (*i.e.*, ASHRAE Standard 90.1-1989).

In overview, if ASHRAE Standard 90.1 is amended with respect to the standard levels or design requirements applicable under that standard for certain commercial equipment, including CWAFs, not later than 180 days after the amendment of the standard, DOE must publish in the *Federal Register* for public comment an analysis of the energy savings potential of amended energy efficiency standards. (42 U.S.C. 6313(a)(6)(A)(i)) DOE must adopt amended energy conservation standards at the new efficiency level in ASHRAE Standard 90.1, unless DOE determines that there is clear and convincing evidence to support a determination that the adoption of a more-stringent efficiency level as a uniform national standard would produce significant additional energy savings and be technologically feasible and economically justified.[4] (42 U.S.C. 6313(a)(6)(A)(ii))

If DOE decides to adopt, as a uniform national standard, the efficiency levels specified in the amended ASHRAE Standard 90.1, DOE must establish such standard not later than 18 months after publication of the amended industry standard. (42 U.S.C. 6313(a)(6)(A)(ii)(I)) However, if DOE determines, supported by clear and convincing evidence, that a more-stringent uniform national standard would result in significant additional conservation of energy and is technologically feasible and economically justified, then DOE must establish the more-stringent standard not later than 30 months after publication of the amended ASHRAE Standard 90.1. (42 U.S.C. 6313(a)(6)(A)(ii)(II) and (B)(i))

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[4] In determining whether a more-stringent standard is economically justified, EPCA directs DOE to determine, after receiving views and comments from the public, whether the benefits of the proposed standard exceed the burdens of the proposed standard by, to the maximum extent practicable, considering the following seven factors: (1) The economic impact of the standard on the manufacturers and consumers of the products subject to the standard; (2) The savings in operating costs throughout the estimated average life of the product compared to any increases in the initial price of, initial charges for, or maintenance expense of the products that are likely to result from the standard; (3) The total projected amount of energy savings likely to result directly from the standard; (4) Any lessening of the utility or the performance of the products likely to result from the standard; (5) The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the standard; (6) The need for national energy conservation; and (7) Other factors the Secretary of Energy ("Secretary") considers relevant. (42 U.S.C. 6313(a)(6)(B)(ii))

EPCA also requires that every six years DOE shall evaluate the energy conservation standards for each class of certain covered commercial equipment, including CWAFs, and publish either a notice of determination that the standards do not need to be amended, or a notice of proposed rulemaking ("NOPR") that includes new proposed energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6313(a)(6)(C)(i)) EPCA further provides that, not later than three years after the issuance of a final determination not to amend standards, DOE must publish either a notification of determination that standards for the equipment do not need to be amended, or a NOPR including new proposed energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6313(a)(6)(C)(iii)(II))

A determination of whether amended energy conservation standards are needed must be based on the same considerations as if it were adopting a standard that is more stringent than an amendment to ASHRAE Standard 90.1. (42 U.S.C. 6313(a)(6)(C)(i)(II); 42 U.S.C. 6313(a)(6)(A)-(B)) DOE must make the analysis on which a determination is based publicly available and provide an opportunity for written comment. (42 U.S.C. 6313(a)(6)(C)(ii)) Further, there must be clear and convincing evidence that a determination that more-stringent standards would: (1) result in significant additional conservation of energy, (2) be technologically feasible, and (3) be economically justified. (42 U.S.C. 6313(a)(6)(C)(i); 42 U.S.C. 6313(a)(6)(A))

DOE is publishing this final determination in satisfaction of the six-year-lookback review requirement in EPCA, having determined that DOE lacks clear and convincing evidence that amended standards for CWAFs would be economically justified.

B. Background

In a final rule published in the *Federal Register* on October 21, 2004 ("October 2004 final rule"), DOE codified energy conservation standards for CWAFs equal to those established in EPCA (*i.e.*, a thermal efficiency ("TE") of 80 percent for gas-fired

CWAFs, and a TE of 81 percent for oil-fired CWAFs). 69 FR 61916, 61941. The standards established in the October 2004 final rule are the same as DOE's current CWAF standards for CWAFs manufactured before January 1, 2023. 10 CFR 431.77.

As noted previously, DOE most recently amended the energy conservation standards for CWAFs in the January 2016 final rule, which requires compliance beginning on January 1, 2023. 81 FR 2420 (Jan. 15, 2016).

Since publication of the January 2016 final rule, ASHRAE published two updated versions of ASHRAE Standard 90.1, one in 2016 ("ASHRAE Standard 90.1-2016") and another in 2019 ("ASHRAE Standard 90.1-2019"). The CWAF standards adopted in the January 2016 final rule (*i.e.*, the standards which take effect on and after the January 1, 2023 compliance date) are more stringent than the minimum efficiency levels for CWAFs in ASHRAE Standard 90.1-2016. ASHRAE Standard 90.1-2019 updated the minimum efficiency levels for CWAFs to align with those adopted by DOE in the January 2016 final rule.[5] Because ASHRAE Standard 90.1-2016 and ASHRAE Standard 90.1-2019 did not contain minimum efficiency levels more stringent than the current Federal standards for CWAFs, DOE was not triggered to examine amended standards for this equipment under 42 U.S.C. 6313(a)(6)(A).[6] As a result, despite these intervening ASHRAE actions, the Federal standards for CWAFs are those set forth in the January 2016 final rule and codified in DOE's regulations at 10 CFR 431.77.

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[5] It is DOE's understanding that the relevant provisions of ASHRAE Standard 90.1-2019 pertaining to CWAF standards contained a typographical error. Table 6.8.1-5 of ASHRAE Standard 90.1-2019 specifies a thermal efficiency (TE) requirement of 82 percent for oil-fired CWAFs applicable after January 1, 2023, which aligns with the standard adopted by the January 2016 final rule. However, Table 6.8.1-5 of ASHRAE 90.1-2019 also specifies a TE requirement of only 80 percent for oil-fired CWAFs applicable before January 1, 2023, whereas ASHRAE 90.1-2016 specifies a TE requirement of 81 percent for this class. As such, DOE understands the 80-percent level in ASHRAE Standard 90.1-2019 to be a typographical error.

[6] DOE assessed whether it was triggered based upon consideration of the current Federal standards codified at 10 CFR 431.77, which were promulgated through the final rule published in the *Federal Register* at 81 FR 2420 (Jan. 15, 2016). In doing so, DOE considered the totality of these CWAF standard levels, even though compliance with certain of those standards is not yet required (*i.e.*, a compliance date of January 1, 2023).

More specifically, for gas-fired CWAFs manufactured starting on January 1, 1994, until January 1, 2023, TE at the maximum rated capacity (*i.e.*, rated maximum input) must be not less than 80 percent. For gas-fired CWAFs manufactured starting on January 1, 2023, the TE at the maximum rated capacity must be not less than 81 percent. For oil-fired CWAFs manufactured starting on January 1, 1994, until January 1, 2023, the TE at the maximum rated capacity must be not less than 81 percent. For oil-fired CWAFs manufactured starting on January 1, 2023, the TE at the maximum rated capacity must be not less than 82 percent. 10 CFR 431.77.

In the January 2016 final rule, DOE rejected more-stringent standards on the basis that benefits of energy savings, emission reductions, and the estimated monetary value of the emissions reductions would be outweighed by the economic burden on many consumers, negative net present value ("NPV") of consumer benefits, and the impacts on manufacturers, including the conversion costs and profit margin impacts that could result in a large reduction in industry net present value ("INPV"). 81 FR 2420, 2522 (Jan. 15, 2016).

In support of its present review of the CWAF energy conservation standards, DOE initially published in the *Federal Register* a request for information (RFI) on May 12, 2020 (May 2020 RFI), which identified various issues on which DOE sought comment, data, and information to inform its determination of whether the current Federal standards need to be amended. 85 FR 27941. After considering comments received in response to the RFI, DOE published in the *Federal Register* a notice of proposed determination on April 26, 2022 ("April 2022 NOPD"), which proposed not to amend the standards for CWAFs. 87 FR 24455. In the April 2022 NOPD, DOE tentatively determined that the current CWAF market conditions are not significantly different now than projected in the January 2016 final rule, and that any analysis of

increased standards for CWAFs would not result in a significantly different economic outcome from the January 2016 final rule. As such, DOE determined that it lacks clear and convincing evidence that amended energy conservation standards for CWAFs would be economically justified. *Id* at 87 FR 24465.

DOE received numerous comments in response to the April 2022 NOPD from the interested parties listed in Table II.1.

Table II.1 Interested Parties that Provided Written Comment in Response to the April 2022 NOPD

Commenter(s)	Acronym Used in this Final Determination	Commenter Type
Air-Conditioning, Heating, and Refrigeration Institute	AHRI	Manufacturer Trade Association
American Gas Association and American Public Gas Association	AGA and APGA	Utility Trade Associations
Appliance Standards Awareness Project, American Council for an Energy-Efficient Economy, New York State Energy Research and Development Authority, Natural Resources Defense Council	Joint Advocates	Efficiency Advocacy Organizations and State Government
California Investor-Owned Utilities	CA IOUs	Utilities
Lennox International, Inc.	Lennox	Manufacturer
Northwest Energy Efficiency Alliance	NEEA	Efficiency Advocacy Organization

A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.[7]

[7] The parenthetical reference provides a reference for information located in the docket (Docket No. EERE-2019-BT-STD-0042, which is maintained at *www.regulations.gov/docket?D=EERE-2019-BT-STD-0042*). The references are arranged as follows: (commenter name, comment docket ID number, page of that document).

III. General Discussion and Rationale

DOE developed this final determination after a review of the CWAF market, including product literature and product listings in the DOE Compliance Certification Management System (CCMS) database. DOE also considered comments, data, and information from interested parties that represent a variety of interests. This document addresses issues raised by these commenters.

A. Test Procedures

EPCA sets forth generally applicable criteria and procedures for DOE's adoption and amendment of test procedures. (42 U.S.C. 6314(a)) As a general matter, manufacturers of covered ASHRAE equipment must use these test procedures to certify to DOE that their equipment complies with energy conservation standards and to quantify the efficiency of their equipment. (42 U.S.C. 6316(b); 42 U.S.C. 6296) DOE's current energy conservation standards for CWAFs are expressed in terms TE in percent. (*See* 10 CFR 431.77) The applicable test procedure for CWAFs is found at 10 CFR 431.76, "Uniform Test Method for Measurement of Energy Efficiency of Commercial Warm Air Furnaces."

On February 25, 2022, DOE published a NOPR in the *Federal Register* that proposed to update the CWAF test procedure ("February 2022 TP NOPR"). 87 FR 10726. In the February 2022 TP NOPR, DOE proposed to adopt the latest versions of the industry test standards that are currently incorporated by reference, to make minor revisions to the CWAF test procedure to clarify how to test certain equipment,[8] and to establish a new metric – Thermal Efficiency Two ("TE2"). The proposed TE2 metric would, unlike the current TE metric, account for heat loss through the CWAF cabinet

[8] These revisions included additional specifications for CWAFs with multiple vent hoods or small-diameter vent hoods.

(*i.e.*, jacket losses) and performance at a minimum fire rate (*i.e.*, part-load). *Id.* at 87 FR 10729-10730. However, DOE proposed to make use of the TE2 metric and test procedure optional until such time as compliance with amended energy conservation standards based on TE2 is required, should DOE adopt such standards. *Id.* at 87 FR 10735.

In response to the April 2022 NOPD, NEEA and the Joint Advocates recommended that DOE should consider the potential energy savings that would result from analyzing new CWAF standards based on an updated test procedure and metric. (NEEA, No. 34 at pp. 1-2; Joint Advocates, No. 31 at pp. 1-2) NEEA also recommended that DOE evaluate the energy savings that would result from amending the CWAF test procedure to incorporate aspects of CSA Standard P.8-2022, "Thermal efficiencies of industrial and commercial gas-fired package furnaces" ("CSA P.8-2022"), which includes a test procedure that assesses CWAF performance based on the not only the CWAF, but also accounts for features within a commercial unitary air conditioner ("CUAC") that the commenter stated would affect CWAF performance (*e.g.*, total enclosure insulation, low-leak dampers, and energy recovery).[9] (NEEA, No. 34 at pp. 2-5) Additionally, NEEA and the Joint Advocates asserted that accounting for the technology options in CSA P.8-2022 could result in significant energy savings, and that obtaining this energy savings would be technologically feasible and economically justified. (NEEA, No. 34 at p. 3; Joint Advocates, No. 31 at p. 2) Specifically, NEEA argued that although the effects of these technologies are not accounted for in the TE metric, DOE should look into the energy savings associated with them before adopting a final test procedure, because assessing the energy savings of these technology options

[9] NEEA also recommended DOE consider amending the CWAF test procedure and metric to incorporate aspects based on CSA P.8-2022 in the February 2022 NOPR. (*See* EERE-2019-BT-TP-0041-0024)

help to justify adding them to the test procedure. (NEEA, No. 34 at p. 3) NEEA also presented data showing the potential energy savings based improvements in enclosure insulation, damper leakage, and energy recovery. *Id.* NEEA stated that the technologies that achieve this level of energy savings are readily available on the market today, and, therefore, are technologically feasible. (NEEA, No. 34 at p. 4) NEEA also asserted that these technologies may have lower incremental costs and, therefore, may be economically justified. (NEEA, No. 34 at pp. 4-5) To support its conclusion, NEEA presented preliminary results from a benefit-cost analysis being conducted in partnership with the Northwest Power and Conservation Council that shows the benefit-cost ratios for low-leak dampers and increased insulation. *Id*.

DOE acknowledges there could be potential for additional energy savings, if DOE were to consider technologies that would improve efficiency as measured by TE2 or by an amended test procedure that incorporates aspects of CSA P.8-2022 that are not included in the current TE metric. However, DOE notes that as currently proposed, the TE2 test procedure for CWAFs does not address the technologies that NEEA has identified, and that rulemaking is still ongoing. DOE received similar comments in response to the February 2022 TP NOPR and will address those comments as part of that rulemaking. Therefore, DOE is declining to analyze energy conservation standards (denominated in terms of TE) in light of such technologies at this time, because an amended TE standard level would not be impacted by whether such technologies would be used in CWAFs. Should DOE ultimately decide to amend the CWAF test procedure to include the technologies NEEA has identified or to finalize the TE2 metric and should sufficient TE2 performance data become available, DOE could consider energy savings based on such technologies in a subsequent review of CWAF energy conservation standards.

B. General Comments

In the April 2022 NOPD, DOE requested comment on its proposed determination that the existing energy conservation standards for CWAFs do not need to be amended. 87 FR 24455, 24465 (April 26, 2022).

DOE received comments from AHRI, the CA IOUs, and Lennox supporting DOE's proposed determination. (AHRI, No. 29 at p. 1, CA IOUs, No. 32 at p. 1, Lennox, No. 30 at pp. 1-2) Specifically, AHRI stated that there have not been significant changes in the CWAF market that would warrant an amended energy conservation standard that would be both technically feasible and economically justified. (AHRI, No. 29 at p. 1) Additionally, Lennox commented that since the time of the January 2016 final rule market conditions, including manufacturer costs and costs to improve CWAF efficiency have worsened since the 2016 final rule. Lennox also argued that implementing more-stringent standards at this time would be premature because DOE's 2023 CWAF standards have not yet taken effect, and under the statute, any new CWAF standards could not take effect until 2029. (Lennox, No. 30 at p. 2) AHRI and Lennox also agreed with DOE's tentative conclusion in the April 2022 NOPD that raising the TE standards would likely result in a condensing standard, and these commenters asserted that there are technological problems associated with implementing condensing operation for CWAFs that would add significant burden to manufacturers if such a standard were to be adopted. (AHRI, No. 29 at p. 1; Lennox, No. 30 at p. 1)

NEEA disagreed with DOE's proposed determination. (NEEA, No. 34 at p. 1) As discussed in section III.A of this document, NEEA asserted that DOE should consider the energy savings of technology options that are not captured by the current CWAF test procedure and metric. (NEEA, No. 34 at p. 2) Additionally, NEEA recommended that DOE should update its energy use analysis to account for changes in the CWAF market

since 2016. (NEEA, No. 34 at pp. 7-8) NEEA stated that DOE's 2016 analysis was based on the Commercial Building Stock Energy Consumption Survey (CBECS 2003); however, since the publication of that survey, a new CBECS 2018 has been published. NEEA also recommended that DOE should seek new shipment data to account for changing trends in the market. *Id.*

In response to NEEA, DOE reiterates that its analysis for this final determination was based on the existing TE metric, as updates to the required test method as would be needed to account for additional technologies that NEEA identified are not yet adopted. The CWAFs test procedure rulemaking is currently ongoing. Further, it would be premature to evaluate energy conservation standards in terms of a new metric without sufficient data on equipment performance according to any potential new metric. As a result, DOE has concluded that further consideration of TE2 is not appropriate at this time and is better suited for consideration in a future review of CWAF standards, if TE2 were to be finalized and sufficient performance data becomes available.

In response to NEEA's suggestion that DOE seek new shipment data to account for the changing market, DOE notes that it sought feedback on its approach to estimating shipments and/or shipments data in the May 2020 RFI. 85 FR 27941, 27953 (May 12, 2020). Subsequently, in the April 2022 NOPD, DOE considered several comments related to shipments, and the Department ultimately concluded that given the mature market, the expectation that most shipments will be at the baseline level in 2023, and lack of any anticipated increase in equipment lifetime, DOE did not expect the shipments estimates and no-new-standards distributions from the January 2016 final rule to have changed significantly for CWAFs. 87 FR 24455, 24464 (April 26, 2022). After a careful review, DOE has not obtained any new or additional information regarding shipments, and, therefore, maintains the conclusion regarding CWAF shipments set forth in the April

2022 NOPD for this final determination. Regarding NEEA's recommendation to conduct an updated analysis that relies on CBECS 2018, as stated in the April 2022 NOPD, while the previous analysis relied on CBECS 2003, CWAF energy consumption was adjusted for projected decreases in heating degree days between CBECS 2003 and the compliance year.[10] 87 FR 24455, 24463 (April 26, 2022). DOE also noted that the main driver of CWAF energy consumption in the January 2016 final rule was the building heating load, which is based on the reported space heating energy consumption of buildings with a furnace in CBECS 2003, and that the previous analysis was not based on full-load hours or perimeter conditions. *Id.* As such, and given the fact that DOE has determined that the characteristics of the CWAF market are largely the same as when analyzed for the January 2016 final rule, DOE does not anticipate the energy use to have changed sufficiently so as to drive a different outcome, as compared to that in the January 2016 final rule.

As discussed further in section III.D of this document, DOE has determined that it lacks clear and convincing evidence to show that the potential amended standard levels considered would be economically justified. To satisfy the statutory requirements to consider more-stringent standards, DOE must support by clear and convincing evidence that such standards are economically justified, in addition to being technologically feasible and to likely result in significant additional energy savings. Therefore, although DOE could update its analysis to further investigate aspects of energy savings and shipments, the Department finds that doing so would not change DOE's rationale supporting its decision to not amend the existing CWAF standards at this time.

[10] See Chapter 7 of the January 2016 Final Rule Technical Support Document (available at: *www.regulations.gov/document/EERE-2013-BT-STD-0021-0050*).

C. Equipment Classes and Scope of Coverage

EPCA and DOE define a "warm air furnace" as a self-contained oil- or gas-fired furnace designed to supply heated air through ducts to spaces that require it and includes combination warm air furnace/electric air conditioning units but does not include unit heaters and duct furnaces. (42 U.S.C. 6311(11)(A); 10 CFR 431.72) A "commercial warm air furnace" is further defined in DOE's regulations as a warm air furnace that is industrial equipment, and that has a capacity (rated maximum input) of 225,000 British thermal units ("Btu") per hour or more. 10 CFR 431.72.

In the April 2022 NOPD, DOE responded to a comment from NEEA[11] that requested that DOE consider updating the definition for CWAF to account for different operating characteristics, different functions, or use cases in order to reduce uncertainty as to the applicable energy conservation standard and test procedure and to provide more comprehensive coverage. 87 FR 24455, 24459 (April 26, 2022). In response NEEA's comment, DOE stated that the codified definition of "warm air furnace" at 10 CFR 431.72 matches EPCA's definition of a "warm air furnace" at 42 U.S.C. 6311(11)(A), and that, therefore, the current CWAF definition is appropriately aligned with the definition in EPCA and adequately covers CWAFs. As such, DOE determined that no amendments to the regulatory definitions for "commercial warm air furnace" or "warm air furnace" are needed. *Id*.

In response to the April 2022 NOPD, NEEA again recommended that DOE update the definition of a CWAF to allow DOE to develop a metric that would include the effects of both the CWAF and the CUAC with which it is packaged. (NEEA, No. 34

[11] NEEA sent a comment in response to a DOE request for information published in the *Federal Register* on May 12, 2020, for air-cooled commercial package air conditioning and heating equipment and commercial warm air furnaces, in which the Department sought comment regarding whether DOE should consider revising the definition for CWAFs. *See* EERE-2019-BT-STD-0042-0024 at p. 5.

at pp. 6-7) NEEA further stated that it does not see a limitation in EPCA's or DOE's definition of a CWAF that prevents DOE from expanding the definition to cover the entire CUAC and suggested that this was the intent of the EPCA definition. Specifically, NEEA noted that the EPCA defines a warm air furnace as "self-contained," "designed to supply heated air through ducts," and "includes combination warm air furnace/electric air conditioning units," which NEEA argued suggests that the intent was to cover CUACs. *Id.*

DOE disagrees with NEEA that the intent of the "warm air furnace" definition found in EPCA is to include CUACs under the coverage of the CWAF definitions. As previously noted, EPCA's definition of a "warm air furnace" definition clearly states that a warm air furnace "is a self-contained oil or gas-fired furnace," which DOE views as a product that is distinct from a CUAC. DOE notes that EPCA lists warm air furnaces and various types of commercial air conditioners as separate types of covered equipment at 42 U.S.C. 6311(1) and that EPCA defines "commercial package air conditioning and heating equipment" (*i.e.*, CUAC) separately from "warm air furnace." (See 42 U.S.C. 6311(8)(A) and (11)(A)) While EPCA states that a warm air furnace "includes combination warm air furnace/electric air conditioning units," DOE has determined that this is referring to the fact that a CWAF may be installed within an CUAC, which is an attempt to clarify that CWAFs can be standalone units or installed as part of packaged systems. This interpretation is consistent with how DOE has historically treated and regulated CWAFs and packaged systems.

NEEA also stated that DOE should consider expanding the coverage of CWAFs to include three-phase furnaces with capacities less than 225,000 Btu/h. (NEEA, No. 34 at p. 6) As discussed in the April 2022 NOPD, DOE tentatively determined not to take

such action because: (1) such units make up a very small portion of the market (roughly 2 percent), and (2) all of such units meet or exceed the current CWAF standards and the majority meet or exceed the 2023 standards. 87 FR 24455, 24460 (April 26, 2022). NEEA argued that because these types of CWAFs make up about 2 percent of the total CWAF market, there is still a significant opportunity for energy savings, because the CWAF market is large. (NEEA, No. 34 at p. 6) Additionally, NEEA stated that because the majority of the market already meets or exceeds the 2023 standards, the additional burden to manufacturers to redesign such units to meet the 2023 standards is likely to be small. Finally, NEEA argued that DOE has energy conservation standards for three-phase VRFs with a capacity less than 65,000 btu/h even though there are currently no shipments of such units, so the commenter asserted that following this precedent, DOE should establish energy conservation standards for three-phase CWAFs with an input capacity less than 225,000 Btu/h, because such products have thousands of shipments. *Id.*

DOE has decided not to consider energy conservation standards for three-phase CWAFs with a capacity less than 225,000 Btu/h in this rulemaking. DOE disagrees with NEEA that there is a significant opportunity for energy savings. While 2 percent of the overall CWAF market can account for a significant amount of energy use, as previously stated, all three-phase furnaces with capacities less than 225,000 btu/h meet or exceed the current CWAF standards, and the majority already meet the 2023 standards. Therefore, significant energy savings for such units (assuming DOE expanded the CWAF definition to include them) would only be achieved if DOE were to increase CWAF standards, which for the reasons explained in section III.D of this document, DOE is declining to do in this rulemaking.

D. Final Determination

After carefully considering the comments on the April 2022 NOPD and the available data and information, DOE has determined that the energy conservation standards for CWAFs do not need to be amended, for the reasons explained in the paragraphs immediately following.

As previously discussed, EPCA specifies that for any commercial and industrial equipment addressed under 42 U.S.C. 6313(a)(6)(A)(i), including CWAFs, DOE may prescribe an energy conservation standard more stringent than the level for such equipment in ASHRAE Standard 90.1 only if "clear and convincing evidence" shows that a more-stringent standard would result in significant additional conservation of energy and is technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(C)(i); 42 U.S.C. 6313(a)(6)(A)(ii)(II)) The "clear and convincing" evidentiary threshold applies both when DOE is triggered by ASHRAE action and when DOE conducts a six-year-lookback rulemaking, with the latter being the basis for the current proceeding. DOE addresses each of these statutory criteria in turn.

1. Significant Conservation of Energy

EPCA mandates that DOE consider whether amended energy conservation standards for CWAFs would result in result in significant additional conservation of energy. (42 U.S.C. 6313(a)(6)(C)(i); 42 U.S.C. 6313(a)(6)(A)(ii)(II))

As discussed in the April 2022 NOPD, DOE acknowledges that more-stringent standards for CWAFs have the potential to result in significant additional conservation of energy. 87 FR 24455, 24464 (April 26, 2022). In the January 2016 final rule, DOE estimated that establishing a condensing standard (*i.e.*, 92-percent thermal efficiency) for

gas-fired and oil-fired CWAFs would result in 2.1 quads of primary energy savings compared to a no-new-standards case over the lifetime of the CWAF (2019 through 2048). 81 FR 2420, 2508 (Jan. 15. 2016). However, as discussed in section III.D.3 of this document, DOE has determined that it lacks clear and convincing evidence to show that the potential amended standard levels considered would be economically justified.

2. Technological Feasibility

EPCA mandates that DOE consider whether amended energy conservation standards for CWAFs would be technologically feasible. (42 U.S.C. 6313(a)(6)(C)(i); 42 U.S.C. 6313(a)(6)(A)(ii)(II)) As initially explained in the April 2022 NOPD, there have previously been CWAF models on the market at efficiencies above the current minimum standard levels and above the levels adopted in the January 2016 final rule, and DOE has previously analyzed several of those levels as potential national standard levels. 87 FR 24455, 24465 (April 26, 2022). This indicates that more-stringent energy conservation standards could be technologically feasible. However, DOE also noted in the April 2022 NOPD that it was not aware of any CWAF models on the market that exceeded the minimum standards that were adopted in the January 2016 final rule. *Id*. Currently, DOE is not aware of any gas-fired CWAF models, and is only aware of one oil-fired CWAF model line on the market that exceeds the minimum standards that were adopted in the January 2016 final rule.[12]

3. Economic Justification

In the January 2016 final rule, DOE concluded that energy conservation standards at levels requiring condensing operation (trial standard level ("TSL") 5) would not be economically justified, due to the economic burden on most consumers, the negative

[12] See DOE's Compliance Certification Database for CWAFs (available at: *www.regulations.doe.gov/ccms*) (last accessed Sept. 14, 2022).

NPV of consumer benefits using a 7-percent discount rate, and the impacts on manufacturers, including the conversion costs and profit margin impacts that could result in a large reduction in INPV. 81 FR 2420, 2522 (Jan. 15, 2016). In examining the current market, DOE has found that market conditions are largely the same as at the time of the January 2016 final rule.

Given the similar market size and in consideration of stakeholder comments, DOE has determined that the manufacturing costs and manufacturer impacts would not be significantly different now than projected in the January 2016 final rule. In addition, DOE has determined that installation costs would be similar to those estimated in the previous analysis, and that energy cost savings would not increase as compared to the previous analysis, as updated Annual Energy Outlook (*AEO*) projections of energy prices show declining prices in comparison to the projections in *AEO 2015*, which were used for the January 2016 final rule. For these reasons, DOE has determined that any analysis of more-stringent thermal efficiency standard levels for CWAFs would not result in a significantly different economic outcome from the January 2016 final rule, and that as such, it lacks clear and convincing evidence that more-stringent standard levels for CWAFs would be economically justified.

DOE notes that the determination that it lacks clear and convincing evidence is specific to this rulemaking. DOE will evaluate its ability to reach clear and convincing evidence on a case-by-case basis.

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866 and 13563

Executive Order ("E.O.") 12866, "Regulatory Planning and Review," 58 FR 51735 (Oct. 4, 1993), 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 regulatory action is consistent with these principles.

OMB has determined that this final determination does not constitute a "significant regulatory action" under section 3(f) of E.O. 12866. Accordingly, this action was not subject to review under E.O. 12866 by OIRA at OMB.

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") 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 (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 the General Counsel's website (*www.energy.gov/gc/office-general-counsel*).

The Small Business Administration (SBA) considers a business entity to be a small business, if, together with its affiliates, it employs less than a threshold number of workers specified in 13 CFR part 121. The equipment covered by this final determination are classified under North American Industry Classification System ("NAICS") code 333415,[13] "Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing." In 13 CFR 121.201, the SBA sets a threshold of 1,250 employees or fewer for an entity to be considered as a small business for this category.

DOE has conducted a focused inquiry into small business manufacturers of the equipment covered by this rulemaking. The Department used available public information to identify potential small manufacturers. DOE accessed its Compliance Certification Database ("CCD")[14] to identify a list of companies that manufacture the CWAFs covered by this final determination. Using these sources, DOE identified a total of eight distinct manufacturers of CWAFs. DOE screened out companies that do not meet the definition of a "small business" or are foreign-owned and operated. Of these

[13] The size standards are listed by NAICS code and industry description and are available at: *www.sba.gov/document/support--table-size-standards* (last accessed March 4, 2022).
[14] U.S. Department of Energy Compliance Certification Management System (available at: *www.regulations.doe.gov/ccms*).

manufacturers, DOE identified one small, domestic manufacturer as a potential small business.

DOE reviewed this final determination under the provisions of the Regulatory Flexibility Act and the policies and procedures published on February 19, 2003. Because DOE is not amending standards for CWAFs in this final determination, DOE certifies that this final determination will not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared an IRFA or FRFA for this final determination. DOE has transmitted this certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act of 1995

This final determination, which determines that amended energy conservation standards for CWAFs are unneeded under the applicable statutory criteria, imposes no new informational or recordkeeping requirements. Accordingly, 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

DOE is analyzing this action in accordance with the National Environmental Policy Act of 1969 ("NEPA") and DOE's NEPA implementing regulations (10 CFR part 1021). DOE's regulations include a categorical exclusion for actions which are interpretations or rulings with respect to existing regulations. 10 CFR part 1021, subpart D, appendix A4. DOE has determined that this final determination qualifies for categorical exclusion A4 because it is an interpretation or ruling in regard to an existing regulation and otherwise meets the requirements for application of a categorical exclusion. *See* 10 CFR 1021.410. Therefore, DOE has determined that promulgation of this final determination is not a major Federal action significantly affecting the quality of

the human environment within the meaning of NEPA, and does not require an environmental assessment or an environmental impact statement.

E. Review Under Executive Order 13132

E.O. 13132, "Federalism," 64 FR 43255 (August 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 final determination and has 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 equipment that is the subject of this final 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. 6316(a) and (b); 42 U.S.C. 6297) As this final determination would not amend the standards for CWAFs, there is no impact on the policymaking discretion of the States. 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 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 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 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 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 final determination according to UMRA and its statement of policy and determined that this final 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 final determination would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

Pursuant to E.O. 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights," 53 FR 8859 (March 15, 1988), DOE has

determined that this final 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%20IAQ%20Guidelines%20Dec%202019.pdf*. DOE has reviewed this final 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 the 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 Executive 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 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 final determination, which does not amend energy conservation standards for CWAFs, is not a significant regulatory action under Executive Order 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. Therefore, it is not a significant energy action, and 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." *Id.* at 70 FR 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 has prepared a Peer Review report pertaining to the energy conservation

standards rulemaking analyses.[15] 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 (NAS) 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 December 2021 NAS report.[16]

M. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this final determination prior to its effective date. This report will state that it has been determined that the final determination is not a "major rule" as defined by 5 U.S.C. 804(2).

[15] "Energy Conservation Standards Rulemaking Peer Review Report." 2007 (available at: *energy.gov/eere/buildings/downloads/energy-conservation-standards-rulemaking-peer-review-report-0*).
[16] The December 2021 NAS report is available at *www.nationalacademies.org/our-work/review-of-methods-for-setting-building-and-equipment-performance-standards*.

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final determination.

Signing Authority

This document of the Department of Energy was signed on December 16, 2022, by Francisco Alejandro Moreno, Acting 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 December 19, 2022.

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

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