[6450-01-P]

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket No. EERE-2013-BT-NOA-0047]

RIN: 1904-AD08

Energy Conservation Program: Energy Conservation Standards for Certain Consumer Products

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

ACTION: Proposed rule; request for comment.

SUMMARY: The U.S. Department of Energy (DOE or the "Department") proposes to adopt into the Code of Federal Regulations the definitions for "through-the-wall central air conditioner" and "through-the-wall central air conditioning heat pump" that were established in section 5 of the American Energy Manufacturing Technical Corrections Act. This notice also proposes to remove the standards for air conditioners that were superseded effective in 2006, and the now defunct references to the "through-the-wall air conditioner and heat pump" product class, including the definition and standards.

DATES: DOE will accept comments, data, and information regarding this notice of proposed rulemaking (NOPR) received no later than [**INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER**].

ADDRESSES: Any comments submitted must identify the NOPR for the AEMTCA amendments and provide docket number EERE-2013-BT-NOA-0047 and/or Regulation Identification Number (RIN) 1904-AD08, by any of the following methods:

- Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

- E-mail: AEMTCATechAmend2013NOA0047@ee.doe.gov. Include the docket number EERE-2013-BT-NOA-0047 and/or RIN 1904-AD08 in the subject line of the message.

- Mail: Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE-2J, 1000 Independence Avenue, SW, Washington, DC 20585-0121. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies. [Please note that comments and CDs sent by mail are often delayed and may be damaged by mail screening processes.]

- Hand Delivery/Courier: Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza, SW., Suite 600, Washington, DC 20024. Telephone (202) 586-2945. If possible, please submit all items on CD, in which case it is not necessary to include printed copies.

Docket: The docket is available for review at regulations.gov, including Federal Register notices, framework documents, public meeting attendee lists and transcripts, comments, and other supporting documents/materials. All documents in the docket are listed in the regulations.gov index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

FOR FURTHER INFORMATION CONTACT:

Mr. Lucas Adin, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE-2J, 1000 Independence Avenue, SW., Washington, DC, 20585-0121, 202-287-1317, e-mail: Lucas.Adin@ee.doe.gov

Jennifer Tiedeman, U.S. Department of Energy, Office of the General Counsel, GC-71, 1000 Independence Avenue, SW., Washington, DC 20585-0121. Telephone: (202) 287-6111. e-mail: Jennifer.Tiedeman@hq.doe.gov.

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I. Background and Authority

The American Energy Manufacturing Technical Corrections Act (AEMTCA), Pub. L. 112–210, was signed into law on December 18, 2012. Among its provisions are amendments to Part B[1] of Title III of the Energy Policy and Conservation Act of 1975 (EPCA or "the Act") (42 U.S.C. 6291-6309, as codified), which provides for an energy conservation program for consumer products other than automobiles, and to Part C[2] of Title III of EPCA (42 U.S.C. 6311–6317, as codified), which provides for an energy conservation program for certain commercial and industrial equipment, similar to the one in Part B for consumer products.[3] Some of the AEMTCA amendments to EPCA establish or modify certain energy conservation standards and related definitions, and make technical changes to the Act. Other AEMTCA amendments to EPCA prescribe criteria for the conduct of rulemakings to promulgate energy conservation standards for various consumer products and commercial and industrial equipment, or direct the Department of Energy (DOE) to undertake rulemakings under EPCA.

[1] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

[2] For editorial reasons, upon codification in the U.S. Code, Part C was redesignated Part A-1.

[3] All references to EPCA in this document refer to the statute as amended through the enactment of the AEMTCA.

II. Discussion

In today's notice, DOE is proposing to amend the Code of Federal Regulations (CFR) to include the definitions for "through-the-wall central air conditioner" and "through-the-wall central air conditioning heat pump" that were prescribed by the AEMTCA. 42 U.S.C. 6295(d)(4)(A)(ii). DOE is proposing to amend the language of its regulations in 10 CFR 430.2 to adopt these statutory definitions. Although the definitions for "through-the-wall central air conditioner" and "through-the-wall central air conditioning heat pump" are new, these through-the-wall ("TTW") products have been subject to standards since 2006.

DOE is also proposing to remove a variety of provisions from 10 CFR 430.32(c) that reference historical standards. Specifically, DOE is proposing to remove paragraph (c)(1) which contains standards for certain products manufactured between 1992/1993 and 2006. DOE is also proposing to amend its regulations in 10 CFR 430.32(c)(2) and (c)(3) to remove references to the "through-the-wall air conditioner and heat pump" product class, which applied to certain products manufactured prior to January 23, 2010. To avoid confusion with the new statutory definitions, DOE is also removing the "through-the-wall air conditioner and heat pump" product class definition currently in 10 CFR 430.2.

Although DOE is removing the outdated standards for the TTW product classes, DOE wants to be clear that the TTW products (for which this rule is adding definitions) are currently subject to standards. As discussed in a May 23, 2002 final rule that adopted amended energy conservation standards for several classes of residential central air conditioners and heat pumps, DOE initially created a separate product class for TTW products. 67 FR 36368, 36397 DOE

explained that it was adopting separate and less stringent standards for TTW products based on its analysis of the design characteristics of these products. Id. However, DOE also identified a concern that lower standards for TTW products could encourage purchasers of equipment covered by higher standards to shift to TTW products, thus undermining the standards for other products. To address this concern, DOE limited the TTW product class to products manufactured prior to January 23, 2010, and specified that TTW products manufactured on or after that date would have to comply with the standard for other space-constrained products. 67 FR 36368, 36402

This provision was retained in the August 17, 2004 technical amendment that addressed the ruling of the U.S. Court of Appeals for the Second Circuit, which affected the standards for split-system and single-package central air conditioners but did not affect the standards for space-constrained and TTW products. 69 FR 50997, 50998 Thus, the 2004 rule again specified that the TTW standards would expire on January 23, 2010 and that TTW products manufactured on or after that date would be subject to the space-constrained product class. The 2004 rule also included a footnote to the standards table in 10 CFR 430.32(c)(2) to ensure that this limitation was clear. Id. Finally, in the June 27, 2011 direct final rule that amended the current energy efficiency standards for residential central air conditioners and heat pumps, DOE again affirmed the limited applicability of the TTW product class and amended the footnote to clarify the classification of TTW products. 76 FR 37408, 37446

DOE is proposing to remove the references to the now-defunct TTW product class standards; however, through-the-wall central air conditioners and through-the-wall central air

conditioning heat pumps must be assigned to a product class based on the product's characteristics. Product class definitions can be found in 10 CFR 430.2 and 10 CFR part 430, subpart B, appendix M. DOE believes that most, if not all, of the historically-characterized "through-the-wall" products will be assigned to one of the space-constrained product classes.

III. Procedural Requirements

A. Review Under Executive Order 12866

Today's regulatory action is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993). Accordingly, this action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (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 for any rule that by law must be proposed for public comment, unless the agency certifies that the proposed 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 the General Counsel's website (http://www.energy.gov/gc).

DOE has reviewed the amendments proposed in today's notice under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003, and has tentatively concluded that the proposed rule, if adopted, will not have a significant impact on small manufacturers under the provisions of the Regulatory Flexibility Act. These amendments add new statutory definitions for currently regulated products and have no impact on the applicable standards. These amendments also remove outdated regulatory requirements and do not otherwise change the regulatory framework for consumer products or commercial and industrial equipment that is currently in place. Accordingly, DOE is certifying that, if adopted, the changes proposed in this notice would not have a significant economic impact on a substantial number of small entities and has not prepared a regulatory flexibility analysis.

C. Review Under the Paperwork Reduction Act of 1995

Manufacturers of residential central air conditioners and heat pumps must certify to DOE that their products comply with any applicable energy conservation standards. In certifying compliance, manufacturers must test their products according to the DOE test procedures for residential central air conditioners and heat pumps, including any amendments to these procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including residential central air conditioners and heat pumps. (76 FR 12422 (March 7, 2011)) The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been approved by OMB under OMB control number 1910-1400. Public reporting burden for the certification is

estimated to average 20 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act of 1969

Pursuant to the National Environmental Policy Act of 1969, DOE has determined that this rule is covered under the Categorical Exclusion found in DOE's National Environmental Policy Act regulations at paragraph A.6 of Appendix A to Subpart D, 10 CFR Part 1021, which applies to rulemakings that are strictly procedural. Therefore, DOE does not need to prepare an Environmental Assessment or Environmental Impact Statement for this rule.

E. Review Under Executive Order 13132

Executive Order 13132, "Federalism," imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. 64 FR 43255 (August 10, 1999). 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 that it will follow in developing such regulations. 65 FR 13735. DOE examined this proposed rule and determined that it will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of today's final rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (Feb. 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; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) 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 specifies the following: (1) the preemptive effect, if any; (2) any effect on existing Federal law or regulation; (3) a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) the retroactive effect, if any; (5) definitions of key terms; and (6) 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 sections 3(a) and 3(b) to determine whether they are met or whether it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this proposed rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4; 2 U.S.C. 1501 et seq.) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. For a regulatory action resulting 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 estimates of the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a)-(b)) 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 such governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. (The policy is also available at www.energy.gov/gc). Today's proposed rule contains neither an intergovernmental mandate nor a mandate that may result in an expenditure of $100 million or more in any year, so these requirements 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. Today's proposed 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.

I. Review Under Executive Order 12630

DOE has determined, under 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 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 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 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed today's proposed rule under OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. 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 OIRA a Statement of Energy Effects for any significant energy action. A "significant energy action" is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule and that (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (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 if the regulation is implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Today's proposed regulatory action is not a significant regulatory action under Executive Order 12866. It has likewise not been designated as a significant energy action by the Administrator of OIRA. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the DOE Organization Act (Pub. L. 95-91; 42 U.S.C. 7101 et seq.), DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977 (FEAA). (15 U.S.C. 788) Section 32 essentially provides in part that, where a rule authorizes or requires use of

commercial standards, the rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (FTC) concerning the impact of the commercial or industry standards on competition.

The proposed modifications to regulatory definitions addressed by this action do not incorporate testing methods contained in any new commercial standards not already referenced by the test procedures.

IV. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of today's proposed rule.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Energy conservation, Household appliances.

Issued in Washington, DC, on November 26, 2013.

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David Danielson
Assistant Secretary
Energy Efficiency and Renewable Energy

For the reasons stated in the preamble, DOE proposes to amend part 430 of chapter II, subchapter D, of title 10, of the Code of Federal Regulations, 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 removing the definition of "through-the-wall air conditioner and heat pump" and by adding, in alphabetical order, definitions for "through-the-wall central air conditioner" and "through-the-wall central air conditioning heat pump" to read as follows:

§430.2 Definitions.

* * * * *

Through-the-wall central air conditioner means a central air conditioner that is designed to be installed totally or partially within a fixed-size opening in an exterior wall, and:

(1) Is not weatherized;

(2) Is clearly and permanently marked for installation only through an exterior wall;

(3) Has a rated cooling capacity no greater than 30,000 Btu/hr;

(4) Exchanges all of its outdoor air across a single surface of the equipment cabinet; and

(5) Has a combined outdoor air exchange area of less than 800 square inches (split systems) or less than 1,210 square inches (single packaged systems) as measured on the surface described in paragraph (4) of this definition.

Through-the-wall central air conditioning heat pump means a heat pump that is designed to be installed totally or partially within a fixed-size opening in an exterior wall, and:

(1) Is not weatherized;

(2) Is clearly and permanently marked for installation only through an exterior wall;

(3) Has a rated cooling capacity no greater than 30,000 Btu/hr;

(4) Exchanges all of its outdoor air across a single surface of the equipment cabinet; and

(5) Has a combined outdoor air exchange area of less than 800 square inches (split systems) or less than 1,210 square inches (single packaged systems) as measured on the surface described in paragraph (4) of this definition.

* * * * *

3. Section 430.32 is amended by

a. Revising the introductory text to paragraph (c);

b. Removing paragraph (c)(1);

c. Redesignating paragraphs (c)(2) through (c)(6) as (c)(1) through (c)(5) respectively;

d. Removing footnote 1 to the table in newly redesignated paragraph (c)(1);

e. Removing rows (v)(A) and (v)(B) in the table in newly redesignated paragraph (c)(1);

f. Redesignating row (vi) in the table in newly redesignated paragraph (c)(1) as

row (v);

g. Redesignating rows (vii)(A) and (vii)(B) in the table in newly redesignated paragraph (c)(1) as rows (vi)(A) and (vi)(B) respectively; and

h. Removing footnote 1 to the table in newly redesignated paragraph (c)(2).

The revision reads as follows:

§430.32 Energy and water conservation standards and their compliance dates.

* * * * *

(c) Central air conditioners and heat pumps. The energy conservation standards defined in terms of the heating seasonal performance factor are based on Region IV, the minimum standardized design heating requirement, and the sampling plan stated in §429.16 of this chapter.

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[FR Doc. 2013-30175 Filed 12/19/2013 at 8:45 am; Publication Date: 12/20/2013]