

of one or more SMRs and a basis on which SMR fees are calculated.

\* \* \* \* \*

*Variable fee* means the annual fee component paid by the first bundled unit on a site with a licensed thermal power rating greater than 250 MWt and less than or equal to 2,000 MWt; or the annual fee component paid by additional bundled units on a site that have a licensed thermal power rating of less than or equal to 2,000 MWt. The variable fee is the product of the bundled unit thermal power capacity (in the applicable range) and the variable rate.

*Variable rate* means a per-MWt fee factor applied to all bundled units on site with a licensed thermal power rating less than or equal to 2,000 MWt. For the first bundled unit on a site with

a licensed thermal power rating greater than 250 MWt and or less than or equal to 2,000 MWt, the variable rate is based on the difference between the maximum fee and the minimum fee, divided by 1,750 MWt (the variable fee licensed thermal rating range). For additional bundled units with a licensed thermal power rating less than or equal to 2,000 MWt, the variable rate is based on the maximum fee divided by 2,000 MWt.

■ 5. In § 171.15, redesignate paragraph (e) as paragraph (f) and add new paragraph (e) to read as follows:

**§ 171.15 Annual fees: Reactor licenses and independent spent fuel storage licenses.**

\* \* \* \* \*

(e)(1) Each person holding an operating license for an SMR issued

under 10 CFR part 50 of this chapter or a combined license issued under 10 CFR part 52 after the Commission has made the finding under 10 CFR 52.103(g), shall pay the annual fee for all licenses held for an SMR site. The annual fee will be determined using the cumulative licensed thermal power rating of all SMR units and the bundled unit concept, during the fiscal year in which the fee is due. For a given site, the use of the bundled unit concept is independent of the number of SMR plants, the number of SMR licenses issued, or the sequencing of the SMR licenses that have been issued.

(2) The annual fees for a small modular reactor(s) located on a single site to be collected by September 30 of each year, are as follows:

Bundled unit thermal power rating	Minimum fee	Variable fee	Maximum fee
First Bundled Unit			
0 MWt ≤250 MWt .....	TBD	N/A	N/A
>250 MWt ≤2,000 MWt .....	TBD	TBD	N/A
>2,000 MWt ≤4,500 MWt .....	N/A	N/A	TBD
Additional Bundled Units			
0 MWt ≤2,000 MWt .....	N/A	TBD	N/A
>2,000 MWt ≤4,500 MWt .....	N/A	N/A	TBD

(3) The annual fee for an SMR collected under paragraph (e) of this section is in lieu of any fee otherwise required under paragraph (b) of this section. The annual fee under paragraph (e) of this section covers the same activities listed for power reactor base annual fee and spent fuel storage/reactor decommissioning reactor fee.

\* \* \* \* \*

Dated at Rockville, Maryland, this 6th day of May.

For the Nuclear Regulatory Commission.

**Maureen E. Wylie,**  
*Chief Financial Officer.*  
[FR Doc. 2016-11975 Filed 5-23-16; 8:45 am]

**BILLING CODE 7590-01-P**

**DEPARTMENT OF ENERGY**

**10 CFR Part 431**

**[Docket Number EERE-2013-BT-STD-0007 and EERE-2013-BT-STD-0021]**

**RIN 1904-AC95 and 1904-AD11**

**Energy Conservation Program for Certain Industrial Equipment: Energy Conservation Standards for Small, Large, and Very Large Air-Cooled Commercial Package Air Conditioning and Heating Equipment and Commercial Warm Air Furnaces**

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

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

**SUMMARY:** The U.S. Department of Energy (“DOE”) published a direct final rule to establish amended energy conservation standards for small, large, and very large air-cooled commercial package air conditioning and heating equipment and commercial warm air furnaces in the **Federal Register** on January 15, 2016. DOE has determined that the comments received in response to the direct final rule do not provide a reasonable basis for withdrawing the direct final rule. Therefore, DOE provides this notice confirming

adoption of the energy conservation standards established in the direct final rule and announcing the effective date of those standards.

**DATES:** The direct final rule published on January 15, 2016 (81 FR 2420) became effective on May 16, 2016. Compliance with the amended standards in this final rule will be required for small, large, and very large air-cooled commercial package air conditioning and heating equipment listed in this final rule starting on January 1, 2018, for the first set of standards and January 1, 2023, for the second set of standards. Compliance with the amended standards established for commercial warm air furnaces in this final rule is required starting on January 1, 2023.

**ADDRESSES:** The dockets, which include **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials, is available for review at [www.regulations.gov](http://www.regulations.gov). All documents in the dockets are listed in the [www.regulations.gov](http://www.regulations.gov) index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

A link to the docket Web page for small, large, and very large air-cooled commercial package air conditioning

and heating equipment can be found at: [www.regulations.gov/#!docketDetail;D=EERE-2013-BT-STD-0007](http://www.regulations.gov/#!docketDetail;D=EERE-2013-BT-STD-0007). A link to the docket Web page for commercial warm air furnaces can be found at: [www.regulations.gov/#!docketDetail;D=EERE-2013-BT-STD-0021](http://www.regulations.gov/#!docketDetail;D=EERE-2013-BT-STD-0021). The [www.regulations.gov](http://www.regulations.gov) Web page will contain instructions on how to access all documents, including public comments, in the docket.

For further information on how to review the dockets, contact Ms. Brenda Edwards at (202) 586–2945 or by email: [Brenda.Edwards@ee.doe.gov](mailto:Brenda.Edwards@ee.doe.gov).

**FOR FURTHER INFORMATION CONTACT:** Mr. John Cymbalsky, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies, EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 286–1692. Email: [John.Cymbalsky@ee.doe.gov](mailto:John.Cymbalsky@ee.doe.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Authority and Rulemaking Background**

As amended by the Energy Independence and Security Act of 2007 (“EISA 2007”), Public Law 110–140 (December 19, 2007), the Energy Policy and Conservation Act (“EPCA” or, in context, “the Act”) authorizes DOE to issue a direct final rule (*i.e.*, 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. See 42 U.S.C. 6295(p)(4). This provision also applies to the equipment at issue in this direct final rule. See 42 U.S.C. 6316(b)(1) 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. If the Secretary makes such a determination, DOE must withdraw the direct final rule and proceed with the simultaneously-published NOPR, and publish in the **Federal Register** the reason why the direct final rule was withdrawn. *Id.*

During the rulemaking proceedings to consider amending the energy conservation standards for small, large, and very large air-cooled commercial package air conditioning and heating equipment (referred to herein as air-cooled commercial unitary air conditioners and heat pumps (“CUACs” and “CUHPs”)) and commercial warm air furnaces (“CWAFFs”), interested parties commented that DOE should convene a negotiated rulemaking to develop standards that will result in energy savings using technology that is feasible and economically justified. In addition, AHRI and ACEEE submitted a joint letter to the Appliance Standards and Rulemaking Federal Advisory Committee (“ASRAC”) requesting that it consider approving a recommendation that DOE initiate a negotiated rulemaking for air-cooled commercial package air conditioners and commercial furnaces. (EERE–2013–BT–STD–0007–0080) ASRAC carefully evaluated this request and the Committee voted to charter a working group to support the negotiated rulemaking effort requested by these parties.

Subsequently, after careful consideration, DOE determined that, given the complexity of the CUAC/ CUHP rulemaking and the logistical challenges presented by the related CWAFF proposal, a combined effort to address these equipment types was necessary to ensure a comprehensive vetting of all issues and related analyses that would be necessary to support any final rule setting standards for this equipment. To this end, while highly unusual to do so after issuing a proposed rule, DOE solicited the public for membership nominations to the working group that would be formed under the ASRAC charter by issuing a Notice of Intent to Establish the Commercial Package Air Conditioners and Commercial Warm Air Furnaces Working Group To Negotiate Potential Energy Conservation Standards for Commercial Package Air Conditioners and Commercial Warm Air Furnaces. 80 FR 17363 (April 1, 2015). The CUAC/ CUHP–CWAFF Working Group (in context, “the Working Group”) was established under ASRAC in accordance with the Federal Advisory Committee Act and the Negotiated Rulemaking Act—with the purpose of discussing

and, if possible, reaching consensus on a set of energy conservation standards to propose or finalize for CUACs, CUHPs and CWAFFs. The Working Group was to consist of fairly representative parties having a defined stake in the outcome of the proposed standards, and would consult, as appropriate, with a range of experts on technical issues.

DOE received 17 nominations for membership. Ultimately, the Working Group consisted of 17 members, including one member from ASRAC and one DOE representative.<sup>1</sup> The Working Group met six times (five times in-person and once by teleconference). The meetings were held on April 28, May 11–12, May 20–21, June 1–2, June 9–10, and June 15, 2015.<sup>2</sup> As a result of these efforts, the Working Group successfully reached consensus on energy conservation standards for CUACs, CUHPs, and CWAFFs. On June 15, 2015, it submitted a Term Sheet to ASRAC outlining its consensus recommendations, which ASRAC subsequently adopted.<sup>3</sup>

After carefully considering the consensus recommendations submitted by the Working Group and adopted by ASRAC related to amending the energy conservation standards for CUACs, CUHPs, and CWAFFs, DOE determined that these recommendations, which were submitted in the form of a single Term Sheet from the Working Group, comprised a statement submitted by interested persons who are fairly representative of relevant points of view on this matter. In reaching this determination, DOE took into consideration the fact that the Working Group, in conjunction with ASRAC

<sup>1</sup> The group members were John Cymbalsky (U.S. Department of Energy), Marshall Hunt (Pacific Gas & Electric Company, San Diego Gas & Electric Company, Southern California Edison, and Southern California Gas Company), Andrew deLaski (Appliance Standards Awareness Project), Louis Starr (Northwest Energy Efficiency Alliance), Meg Waltner (Natural Resources Defense Council), Jill Hootman (Trane), John Hurst (Lennox), Karen Meyers (Rheem Manufacturing Company), Charlie McCrudden (Air Conditioning Contractors of America), Harvey Sachs (American Council for an Energy Efficient Economy), Paul Doppel (Mitsubishi Electric), Robert Whitwell (United Technologies Corporation (Carrier)), Michael Shows (Underwriters Laboratories), Russell Tharp (Goodman Manufacturing), Sami Zendah (Emerson Climate Technologies), Mark Tezigni (Sheet Metal and Air Conditioning Contractors National Association, Inc.), Nick Mislak (Air-Conditioning, Heating, and Refrigeration Institute).

<sup>2</sup> In addition, most of the members of the ASRAC Working Group held several informal meetings on March 19–20, 2015, March 30, 2015, and April 13, 2015. The purpose of these meetings was to initiate work on some of the analytical issues raised in stakeholder comments on the CUAC NOPR.

<sup>3</sup> Available at <http://www.regulations.gov/#!documentDetail;D=EERE-2013-BT-STD-0007-0093>.

members who approved the recommendations, consisted of representatives of manufacturers of the covered equipment at issue, States, and efficiency advocates—all of which are groups specifically identified by Congress as relevant parties to any consensus recommendation. (42 U.S.C. 6295(p)(4)(A)) As delineated above, the Term Sheet was signed and submitted by a broad cross-section of interests, including the manufacturers who produce the equipment at issue, trade associations representing these manufacturers and installation contractors, environmental and energy-efficiency advocacy organizations, and electric utility companies. Although States were not direct signatories to the Term Sheet, the ASRAC Committee approving the Working Group's recommendations included at least two members representing States—one representing the National Association of State Energy Officials ("NASEO") and one representing the State of California.<sup>4</sup> Moreover, DOE does not read the statute as requiring a statement submitted by all interested parties before the Department may proceed with issuance of a direct final rule. By explicit language of the statute, the Secretary has the discretion to determine when a joint recommendation for an energy or water conservation standard has met the requirement for representativeness (*i.e.*, "as determined by the Secretary").

Pursuant to 42 U.S.C. 6295(p)(4), the Secretary must also determine whether a jointly-submitted recommendation for an energy or water conservation standard satisfies 42 U.S.C. 6295(o) or 42 U.S.C. 6313(a)(6)(B), as applicable. As stated in the direct final rule, in making this determination, DOE conducted an analysis to evaluate whether the potential energy conservation standards under

consideration would meet these requirements. This evaluation is the same comprehensive approach that DOE typically conducts whenever it considers potential energy conservation standards for a given type of product or equipment. DOE applies the same principles to any consensus recommendations it may receive to satisfy its statutory obligation to ensure that any energy conservation standard that it adopts achieves the maximum improvement in energy efficiency that is technologically feasible and economically justified and will result in the significant conservation of energy. Upon review, the Secretary determined that the Term Sheet submitted in the instant rulemaking comports with the standard-setting criteria set forth under 42 U.S.C. 6313(a)(6)(B). Accordingly, the consensus-recommended efficiency levels, included as the "recommended trial standard level (TSL)" for CUACs/ CUHPs and as TSL 2 for CWAFs were adopted as the amended standard levels in the direct final rule. 81 FR at 2422.

In sum, as the relevant statutory criteria were satisfied, the Secretary adopted the consensus-recommended amended energy conservation standards for CUACs, CUHPs, and CWAFs set forth in the direct final rule. The standards for CUACs and CUHPs are set forth in Table 1, with the CUAC and CUHP cooling efficiency standards presented in terms of an integrated energy efficiency ratio ("IEER") and the CUHP heating efficiency standards presented as a coefficient of performance ("COP"). The IEER metric will replace the currently used energy efficiency ratio ("EER") metric on which DOE's standards are currently based. The two-phase standards and compliance dates apply to all equipment listed in Table 1 manufactured in, or imported into, the

United States starting on the dates shown in that table. For CWAFs, the amended standards, which prescribe the minimum allowable thermal efficiency ("TE"), are shown in Table 2. These standards apply to all equipment listed in Table 2 manufactured in, or imported into, the United States starting on January 1, 2023. These compliance dates were set forth in the direct final rule published in the **Federal Register** on January 15, 2016 (81 FR 2420). For a detailed discussion of DOE's analysis of the benefits and burdens of the amended standards pursuant to the criteria set forth in EPCA, please refer to the relevant sections of the direct final rule. (81 FR 2420 (January 15, 2016))

As required by EPCA, DOE also simultaneously published an SNOPR proposing the identical standard levels contained in the direct final rule. DOE considered whether any adverse comment received during the 110-day comment period following the direct final rule provided a reasonable basis for withdrawal of the direct final rule and continuation of this rulemaking under the SNOPR. As noted in the direct final rule, it is the substance, rather than the quantity, of comments that will ultimately determine whether a direct final rule will be withdrawn. To this end, DOE weighs the substance of any adverse comment(s) received against the anticipated benefits of the Consensus Agreement 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.

TABLE 1—AMENDED ENERGY CONSERVATION STANDARDS FOR SMALL, LARGE, AND VERY LARGE COMMERCIAL PACKAGE AIR CONDITIONING AND HEATING EQUIPMENT

Equipment type	Heating type	Proposed energy conservation standard	Compliance date
Small Commercial Packaged AC and HP (Air-Cooled)— ≥65,000 Btu/h and <135,000 Btu/h Cooling Capacity:	AC .....	Electric Resistance Heating or No Heating.	12.9 IEER .....
		14.8 IEER .....	January 1, 2018.
		All Other Types of Heating	12.7 IEER .....
		14.6 IEER .....	January 1, 2023.
	HP .....	Electric Resistance Heating or No Heating.	12.2 IEER, 3.3 COP .....
		14.1 IEER, 3.4 COP .....	January 1, 2018.
		All Other Types of Heating	12.0 IEER, 3.3 COP .....
		13.9 IEER, 3.4 COP .....	January 1, 2023.

<sup>4</sup> These individuals were Deborah E. Miller (NASEO) and David Hungerford (California Energy Commission).

TABLE 1—AMENDED ENERGY CONSERVATION STANDARDS FOR SMALL, LARGE, AND VERY LARGE COMMERCIAL PACKAGE AIR CONDITIONING AND HEATING EQUIPMENT—Continued

Equipment type	Heating type	Proposed energy conservation standard	Compliance date
Large Commercial Packaged AC and HP (Air-Cooled)— ≥135,000 Btu/h and <240,000 Btu/h Cooling Capacity:			
AC .....	Electric Resistance Heating or No Heating.	12.4 IEER .....	January 1, 2018.
	All Other Types of Heating	14.2 IEER .....	January 1, 2023.
		12.2 IEER .....	January 1, 2018.
		14.0 IEER .....	January 1, 2023.
HP .....	Electric Resistance Heating or No Heating.	11.6 IEER, 3.2 COP .....	January 1, 2018.
	All Other Types of Heating	13.5 IEER, 3.3 COP .....	January 1, 2023.
		11.4 IEER, 3.2 COP .....	January 1, 2018.
		13.3 IEER, 3.3 COP .....	January 1, 2023.
Very Large Commercial Packaged AC and HP (Air-Cooled)—≥240,000 Btu/h and <760,000 Btu/h Cooling Capacity:			
AC .....	Electric Resistance Heating or No Heating.	11.6 IEER .....	January 1, 2018.
	All Other Types of Heating	13.2 IEER .....	January 1, 2023.
		11.4 IEER .....	January 1, 2018.
		13.0 IEER .....	January 1, 2023.
HP .....	Electric Resistance Heating or No Heating.	10.6 IEER, 3.2 COP .....	January 1, 2018.
	All Other Types of Heating	12.5 IEER, 3.2 COP .....	January 1, 2023.
		10.4 IEER, 3.2 COP .....	January 1, 2018.
		12.3 IEER, 3.2 COP .....	January 1, 2023.

TABLE 2—AMENDED ENERGY CONSERVATION STANDARDS FOR COMMERCIAL WARM AIR FURNACES

Equipment class	Input capacity* (Btu/h)	Thermal efficiency** (percent)
Gas-Fired Furnaces .....	≥225,000 Btu/h .....	81
Oil-Fired Furnaces .....	≥225,000 Btu/h .....	82

\* In addition to being defined by input capacity, a CWF is “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.”

\*\* Thermal efficiency is at the maximum rated capacity (rated maximum input), and is determined using the DOE test procedure specified at 10 CFR 431.76.

## II. Comments on the Direct Final Rule

The California Investor Owned Utilities (“IOUs”),<sup>5</sup> the Joint Efficiency Advocates,<sup>6</sup> and Lennox International, Inc. (“Lennox”) supported the Term Sheet recommendations and DOE’s adoption of the standard levels in the direct final rule. (California IOUs, No. 116 at pp. 1–3; Joint Efficiency Advocates, No. 119 at p. 1; Lennox, No. 121 at pp. 1–2)<sup>7</sup>

<sup>5</sup> Pacific Gas and Electric Company, Southern California Gas Company, San Diego Gas and Electric, and Southern California Edison.

<sup>6</sup> Appliance Standards Awareness Project, Alliance to Save Energy, American Council for an Energy-Efficient Economy, California Energy Commission, Consumer Federation of America, National Consumer Law Center, Natural Resources Defense Council, Northeast Energy Efficiency Partnerships, Northwest Energy Efficiency Alliance, and Northwest Power and Conservation Council.

<sup>7</sup> Comments received in regards to the direct final rule while filed in the dockets for both the CUAC/ CUHP (Docket No. EERE–2013–BT–STD–0007) and CWF (Docket No. EERE–2013–BT–STD–0021) rulemakings, are identified using the CUAC docket number.

The Joint Efficiency Advocates also noted that the Term Sheet recommended that DOE initiate a test procedure rulemaking for CUACs and CUHPs by January 1, 2016 and issue a final rule by January 1, 2019, with the primary focus of the rulemaking being to better represent fan energy use. The Joint Efficiency Advocates requested that DOE give some public indication of its commencement of work on the test procedure. (Joint Efficiency Advocates, No. 119 at pp. 1–2) The California IOUs also commented that while the January 1, 2016 initiation date has passed, DOE should initiate this test procedure rulemaking as soon as possible to address fan energy use and the lack of high ambient test conditions above 95 degrees Fahrenheit (°F) to account for conditions regularly experienced in the desert Southwest. (California IOUs, No. 116 at p. 2)

DOE appreciates these comments regarding the CUAC/ CUHP test procedure and is considering these potential changes to the test procedure

in a future rulemaking. DOE notes that any amendments adopted in this future test procedure rulemaking would not be required for use to determine compliance with the energy conservation standards promulgated by this direct final rule.

The California IOUs commented that as DOE conducts future standards and test procedure rulemakings for these equipment, it should explore different options for standards that will improve efficiency and also contribute to peak load reduction for CUACs and CUHPs. The California IOUs stated that DOE could consider the following actions in future rulemakings: Revisiting the possibility of a dual metric for EER and IEER; an IEER test point at an ambient temperature above 95 °F; and using energy modeling software to predict equipment performance at peak conditions. (California IOUs, No. 116 at p. 3)

The Air-Conditioning, Heating, and Refrigeration Institute (“AHRI”) submitted a letter committing to

continue to certify and publish EER values (at 95 °F) for CUAC and CUHP equipment covered under this rulemaking in its directory of certified products once the IEER metric becomes the new Federal energy efficiency descriptor. AHRI noted that this commitment was not part of the term sheet and should not be considered as a comment to the SNOPR. (AHRI, No. 118 at p. 1) The California IOUs and Joint Efficiency Advocates both supported AHRI's commitment to continue publishing full-load EER test values, as this information is important for the design and implementation of utility incentive programs that incentivize consumers to purchase equipment that has high performance in both part load and peak load conditions. (Joint Efficiency Advocates, No. 119 at p. 2)

DOE appreciates these comments regarding CUAC and CUHP full-load efficiency. DOE notes that AHRI's commitment to continuing to require verification and reporting of EER was discussed and agreed upon by interested parties during the ASRAC Working Group meetings. However, DOE noted that it could not be included as part of the Term Sheet because it was not a recommendation for a specific DOE action. (ASRAC Public Meeting, No. 102 at pp. 79–83, 113–116) DOE recognizes that AHRI's commitment to continuing to require verification and reporting of EER for its certification program would allow utilities, and others, to consider full-load efficiency in their energy efficiency programs. DOE will review its statutory authority at the time it conducts a future standards rulemaking for CUACs and CUHPs to explore options to separately consider full-load efficiency.

DOE also received two comments that discussed the market failures addressed by the direct final rule and made suggestions for actions that would complement the standards. Arthur Laciak commented that by establishing more stringent energy efficiency standards, DOE addressed the principal-agent problem (*i.e.* where a building manager purchases the equipment, but the tenants pay the energy bill), but the consumer is no better informed about the energy savings of more efficient equipment than the minimum standards. He stated that DOE should encourage Congress to provide DOE greater authority to disseminate information regarding CUACs and CUHPs to better inform consumers of the cost savings of purchasing more efficient equipment. (Laciak, No. 120 at pp. 7–8) Paul Melmeyer commented that DOE's economic analysis and

justification for the updated standards are cogent and convincing, but he pointed to various ways that DOE can ensure that the direct final rule accomplishes the stated statutory and regulatory objectives. These include programs of labeling or consumer education, formulating plans to ensure low-income individuals are not adversely affected, and crafting a plan to conduct retrospective analysis on various DOE predictions. (Melmeyer, No. 122 at pp. 10–11) DOE acknowledges the suggestions made by the commenters.

### III. 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. See 42 U.S.C. 6295(o)(2)(B)(i)(V) and (B)(ii). See also 42 U.S.C. 6316(b)(1) (applying 42 U.S.C. 6295(o) to CUACs, CUHPs, and CWAFFs). DOE published an SNOPR containing energy conservation standards identical to those set forth in 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 provide its determination on this issue. DOE has published DOJ's comments at the end of this notice.

DOJ reviewed the amended standards in the direct final rule and the final TSD provided by DOE. As a result of its analysis, DOJ concluded that the amended standards issued in the direct final rule are unlikely to have a significant adverse impact on competition.

### IV. National Environmental Policy Act

Pursuant to the National Environmental Policy Act of 1969 (“NEPA”), DOE has determined that the 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 App. B, B(1)–(5). The rule fits within the category of actions because it is a rulemaking that establishes 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 this rule. DOE's CX determination for this rule is available at <http://energy.gov/nepa/categorical-exclusion-cx-determinations-cx>.

### V. Conclusion

In summary, based on the discussion above, DOE has determined that the comments received in response to the direct final rule for amended energy conservation standards for CUACs, CUHPs, and CWAFFs do not provide a reasonable basis for withdrawal of the direct final rule. As a result, the amended energy conservation standards set forth in the direct final rule became effective on May 16, 2016. Compliance with these amended standards is required for small, large, and very large CUACs and CUHPs starting on January 1, 2018, for the first set of standards and January 1, 2023, for the second set of standards. Compliance with the amended standards established for CWAFFs is required starting on January 1, 2023.

Issued in Washington, DC, on May 13, 2016.

**David Friedman,**

*Principal Deputy Assistant Secretary, Energy Efficiency and Renewable Energy.*

### Appendix

[The following letter from the Department of Justice will not appear in the Code of Federal Regulations.]

#### U.S. DEPARTMENT OF JUSTICE

Antitrust Division  
RFK Main Justice Building 950 Pennsylvania Avenue NW., Washington, DC 20530–0001  
(202) 514–2401/(202) 616–2645 (Fax)  
March 15, 2016

Anne Harkavy  
Deputy General Counsel for Litigation, Regulation and Enforcement, U.S. Department of Energy Washington, DC 20585  
Re: Energy Conservation Standards for Small, Large, and Very Large Air-Cooled Commercial Package Air Conditioning and Heating Equipment and Commercial Warm Air Furnaces Doc. Nos. EERE–2013–BT–STD–0007 and EERE–2013–BT–STD–0021

Dear Deputy General Counsel Harkavy:

I am responding to your January 15, 2016, letter seeking the views of the Attorney General about the potential impact on competition of proposed energy conservation standards for certain types of commercial warm air furnace equipment, commercial air-conditioning equipment and commercial heat pump equipment. 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), 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 Supplemental Notice of Proposed Rulemaking (81 FR 2111 & 2420, January 15, 2016) and the related Technical Support Documents.

Based on this review, our conclusion is that the proposed energy conservation standards for commercial warm air furnace equipment, commercial air-conditioning equipment, and commercial heat pump equipment are unlikely to have a significant adverse impact on competition.

Sincerely,  
William J. Baer

[FR Doc. 2016-12279 Filed 5-23-16; 8:45 am]

BILLING CODE 6450-01-P

## FARM CREDIT ADMINISTRATION

### 12 CFR Part 622

#### RIN 3052-AD16

### Rules of Practice and Procedure; Adjusting Civil Money Penalties for Inflation

**AGENCY:** Farm Credit Administration.  
**ACTION:** Final rule.

**SUMMARY:** This regulation implements inflation adjustments to civil money penalties (CMPs) that the Farm Credit Administration (FCA) may impose or enforce pursuant to the Farm Credit Act of 1971, as amended (Farm Credit Act), and pursuant to the Flood Disaster Protection Act of 1973, as amended by the National Flood Insurance Reform Act of 1994 (Reform Act), and further amended by the Biggert-Waters Flood Insurance Reform Act of 2012 (Biggert-Waters Act). The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 (1996 Act) and the Federal Civil Penalties Inflation Adjustment Act of 2015 (2015 Act) (collectively, 1990 Act, as amended), requires all Federal agencies with the

authority to enforce CMPs to evaluate those CMPs each year to ensure that they continue to maintain their deterrent value and promote compliance with the law.

**EFFECTIVE DATE:** This regulation is effective on August 1, 2016.

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#### SUPPLEMENTARY INFORMATION:

### I. Objective

The objective of this regulation is to adjust the maximum CMPs for inflation with an initial “catch-up” adjustment through an interim final rulemaking (IFR) to retain the deterrent effect of such penalties.

### II. Background

#### A. Introduction

Section 3(2) of the 1990 Act, as amended, defines a civil monetary penalty<sup>1</sup> as any penalty, fine, or other sanction that: (1) Either is for a specific monetary amount as provided by Federal law or has a maximum amount provided for by Federal law; (2) is assessed or enforced by an agency pursuant to Federal law; and (3) is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts.<sup>2</sup>

The FCA imposes and enforces CMPs through the Farm Credit Act and the Flood Disaster Protection Act of 1973, as amended. FCA's regulations governing CMPs are found in 12 CFR parts 622 and 623. Part 622 establishes rules of practice and procedure applicable to formal and informal hearings held before the FCA, and to formal investigations conducted under the Farm Credit Act. Part 623 prescribes rules with regard to persons who may practice before the FCA and the circumstances under which such persons may be suspended or debarred from practice before the FCA.

<sup>1</sup> While the 1990 Act, as amended by 1996 and 2015 Acts, uses the term “civil monetary penalties” for these penalties or other sanctions, the Farm Credit Act and the FCA Regulations use the term “civil money penalties.” Both terms have the same meaning. Accordingly, this rule uses the term “civil money penalty”, and both terms may be used interchangeably.

<sup>2</sup> See 28 U.S.C. 2461 note.

#### B. CMPs Issued Under the Farm Credit Act

The Farm Credit Act provides that any Farm Credit System (System) institution or any officer, director, employee, agent, or other person participating in the conduct of the affairs of a System institution who violates the terms of a cease-and-desist order that has become final pursuant to section 5.25 or 5.26 of the Farm Credit Act must pay up to a maximum daily amount of \$1,000<sup>3</sup> during which such violation continues. This CMP maximum was set by the Farm Credit Amendments Act of 1985, which amended the Farm Credit Act. Orders issued by the FCA under section 5.25 or 5.26 of the Farm Credit Act include temporary and permanent cease-and-desist orders. In addition, section 5.32(h) of the Farm Credit Act provides that any directive issued under sections 4.3(b)(2), 4.3A(e), or section 4.14A(i) of the Farm Credit Act “shall be treated” as a final order issued under section 5.25 of the Farm Credit Act for purposes of assessing a CMP.

Section 5.32(a) of the Farm Credit Act also states that “[a]ny such institution or person who violates any provision of the [Farm Credit] Act or any regulation issued under this Act shall forfeit and pay a civil penalty of not more than \$500<sup>4</sup> per day for each day during which such violation continues.” This CMP maximum was set by the Agricultural Credit Act of 1987, which was enacted in 1988, and amends the Farm Credit Act. Current, inflation-adjusted CMP maximums are set forth in existing § 622.61 of FCA regulations.<sup>5</sup>

The FCA also enforces the Flood Disaster Protection Act of 1973,<sup>6</sup> as amended by the National Flood Insurance Reform Act of 1994,<sup>7</sup> which requires FCA to assess CMPs for a pattern or practice of committing certain specific actions in violation of the National Flood Insurance Program. The existing maximum CMP for a violation under the Flood Disaster Protection Act of 1973 is \$2,000.<sup>8</sup>

<sup>3</sup> The inflation-adjusted CMP in effect on November 2, 2015, for a violation of a final order is \$1,100 per day, as set forth in § 622.61(a)(1) of FCA regulations.

<sup>4</sup> The inflation-adjusted CMP in effect on November 2, 2015, for a violation of the Farm Credit Act or a regulation issued under the Farm Credit Act is \$750 per day, as set forth in § 622.61(a)(2) of FCA regulations.

<sup>5</sup> Prior adjustments were made under the 1990 Act.

<sup>6</sup> 42 U.S.C. 4012a.

<sup>7</sup> Pub. L. 103-325, title V, 108 Stat. 2160, 2255-87 (September 23, 1994).

<sup>8</sup> Pub. L. 112-141, 126 Stat. 405 (July 6, 2012).