■ 7. In § 52.51, paragraph (c)(1), the figure ''$39.00'' is revised to read ''$49.00'', in paragraph (c)(2), the figure ''$52.00'' is revised to read ''$65.00'', and in paragraph (d)(1), the figure ''$52.00'' is revised to read ''$65.00'' and new paragraphs (c)(6) and (d)(6) are added to read as follows:

§ 52.51 Charges for inspection services on a contract basis.

* * * * *

(c) * * *

(6) Sunday differential. A 25 percent Sunday differential will be charged for all work performed on Sunday.

* * * * *

(d) * * *

(6) Sunday differential. A 25 percent Sunday differential will be charged for all work performed on Sunday.

* * * * *

Dated: March 1, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E7–3937 Filed 3–6–07; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 431

[Docket Nos. EE–RM/STD–03–100, EE–RM/STD–03–200, and EE–RM/STD–03–300]

RIN Nos. 1904–AB16, 1904–AB17, and 1904–AB44

Energy Efficiency Program for Certain Commercial and Industrial Equipment: Efficiency Standards for Commercial Heating, Air-Conditioning, and Water-Heating Equipment

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

ACTION: Final rule.

SUMMARY: The Energy Policy and Conservation Act, as amended (EPCA), establishes energy conservation standards for various commercial and industrial equipment. EPCA further provides with respect to certain equipment covered by this rule, that if the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) and the Illuminating Engineering Society of North America (IESNA) amend ASHRAE/IESNA Standard 90.1 as in effect on October 24, 1992, then the Department of Energy (DOE) must establish amended national standards at the ASHRAE/IESNA Standard 90–1 minimum energy efficiency levels unless DOE determines that evidence supports adoption of higher standard levels or certain other circumstances exist. ASHRAE/IESNA amended ASHRAE/IESNA Standard 90.1 on October 29, 1999 (ASHRAE/IESNA Standard 90.1–1999), and DOE initiated this rulemaking to consider amendments to the national standards. DOE has concluded that it lacks authority to pursue higher standards for gas-fired instantaneous water heaters and large commercial packaged boilers. For small commercial packaged boilers with capacities greater than 300,000 Btu/h and less than or equal to 2.5 million British thermal units per hour, DOE is declining to adopt revised efficiency standards contained in the ASHRAE/IESNA Standard 90.1–1999 because the revised levels are less stringent than the current national standard. In addition, DOE has decided to conduct a separate rulemaking to consider whether standards at higher levels than those in the ASHRAE/IESNA Standard 90.1–1999 are warranted for packaged terminal air conditioners and packaged terminal heat pumps. Finally, DOE has concluded it does not have the authority to adopt, as uniform national standards, efficiency standards contained in Addenda f and b, respectively, to ASHRAE/IESNA Standard 90.1–2004 for three-phase air conditioners and heat pumps with cooling capacities less than 65,000 British thermal units per hour, and single-package vertical air conditioners and single-package vertical heat pumps with cooling capacities less than 65,000 Btu/h.

DATES: *Effective Date:* April 6, 2007.

FOR FURTHER INFORMATION CONTACT: Maureen Murphy, Project Manager, 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) 586–0598, or e-mail *Maureen.Murphy@ee.doe.gov.*

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SUPPLEMENTARY INFORMATION:

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I. Introduction

A. Summary of Today's Actions

Today's final rule addresses five categories of commercial equipment [1]: (1) Small and large commercial packaged boilers; (2) gas-fired instantaneous water heaters; (3) packaged terminal air conditioners (PTACs) and packaged terminal heat pumps (PTHPs); (4) three-phase air conditioners (ACs) and heat pumps (HPs) with cooling capacities less than 65,000 British thermal units per hour (Btu/h); and (5) single-package vertical air conditioners (SPVAC) and single-package vertical heat pumps (SPVHP), collectively referred to as single package vertical units (SPVUs).

By today's action, DOE is publishing a final rule that prescribes no amended standard. As discussed in section II.A through II.F of this notice, DOE has decided:

[1] DOE uses the terms ''product'' and ''equipment'' interchangeably in this final rule. Where DOE refers to the categories of ''residential products'' covered by 10 CFR Part 430, DOE uses the phrase ''residential products.''

(1) Not to amend the standards for large commercial packaged boilers (greater than 2.5 million Btu/h) and gas-fired instantaneous water heaters because ASHRAE/IESNA did not amend the levels for these products in ASHRAE/IESNA Standard 90.1–1999 and, thus, did not trigger the provision requiring DOE to amend the standards established under EPCA;

(2) Not to amend the standards for small commercial packaged boilers (greater than 300,000 Btu/h and less than or equal to 2.5 million Btu/h) because the ASHRAE/IESNA Standard 90.1–1999 levels for these products are less stringent than the existing EPCA standards;

(3) Not to amend the standards for packaged terminal air conditioners and packaged terminal heat pumps because DOE will conduct a separate rulemaking to determine if clear and convincing evidence supports standard levels higher than those in ASHRAE/IESNA Standard 90.1–1999;

(4) Not to amend the standards for three-phase air conditioners and heat pumps less than 65,000 Btu/h because EPACT 2005 amended EPCA to provide that only an amendment to ASHRAE/IESNA Standard 90.1 as in effect on January 1, 2010, triggers DOE to amend the standards established under EPCA;

(5) Not to amend the standards for single-package vertical air conditioners and single-package vertical heat pumps less than 65,000 Btu/h because EPACT 2005 amended EPCA to provide that only an amendment to ASHRAE/IESNA Standard 90.1 as in effect on January 1, 2010, triggers DOE to amend the standards established under EPCA; and

(6) Not to amend the standards for single-package vertical air conditioners and single-package vertical heat pumps greater than or equal to 65,000 Btu/h and less than 240,000 Btu/h because DOE has determined that these products are covered by standards established by EPACT 2005 for large commercial package air conditioning and heating equipment with cooling capacities greater than or equal to 65,000 Btu/h and less than 760,000 Btu/h.

B. Authority

Part C of Title III of EPCA addresses the energy efficiency of certain types of commercial and industrial equipment. (42 U.S.C. 6311–6317) It contains, for example, specific mandatory energy conservation standards for tankless, gas-fired IWHs; PTACs and PTHPs; small and large commercial packaged boilers; and commercial package air-conditioning and heating equipment. The latter category includes three-phase ACs and HPs with cooling capacities less than 65,000 Btu/h, as well as SPVACs and SPVHPs with cooling capacities less than 65,000 Btu/h. (42 U.S.C. 6313(a)(1)–(5))

The energy conservation standards set forth in EPCA for these and related types of commercial and industrial equipment generally correspond to the levels in ASHRAE/IESNA Standard 90.1, effective October 24, 1992 (ASHRAE/IES Standard 90.1–1989). Pursuant to section 342(a)(6)(A)(i) of EPCA, DOE, except in certain circumstances, must amend energy conservation standards for the listed ASHRAE equipment if ASHRAE amends ASHRAE/IESNA Standard 90.1. With respect to certain types of commercial and industrial equipment, including all of the equipment covered by today's rule, prior to the enactment of Energy Policy Act of 2005 (EPACT 2005), any amendment of ASHRAE/IES Standard 90.1, as in effect on October 24, 1992 (the date of enactment of the Energy Policy Act of 1992) would trigger DOE action for adopting amended uniform national standards for this equipment. EPACT 2005 changed the October 24, 1992, date for small and large commercial package air conditioning and heating equipment, so that only an amendment of ASHRAE/IES Standard 90.1 as in effect on January 1, 2010, would trigger DOE action to adopt amended uniform national standards. Pursuant to EPACT 2005, this provision also applies to ''very large'' commercial package air conditioning and heating equipment. *Id.* Any SPVU with a cooling capacity below 760,000 Btu/h would be within the definition of small, large, or very large commercial package air conditioning and heating equipment. (42 U.S.C. 6311(8)(A)–(D))

Under certain circumstances delineated in EPCA, DOE may adopt standards more stringent than the levels in amendments to ASHRAE/IES Standard 90.1. (42 U.S.C. 6313(6)(A)(i)–(ii)) In any such rulemaking, the rule must contain the amended standard. The Secretary may not prescribe any amended standard that increases maximum allowable energy use, or decreases the minimum required energy efficiency, of the covered equipment. (42 U.S.C. 6313(a)(6)(B)(ii)) Furthermore, the Secretary may not prescribe an amended standard if the Secretary publishes a finding that interested persons have established by a preponderance of evidence that the amended standard is likely to result in the unavailability in the United States of products with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States at the time of the Secretary's finding. (42 U.S.C. 6313(a)(6)(B)(ii))

C. Background

1. ASHRAE/IESNA Standard 90.1 and the Department of Energy's Response [2]

On October 29, 1999, ASHRAE approved and published ASHRAE/IESNA Standard 90.1–1999, which addressed efficiency levels for many categories of commercial heating, ventilating, air-conditioning (HVAC), and water-heating equipment covered by EPCA. ASHRAE/IESNA Standard 90.1–1999 revised the efficiency levels in ASHRAE/IESNA Standard 90.1–1989 for certain equipment. For the remaining equipment, ASHRAE left the preexisting levels in place after considering revising the levels for some equipment and deferring consideration of others.

Following publication of ASHRAE/IESNA Standard 90.1–1999, DOE performed a screening analysis for the categories of equipment for which ASHRAE addressed efficiency levels in ASHRAE/IESNA Standard 90.1, to determine what action DOE would take with respect to these levels. 65 FR 10984. Upon completion of the screening analysis, DOE published a notice of document availability and public workshop on May 15, 2000. The May 15, 2000, notice invited written comments on the screening analysis and DOE's planned actions and described the screening analysis and announced its availability to the public. 65 FR 30929. For each equipment category for which ASHRAE adopted or considered an amended efficiency level, the notice stated what action DOE was inclined to take. 65 FR 30935. ASHRAE did not amend the standard levels for three-phase ACs and HPs with cooling capacities less than 65,000 Btu/h at that time. However, it was DOE's understanding that the ASHRAE Standard 90.1 committee intended to amend the levels once the DOE rulemaking for residential central air conditioners energy efficiency standards had been completed. Based on ASHRAE's action and DOE's understanding of the ASHRAE Standard 90.1 committee's intention to adopt the same level as DOE adopted for residential central air conditioners, DOE stated that it had decided to take no action until ASHRAE had amended ASHRAE/IESNA Standard 90.1's

[2] A more detailed discussion of the ASHRAE process can be found in DOE's Notice of Availability and request for public comment on this rulemaking published on March 13, 2006 in the **Federal Register**. 71 FR 12634.

efficiency levels for three-phase ACs and HPs with cooling capacities less than 65,000 Btu/h. 71 FR 12643. In Addendum f to ASHRAE/IESNA Standard 90.1–2004, ASHRAE adopted the same minimum energy efficiency standards for this equipment as DOE had adopted for residential central air conditioners. ASHRAE adopted Addendum f to ASHRAE/IESNA Standard 90.1–2004 on April 1, 2006.

Following the public meeting on July 11, 2000, DOE adopted the efficiency levels in ASHRAE/IESNA Standard 90.1–1999 as uniform national standards to replace existing EPCA levels for 18 categories of commercial equipment in the January 2001 final rule. 66 FR 3335, 3336–37, 3349–52 (January 12, 2001). DOE also rejected the ASHRAE/IESNA Standard 90.1–1999 levels for electric water heaters, leaving the EPCA level in place for that equipment. 66 FR 3337.

In this same final rule, for 11 categories of commercial equipment,[3] DOE stated it would evaluate whether to adopt more stringent standards than those contained in ASHRAE/IESNA Standard 90.1–1999. 66 FR 3336–38, 3349–52. For the four categories of three-phase air-conditioning equipment that ASHRAE had not addressed in ASHRAE/IESNA Standard 90.1–1999, DOE understood that ASHRAE intended to amend its efficiency levels for this equipment in conjunction with the then-pending DOE standards rulemaking for similar, single-phase residential products.[4] The standard levels prescribed in EPCA and ASHRAE/IESNA Standard 90.1–1999 for these 15 equipment categories [5] appear in Tables I.1 and I.2. EPACT 2005 included energy efficiency standards for some of these commercial air conditioners and heat pumps; those new standards also appear in Tables I.1 and I.2. EPACT 2005 prescribed more stringent standards than those contained in ASHRAE/IESNA Standard 90.1–1999 for commercial package air-conditioning and heating equipment with cooling capacities between 65,000 Btu/h and 240,000 Btu/h as listed in Table I.1.[6]

TABLE I.1.—ENERGY CONSERVATION STANDARDS FOR COMMERCIAL AIR CONDITIONERS AND HEAT PUMPS

Product	Capacity/characteristics	Standard efficiency level*		
		EPCA	ASHRAE/IESNA standard 90.1–1999	EPACT 2005
Small Commercial Package Air-Conditioning and Heating Equipment.	<65 kBtu/h Air-Cooled, 3-Phase, Central Split-System AC, HP	SEER: 10.0 HSPF: 6.8	SEER: 10.0 HSPF: 6.8	Not addressed.
	<65 kBtu/h Air-Cooled, 3-Phase, Central Single-Package AC, HP	SEER: 9.7 HSPF: 6.6	SEER: 9.7 HSPF: 6.6	Not addressed.
	≥65 kBtu/h and <135 kBtu/h Air-Cooled, Central AC	EER: 8.9**	EER: 10.3**	EER: 11.2**††
	≥65 kBtu/h and <135 kBtu/h Air-Cooled, Central HP	EER: 8.9** COP: 3.0†	EER: 10.3** COP: 3.2†	EER: 11.0** COP: 3.3†
Large Commercial Package Air-Conditioning and Heating Equipment.	≥135 kBtu/h and <240 kBtu/h Air-Cooled, Central AC	EER: 8.5**	EER: 9.7**	EER: 11.0**††
	≥135 kBtu/h and <240 kBtu/h Air-Cooled, Central HP	EER: 8.5** COP: 2.9†	EER: 9.3** COP: 3.1†	EER: 10.6** COP: 3.2†
Packaged Terminal Air Conditioners and Heat Pumps.	Air-Cooled	EER, COP vary by capacity according to formulas for each	EER, COP vary by capacity according to formulas for each (different formulas for new construction and replacement equipment)	Not addressed.

*Heating efficiency levels do not apply to cooling-only air conditioners.

**At 95 F dry-bulb temperature.

† At 47 F dry-bulb temperature.

††This EER level applies to equipment that has electric resistance heat or no heating. For all other package air-conditioning equipment with heating system types that are integrated into the equipment, deduct 0.2 EER.

[3] These eleven products include small commercial package air-conditioning and heating equipment with capacities greater than or equal to 65,000 Btu/h and less than 135,000 Btu/h, large commercial package air-conditioning and heating equipment with capacities greater than or equal to 135,000 Btu/h and less than 240,000 Btu/h, packaged terminal air conditioners and heat pumps, small, gas-fired and oil-fired, commercial packaged boilers greater than 300,000 Btu/h and less than or equal to 2,500,000 Btu/h, large, gas-fired and oil-fired, commercial packaged boilers greater than 2,500,000 Btu/h, and gas-fired instantaneous water heaters.

[4] The four categories of three-phase commercial air conditioners and air conditioning hear pumps are: Commercial three-phase, air-source, split-system air conditioners with cooling capacities less than 65,000 Btu/h, commercial three-phase, air-source, single split-system heat pumps with cooling capacities less than 65,000 Btu/h, commercial three-phase, air-source, single package air conditioners with cooling capacities less than 65,000 Btu/h, and commercial three-phase, air-source, single package heat pumps with cooling capacities less than 65,000 Btu/h.

[5] These fifteen products include the eleven products and four categories of commercial three-phase commercial air conditioners and air conditioning heat pumps identified above.

[6] SPVUs are specific types of small and large commercial package air-conditioning and heating equipment. ASHRAE did not recognize and evaluate them as separate equipment categories in ASHRAE/IESNA Standard 90.1–1999, nor did EPCA recognize them as separate equipment categories.

TABLE I.2.—ENERGY CONSERVATION STANDARDS FOR COMMERCIAL BOILERS AND WATER HEATERS*

Product	Capacity/characteristics	Standard efficiency level**	
		EPCA	ASHRAE/IESNA standard 90.1–1999
Packaged Boilers, Oil- and Gas-Fired	>300 kBtu/h ≤2,500 kBtu/h	Combustion Efficiency**: Gas-Fired—80% Oil-Fired—83%	Thermal Efficiency**: Gas-Fired—75% Oil-Fired—78%
	>2,500 kBtu/h	Combustion Efficiency**: Gas-Fired—80% Oil-Fired—83%	Combustion Efficiency**: Gas-Fired—80% Oil-Fired—83%
Gas-Fired Instantaneous Water Heaters	<10 gallons	Thermal Efficiency: 80%	Thermal Efficiency: 80%

* EPACT 2005 did not address this equipment.
** At maximum rated capacity.

2. Subsequent Action by the Department of Energy

DOE reviewed the energy savings potential of increased energy efficiency levels for several types of equipment covered by ASHRAE/IESNA Standard 90.1–1999 and, on March 13, 2006, issued a notice of document availability and request for comments (hereafter referred to as the March 2006 NOA) in the **Federal Register** announcing the availability of a Technical Support Document (TSD) that set forth this review, and requested public comment on the TSD. 71 FR 12634. In the March 2006 NOA, DOE also announced the approaches it was inclined to take for the equipment as summarized in Table I.3, below. *Id* at 12637.

TABLE I.3.—SUMMARY OF POTENTIAL DOE ACTIONS BY PRODUCT AS STATED IN THE MARCH 2006 NOA

Product	DOE's action
PTACs and PTHPs	Initiate a rulemaking to consider more stringent standards.
Small Commercial Packaged Boilers (0.3–2.5 MMBtu/h).	Reject ASHRAE/IESNA Standard 90.1–1999 efficiency levels.
Gas-Fired IWHs	DOE does not have authority to pursue a standard level higher than those specified in ASHRAE/IESNA Standard 90.1–1999.
Large Commercial Packaged Boilers (>2.5 MMBtu/h).	DOE does not have authority to pursue a standard level higher than those specified in ASHRAE/IESNA Standard 90.1–1999.
Three-Phase ACs and HPs (<65,000 Btu/h)	Adopt Addendum f to ASHRAE/IESNA Standard 90.1–2004 once ASHRAE formally adopts this addendum.
SPVUs (<65,000 Btu/h)	DOE invited comments on the potential energy savings estimates and the appropriateness of adopting as federal standards the efficiency levels contained in Addendum b of ASHRAE/IESNA Standard 90.1–2004.

3. The Energy Policy Act of 2005

DOE's authority to amend Federal energy conservation standards for equipment covered by ASHRAE/IES Standard 90.1 (ASHRAE equipment) is found in 42 U.S.C. 6313(a)(6), which, as amended by EPACT 2005, states as follows:

(6)(A)(i) If ASHRAE/IES Standard 90.1, as in effect on January 1, 2010, is amended with respect to any small commercial package air conditioning and heating equipment, large commercial package air conditioning and heating equipment, and very large commercial package air conditioning and heating equipment, or if ASHRAE/IES Standard 90.1, as in effect on October 24, 1992, is amended with respect to any packaged terminal air conditioners, packaged terminal heat pumps, warm-air furnaces, packaged boilers, storage water heaters, instantaneous water heaters, or unfired hot water storage tanks, the Secretary shall establish an amended uniform national standard for that product at the minimum level for each effective date specified in the amended ASHRAE/IES Standard 90.1, unless the Secretary determines, by rule published in the **Federal Register** and supported by clear and convincing evidence, that adoption of a uniform national standard more stringent than such amended ASHRAE/IES Standard 90.1 for such product would result in significant additional conservation of energy and is technologically feasible and economically justified.

(ii) If ASHRAE/IES standard 90.1 is not amended with respect to small commercial package air conditioning and heating equipment, large commercial package air conditioning and heating equipment, and very large commercial package air conditioning and heating equipment during the 5-year period beginning on the effective date of a standard, the Secretary may initiate a rulemaking to determine whether a more stringent standard—

(I) Would result in significant additional conservation of energy; and

(II) Is technologically feasible and economically justified.

(42 U.S.C. 6313(a)(6)(A)(i)–(ii))[7]

Pursuant to this section, DOE's authority to amend energy conservation standards for the listed ASHRAE equipment is triggered by ASHRAE action amending ASHRAE/IES Standard 90.1. With respect to small and large commercial package air conditioning and heating equipment (as well as all other ASHRAE equipment listed in this section), prior to the enactment of EPACT 2005, any amendment of ASHRAE/IES Standard 90.1, as in effect on October 24, 1992, (the date of enactment of the Energy Policy Act of 1992) would trigger DOE action for adopting amended uniform national standards. EPACT 2005 changed the October 24, 1992, date for the

[7] DOE does not have the authority to establish energy conservation standards for the ASHRAE equipment on its own initiative. ASHRAE sets voluntary guidelines for this equipment in ASHRAE/IESNA Standard 90.1.

commercial package air conditioning and heating equipment, so that only an amendment of ASHRAE/IES 90.1 as in effect on January 1, 2010, would trigger DOE action to adopt amended uniform national standards. This provision applies to small and large air conditioning and heating equipment, as well as to very large equipment, which EPACT 2005 added to EPCA.

In addition, section 136(b) of EPACT 2005 amended section 342(a) of EPCA (42 U.S.C. 6313(a)) by prescribing new energy conservation standards for certain small (greater than or equal to 65,000 Btu/h to less than 135,000 Btu/h), for large (greater than or equal to 135,000 Btu/h to less than 240,000 Btu/h), and for very large (greater than or equal to 240,000 Btu/h to less than 760,000 Btu/h) commercial package air conditioners and heat pumps.[8] DOE concluded that the EPACT 2005 standards implicitly cover SPVUs greater than or equal to 65,000 Btu/h to less than 760,000 Btu/h as further discussed below, but EPACT 2005 standards do not address or cover SPVUs less than 65,000 Btu/h. 71 FR 12634, 12638.

II. Discussion of Comments

A. Large Commercial Packaged Boilers (Greater Than 2.5 Million British Thermal Units Per Hour) and Gas-Fired Instantaneous Water Heaters

EPCA specifies minimum energy conservation standards for certain categories of commercial equipment, including gas-fired IWHs and large commercial packaged boilers. (42 U.S.C. 6313(a)(1)–(5)) ASHRAE/IESNA Standard 90.1 also covers these types of equipment, and the efficiency requirements in EPCA correspond with the ASHRAE/IESNA Standard 90.1–1989 levels effective October 24, 1992. (42 U.S.C. 6313(a)(4) and (5))

ASHRAE, in adopting ASHRAE/IESNA Standard 90.1–1999, left in place the pre-existing ASHRAE/IES Standard 90.1–1989 minimum efficiency levels for gas-fired IWHs and large commercial packaged boilers. Thus, the efficiency levels in ASHRAE/IESNA Standard 90.1–1999 for this equipment are the same as the ASHRAE/IES Standard 90.1–1989 and EPCA levels.

In the March 1, 2000, notice of preliminary screening analysis, the May 15, 2000, notice of document availability and public workshop, and the January 2001 final rule, DOE indicated its belief that it had the authority to consider more stringent standard levels for equipment for which ASHRAE had considered adopting more stringent levels but declined to change the efficiency levels for such equipment when publishing ASHRAE/IESNA Standard 90.1–1999. 71 FR 12642. However, in the March 2006 NOA, DOE reexamined its authority under EPCA to amend standards for gas-fired IWHs and large commercial package boilers and concluded that its earlier view was in error. 71 FR 12642

Specifically, DOE has concluded that the statutory trigger that requires DOE to adopt uniform national standards based on ASHRAE action is for ASHRAE to amend a standard for any of the equipment listed in EPCA section 342(a)(6)(A)(i) (42 U.S.C. 6313 (a)(6)(A)(i)) by increasing the energy efficiency level for that equipment type. If ASHRAE merely considers raising the standards for any of the listed equipment in this section, except for small, large, and very large commercial package air conditioning and heating equipment, but ultimately decides to leave the standard levels unchanged or lowers the standard, DOE does not have the authority to conduct a rulemaking for higher standards for that equipment. With respect to small, large, and very large commercial package air conditioning and heating equipment, under 42 U.S.C. 6313 (a)(6(A)(ii), DOE has the authority to initiate a rulemaking proceeding to determine whether more stringent standards are justified if ASHRAE has not amended standards for this equipment within five years following the effective date of a standard. Furthermore, if ASHRAE amends its standards with more stringent standards for a specific subset of the listed equipment, consistent with the above exception, DOE only has the authority to adopt the ASHRAE levels for the specific subset of equipment and its effective dates specified in the amended ASHRAE standard. DOE may under certain circumstances delineated in EPCA adopt a standard more stringent than the amended level in ASHRAE/IESNA Standard 90.1.

Before DOE can adopt an ASHRAE standard for a product pursuant to section 342, the plain language in section 342 requires that ASHRAE must have amended the standard in ASHRAE/IESNA Standard 90.1 for that specific product. Once ASHRAE has amended a standard for ''any'' equipment listed in section 342, section 342 requires the Secretary to ''establish an amended uniform national standard for *that* product at the minimum level for each effective date specified in the amended ASHRAE/IESNA Standard 90.1, unless the Secretary determines * * * that adoption of a * * * more stringent [standard] for *such* product'' is warranted. (*Id. Emphasis added.*) The authority provided in section 342(a)(6)(a)(i) is clearly limited to only those products for which ASHRAE has amended the standard; *i.e.*, authority for ''that product.''

The intent of section 342, generally, is for DOE to maintain uniform national standards consistent with those set in ASHRAE/IESNA Standard 90.1. Given this intent, if ASHRAE has not amended a standard for a product subject to section 342, there is no change which would require action by DOE to consider amending the uniform national standard to maintain consistency with ASHRAE/IESNA Standard 90.1.

In the case of large commercial packaged boilers and gas-fired IWHs, ASHRAE considered amending the standards but ultimately chose not to do so. Therefore, the statutory trigger for DOE to adopt ASHRAE's amended standards did not occur with respect to this equipment. Contrary to stakeholder argument, DOE does not have the authority to amend the standards for large commercial packaged boilers and gas-fired IWHs based on ASHRAE's amendments to ASHRAE/IESNA Standard 90.1, which did not amend the standards for large commercial packaged boilers and gas-fired IWHs. The statutory language specifically links ASHRAE's action in amending standards for specific equipment to DOE's action for those same equipment. Accordingly, since ASHRAE did not amend standards for this equipment, DOE has no rulemaking authority to amend standards for this equipment at this time.

The Alliance to Save Energy (ASE), the American Council for an Energy-Efficient Economy (ACEEE), the Appliance Standards Awareness Project (ASAP), the Natural Resources Defense Council (NRDC), the Northeast Energy Efficiency Partnerships (NEEP), and the Northwest Power and Conservation Council (NWPCC) submitted a combined comment (collectively referred to as ''Joint Comment'') which stated that DOE must review the standards for both large commercial packaged boilers and gas-fired IWHs. (Joint Comment, No. 27 at pp. 3–4) [9] The

[8] Single package vertical air conditioners and single package vertical heat pumps that are within these capacity ranges are small, large and very large commercial package air conditioners and heat pumps since they are commercial products (*i.e.*, distributed for commercial applications) and meet EPCA's definition for ''commercial package air conditioning and heating equipment.'' (42 U.S.C. 6311(8))

[9] A notation in the form ''Joint Comment, No. 27 at pp. 3–4'' identifies a written comment DOE has received and has included in the docket of this rulemaking. This particular notation refers to a

Joint Comment asserted that ASHRAE's ''comprehensive review of all EPCA-related standards which culminated in issuance of ASHRAE 90.1–1999 triggers the required review by DOE of all EPCA standards based on ASHRAE 90.1'' Furthermore, the Joint Comment claimed that ASHRAE should not be permitted to shelter specific standards from DOE review by leaving them unchanged. However, the Joint Comment did not provide a rationale for DOE to reject the position taken in the March 2006 NOA and discussed above. Therefore, DOE does not believe the Joint Comment provided any information that would cause DOE to change its interpretation of EPCA as explained the March 2006 NOA and explained above. DOE rejects the Joint Comment's position.

Additionally, the Joint Comment suggested that if ASHRAE revises a standard for a subset of a product class, then DOE is required under EPCA to consider revised standards for the larger product class. For large commercial packaged boilers, the Joint Comment suggested that DOE is obligated to conduct a standards rulemaking instead of leaving the ASHRAE/IESNA Standard 90.1–1989 levels in place. The Joint Comment noted that when ASHRAE developed ASHRAE/IESNA Standard 90.1–1999, it examined efficiency levels for all packaged boilers, it created two product classes—''small boilers'' and ''large boilers''—and it set a new efficiency level for small boilers while leaving in place the existing level for large boilers. The Joint Comment asserted that ASHRAE's revision of efficiency levels for the newly created product class of ''small boilers'' triggers a review of the entire category of packaged boilers as defined by EPCA. The Joint Comment further contended that DOE's proposed position that it lacks authority to review the standard level for large boilers means that ASHRAE has unfettered power to create new classes of equipment and to shelter them from DOE review and from higher national standards. This, they contended, would conflict with the intent of EPCA that ASHRAE have the lead in developing higher standards for certain equipment, but that these standards are subject to DOE review. (Joint Comment, No. 27, pp. 3–4) However, based on the language of EPCA (42 U.S.C. 6313 (a)(6)(A)(i)), discussed above, DOE finds no basis for accepting the Joint Comments' contention that ASHRAE's revision of efficiency levels for a product class or subclass triggers a review by DOE of the standards for that entire product category.

In sum, DOE does not believe the Joint Comment provides a basis for DOE to conclude that the interpretation presented in the March 2006 NOA (71 FR 12634) was incorrect. Accordingly, since ASHRAE did not amend the efficiency levels in ASHRAE/IESNA Standard 90.1–1999 for large commercial packaged boilers or gas-fired IWHs, DOE concludes it does not have the authority to increase the current standard levels for such equipment.

B. Small Commercial Packaged Boilers (Greater Than 300,000 British Thermal Units Per Hour and Less Than or Equal to 2.5 Million British Thermal Units Per Hour)

EPCA prescribes a minimum combustion efficiency of 80 percent for gas-fired commercial packaged boilers and 83 percent for oil-fired commercial packaged boilers, regardless of capacity. (42 U.S.C. 6313(a)(4)(C)–(D)) ASHRAE/IESNA Standard 90.1–1999 prescribes for small boilers (greater than 300 thousand Btu/h and less than or equal to 2.5 million Btu/h) thermal efficiency levels of 75 percent for gas-fired equipment and 78 percent for oil-fired equipment. In January 2001, when it adopted as Federal standards certain efficiency levels in ASHRAE/IESNA Standard 90.1–1999, DOE stated that it would evaluate whether standard levels higher than those in ASHRAE/IESNA Standard 90.1–1999 are justified for small commercial packaged boilers. 66 FR at 3336–38, 3349–52.

In the March 2006 NOA, DOE tentatively concluded that the ASHRAE/IESNA Standard 90.1–1999 thermal efficiency levels for small commercial packaged boilers would have the effect of lowering minimum combustion efficiency levels required by EPCA by allowing increased energy consumption. 71 FR 12640. Thermal and combustion efficiency are related in that thermal efficiency is a function of both flue losses (*i.e.*, combustion efficiency) and jacket losses, although the amounts of these two types of losses in a given boiler can be independent of one another. DOE observed that the minimum thermal efficiency levels in ASHRAE/IESNA Standard 90.1–1999 appear to be lower than the average thermal efficiencies of boilers that minimally comply with the EPCA's combustion energy efficiency standards. 71 FR 12640. The practical consequence of setting thermal efficiency standards at levels lower than the thermal efficiencies of existing equipment would allow for the possibility of equipment having lower combustion efficiencies than EPCA permits, meaning that the current minimum required efficiency would be decreased in violation of 42 U.S.C. 6313(a)(6)(B)(ii)). Consequently, DOE stated in the March 2006 NOA that it was inclined to reject the ASHRAE/IESNA Standard 90.1–1999 levels for small commercial packaged boilers and leave the existing EPCA standards in place. 71 FR 12641

DOE did not receive any comments objecting to its rejection of the ASHRAE/IESNA Standard 90.1–1999 levels for small commercial packaged boilers, although the Joint Comment argued that DOE must move forward with a rulemaking for commercial boilers instead of leaving the ASHRAE/IESNA Standard 90.1–1989 levels in place as national standards for small packaged boilers. The Joint Comment noted that these standards are 17 years old, and claimed the March 2006 NOA and TSD demonstrate that more stringent levels for small commercial packaged boilers than those in ASHRAE/IESNA Standard 90.1–1999 are technologically feasible and economically justifiable. The Joint Comment also indicated that the magnitude of the potential energy savings for this equipment provides a more than ample reason for DOE to reexamine this standard. (Joint Comment, No. 27, p. 3)

While DOE agrees with the Joint Comment that the ASHRAE/IESNA Standard 90.1 levels for this equipment have been in place since 1989 and that more energy efficient equipment can save energy, the mere potential for energy savings does not justify a DOE rulemaking. As stated above, DOE is rejecting the amended ASHRAE/IESNA Standard 90.1–1999 efficiency levels for small commercial packaged boilers and believes that, consistent with section 342 in EPCA, the proper venue to consider more stringent standards for this equipment is the ASHRAE process itself. Moreover, as noted by the Joint Comment, ACEEE has recommended to ASHRAE that it amend ASHRAE/IESNA Standard 90.1 to adopt new, more stringent standards for this equipment. DOE commends ACEEE's initiative, and encourages ASHRAE to examine whether more stringent standards are warranted for this equipment.

Furthermore, DOE considered whether ASHRAE's action to reduce the standard for a class or type of commercial equipment would be a

comment (1) by the Joint Comment, (2) in document number 27 in the docket of this rulemaking (maintained in the Resource Room of the Building Technologies Program), and (3) appearing on page 3 and 4 of document number 27.

change in the standard that would trigger a DOE standards rulemaking. DOE has concluded that such an action by ASHRAE would not trigger a DOE rulemaking since EPCA is clear that DOE cannot change a standard to reduce its stringency. (42 U.S.C. 6313(a)(6)(B)(ii)) Both Part B for consumer products and Part C for commercial and industrial equipment direct that ''[t]he Secretary may not prescribe any amended standard * * * which increases the maximum allowable energy use, or decreases the minimum required energy efficiency * * *'' (42 U.S.C. 6295(o)(1) and 42 U.S.C. 6313 (a)(6)(B)(ii), respectively) It is a fundamental principle in EPCA's statutory scheme that DOE cannot amend standards downward; that is, weaken standards, from those that have been published as a final rule. *Natural Resources Defense Council* v. *Abraham,* 355 F.3d 179 (2nd Cir. 2004).

Therefore, DOE believes that in order to consider amended efficiency levels for this equipment, DOE must review the amended ASHRAE/IESNA Standard 90.1 to determine if it meets this EPCA requirement and if it does not meet this EPCA requirement, that is, if the efficiency levels in the amended ASHRAE/IESNA Standard 90.1 are less stringent than existing standards, DOE cannot further consider the amended efficiency levels. Accordingly, as stated in the March 2006 NOA, today's final rule will leave the existing EPCA standards in place for small commercial boilers.

C. Packaged Terminal Air Conditioners and Packaged Terminal Heat Pumps

Section 342(a)(3) of EPCA (42 U.S.C. 6313(a)(3)) and ASHRAE/IESNA Standard 90.1–1999 set forth energy conservation standards for PTACs and PTHPs, which are collectively referred to as PTAC/HPs in today's notice of final rulemaking. The energy conservation standards in ASHRAE/IESNA Standard 90.1–1999 vary based on the cooling capacity of the equipment.

EPCA prescribes a single formula for determining the minimum cooling efficiency (EER) for all PTAC/HPs and a single formula for computing the minimum heating efficiency (COP) for all PTHPs. In contrast, ASHRAE/IESNA Standard 90.1–1999 further delineates the product categories and consists of two sets of formulas for calculation of the energy conservation standards. One set is for PTAC/HPs with wall sleeves less than 16 inches high and 42 inches wide, and a label indicating the equipment is for replacement use, which ASHRAE/IESNA Standard 90.1–1999 classifies as ''replacement'' units. The other formula is for all other PTAC/HPs, which ASHRAE/IESNA Standard 90.1–1999 classifies as ''new construction'' units. The resulting minimum efficiency levels for ''replacement'' units are slightly higher than the EPCA levels, and the levels for ''new construction'' units are substantially higher than the EPCA levels. In addition, ASHRAE/IESNA Standard 90.1–1999 have slightly different requirements for the cooling modes of PTACs and PTHPs, whereas EPCA prescribes a single formula for air conditioners and heat pumps.

In the March 2006 NOA, DOE recognized that the market for PTACs and PTHPs has substantially changed since publication of the January 2001 final rule. 71 FR 12639. DOE stated in the March 2006 NOA that the market has changed to efficiency levels at or above the levels in ASHRAE/IESNA Standard 90.1–1999 in the absence of Federal standards. DOE examined the January 2003 Air-Conditioning and Refrigeration Institute (ARI) Directory for PTAC/HPs and found that 52 percent of the listed PTACs are at, or above, the ASHRAE/IESNA Standard 90.1–1999 efficiency level for new construction equipment, and 98 percent of the listed PTACs are at or above the ASHRAE/IESNA Standard 90.1–1999 efficiency level for replacement equipment. *Id.* In addition, DOE found that 72 percent of the listed PTHPs are at or above the ASHRAE/IESNA Standard 90.1–1999 efficiency level for new construction equipment and 99 percent of the listed PTHPs are at or above the ASHRAE/IESNA Standard 90.1–1999 efficiency level for replacement equipment. *Id.*

DOE also indicated in the March 2006 NOA that even though the potential energy savings in the revised analysis have been reduced, it believed there is a possibility of clear and convincing evidence that more stringent standard levels for PTACs and PTHPs would result in significant additional energy savings, and would be technologically feasible and economically justified. Therefore, DOE stated it was inclined to seek a more stringent standard level than in ASHRAE/IESNA Standard 90.1–1999 for PTACs and PTHPs through the rulemaking process. 71 FR 12639.

DOE received several comments on the proposed decision to seek a more stringent standard level than the efficiency levels in ASHRAE/IESNA Standard 90.1–1999 for PTACs and PTHPs. ARI commented that the technical information regarding DOE's analysis does not support moving forward with a separate rulemaking. ARI believes that 0.103 quads of potential energy savings in the TSD is significantly less than the 0.561 quads originally estimated by DOE for PTAC/PTHP, and that DOE should reject 0.103 quads saved over a 25-year period as being a ''significant'' amount of energy. Furthermore, ARI stated that manufacturers are voluntarily striving to meet ASHRAE/IESNA Standard 90.1–1999 requirements. However, ARI went on to note that close to 50 percent of the PTACs listed in the ARI directory are still rated below ASHRAE/IESNA Standard 90.1–1999 efficiency levels, which, in ARI's opinion, demonstrates the importance of establishing a national standard. (ARI, No. 26 at p. 2)

Even though the potential energy savings in DOE's revised analysis has been reduced, DOE believes there is a reasonable likelihood that more stringent standard levels for PTACs and PTHPs would result in significant energy savings and be technically feasible and economically justified. The estimated savings of 0.103 quads would be comparable to the savings resulting from some other efficiency standards established under EPCA. Furthermore, under section 325(o)(3)(B) of the Act, the Department is prohibited from adopting a standard for a product if that standard would not result in ''significant'' energy savings. While the term ''significant'' has never been defined in the Act, the U.S. Court of Appeals, in *Natural Resources Defense Council* v. *Herrington,* 768 F.2d 1355, 1373 (DC Cir. 1985), concluded that Congressional intent in using the word ''significant'' was to mean ''non-trivial.'' Therefore, based on the above, DOE does not agree with ARI's assertion and believes that the energy savings that could result from standards for PTACs and PTHPs, while not as large as the savings potential for some other standards, are significant and warrant consideration in a separate rulemaking. In addition, DOE believes there is a possibility that further evaluation of more stringent standard levels for PTACs and PTHPs are warranted, in part, because the market has changed, in the absence of Federal standards, to efficiency levels at or above the levels in ASHRAE/IESNA Standard 90.1–1999 for PTACs and PTHPs.[10] 71 FR 12639.

DOE has therefore decided to explore more stringent efficiency levels than in ASHRAE/IESNA Standard 90.1–1999 for PTACs and PTHPs through a separate rulemaking, which DOE expects to complete in August 2008.

[10] The price of electricity and forecasts of electricity prices, for example, have changed and more stringent standards than analyzed may prove to be economically justified.

(See Department of Energy Regulatory Agenda, RIN: 1904-AB44, 71 FR 73183, December 11, 2006)

The Edison Electric Institute (EEI) commented that DOE should take into account the refrigerant phaseout that starts in 2010 when considering higher standards for PTACs and PTHPs. EEI maintained that when the effects of the new refrigerants combined with the space limitations on this product are considered, they will have a significant impact on the efficiency levels that are available. (EEI, No. 25 at p. 2)

EEI commented that it is currently unaware of any PTAC or PTHP equipment that uses R–410A, the refrigerant being used to replace R–22 in other air-conditioning equipment. Therefore, EEI stated its belief that DOE will not have current data on baseline or high efficiency equipment that DOE can use to make a technical or economic judgment for a new efficiency standard. (EEI, No. 25 at p. 2)

ARI stated its concern that DOE's analysis focuses exclusively on units operating with R–22, a refrigerant that will be phased out on January 1, 2010. According to the EPACT timetable, any amended energy conservation standards for this equipment would come into effect no sooner than September 2012, well after the phaseout of R–22. Consequently, ARI stated that it does not believe that any of the efficiency data that DOE has collected for its analyses can be used when DOE is evaluating equipment using the new refrigerant, R–410A. (ARI, No. 26 at p. 3)

ARI cited several technical challenges that limit the opportunity to improve efficiencies in PTAC/PTHP equipment, including the availability of 60–Hz rotary compressors compatible with R–410A refrigerant. ARI commented that PTAC/PTHP equipment makes exclusive use of rotary compressors and the current production of a 60–Hz rotary compressor compatible with R–410A refrigerant is very limited. Further, according to ARI, the R–410A rotary compressors currently available are significantly less efficient than comparable R–22 rotary compressors. In addition, ARI stated its belief that the rotary compressor manufacturers have not made significant gains in energy efficiency due to design and manufacturing limitations. According to ARI, simulation analyses it conducted on the performance of package terminal air conditioners and heat pumps with R–410A have shown an overall decrease in efficiency (EER and COP) of between 6 to 10 percent (depending on the cooling capacity) compared to R–22 systems. This reduction can be mostly attributed to a reduction in compressor efficiency. DOE has not addressed whether higher standards using R410a are technically feasible. (ARI, No. 26 at p. 3)

The Joint Comment maintained that at least the same levels of efficiency could be achieved cost effectively with R–410A and R–134a as with R–22. The Joint Comment, citing a paper released by Trane, stated that there is no theoretical degradation of efficiency with R–134a because the refrigerant has a higher efficiency than R–22 with everything else being equal. However, the Joint Comment recognizes that R–410A has a modestly lower efficiency than R–22, but notes that R–410A allows the compressor and tubes to be smaller than R–22, providing space for increased heat transfer surfaces. According to the Joint Comment, this results in ''efficiency gains that can offset some or all of the inherent inefficiencies of R–410A.'' [11] (Joint Comment, No. 27 at p. 2) DOE recognizes this is a significant issue for stakeholders and will consider this issue in the PTAC/PTHP rulemaking, which will assess the technological feasibility of a more stringent energy conservation standard for this equipment.

As stated above, DOE will address more stringent standards for PTACs and PTHPs in a separate rulemaking. To analyze the technical feasibility of energy efficiency improvements of PTACs and PTHPs, which use R–22, DOE will first evaluate systems that use R–22 as a refrigerant because there is insufficient data to gauge the impacts of alternative refrigerants on system efficiency. DOE will then attempt to collect information on the alternative refrigerants. If DOE is unable to collect sufficient data or information to independently estimate the impacts of the refrigerant phaseout on equipment efficiency, DOE will request that stakeholders provide recommendations as to what assumptions DOE should use to represent the approximate incremental cost of switching to higher efficiency levels for this equipment as a result of using alternative refrigerants, for instance, R–410A.

[11] Previous refrigerant phaseouts, including the R–12 phaseout for domestic refrigerators, affected DOE standards rulemakings. In those rulemakings DOE attempted to assess the effects of the refrigerant phaseout and, the Joint Comment notes, there were theoretical reasons to believe that there would be a small reduction in efficiency due to the refrigerant change, but when the refrigerant changeover occurred, reductions in efficiency generally were not apparent.

D. Three-Phase Air Conditioners and Heat Pumps Less Than 65,000 British Thermal Units Per Hour

Energy conservation standards for split-system three-phase ACs and HPs with cooling capacities less than 65,000 Btu/h are 10.0 SEER for cooling (42 U.S.C. 6313(a)(1)(A)) and 6.8 HSPF for heating. (42 U.S.C. 6313(a)(1)(A) and (D)) Energy conservation standards for single-package three-phase ACs and HPs with cooling capacities less than 65,000 Btu/h are set forth in EPCA at a SEER of 9.7 for cooling (42 U.S.C. 6313(a)(1)(B)) and an HSPF of 6.6 for heating. (42 U.S.C. 6313(a)(1)(B) and (E)) The current energy conservation standards for single-package and split-system three-phase ACs and HPs with cooling capacities less than 65,000 Btu/h are found in Table 1 and Table 2 of section 431.97 of 10 CFR Part 431. These efficiency levels are the same as those in ASHRAE/IESNA Standard 90.1–1989.

In the March 2006 NOA, DOE recognized that ASHRAE was considering an Addendum to ASHRAE/IESNA Standard 90.1 (Addendum f) to provide a 13–SEER level for this equipment and stated that DOE would not take action on three-phase commercial air conditioners and heat pumps with capacities less than 65,000 Btu/h until after ASHRAE had completed its process. At that time, DOE stated that it intended to adopt as Federal standards the 13 SEER and 7.7 HSPF levels in ASHRAE/IESNA Standard 90.1–2004 Addendum f. 71 FR 12634, 12637–38, 12643.

Subsequent to the publication of the March 2006 NOA, DOE reexamined the amendments in EPACT 2005 to EPCA for commercial package air conditioning and heating equipment and determined that EPACT 2005 had revised the language in 42 U.S.C. 6313(a)(6)(A)(i) to limit DOE's authority to adopt ASHRAE amendments for small, large, and very large commercial package air conditioning and heating equipment until after January 1, 2010. Three-phase commercial ACs and HPs less than 65,000 Btu/h, fall under the definition of small commercial package air conditioning and heating equipment (42 U.S.C. 6311(8)(B)), and therefore are subject to the revised statutory language of EPACT 2005.

Prior to the enactment of EPACT 2005, for small and large commercial package air conditioning and heating equipment, any amendment of ASHRAE/IES Standard 90.1, as in effect on October 24, 1992 (the date of enactment of the Energy Policy Act of 1992), would trigger DOE action for

adopting amended uniform national standards for this equipment. However, EPACT 2005 changed the October 24, 1992, date for this equipment, so that only an amendment of ASHRAE/IES Standard 90.1 as in effect on January 1, 2010, would trigger DOE action to adopt amended uniform national standards for these products. (42 U.S.C. 6313(a)(6)(A)(i)) This revised statutory requirement, on its face, precludes DOE from adopting the efficiency levels in Addendum f to ASHRAE/IESNA Standard 90.1–2004 for three-phase commercial ACs and HPs less than 65,000 Btu/h at this time. The revised provision states:

> If ASHRAE/IES Standard 90.1, *as in effect on January 1, 2010*, is amended with respect to any small commercial package air conditioning and heating equipment, large commercial package air conditioning and heating equipment, and very large commercial package air conditioning and heating equipment * * * the Secretary shall establish an amended uniform national standard for that product at the minimum level for each effective date specified in the amended ASHRAE/IES Standard 90.1[.]

(42 U.S.C. 6313(a)(6)(A)(i)) (Emphasis added.) Because of this statutory change, it is outside the scope of DOE's authority to adopt these ASHRAE/IESNA Standard 90.1 levels at this time. Three-phase ACs and HPs less than 65,000 Btu/h are within the small commercial packaged air conditioning and heating equipment product categories listed in the clause that contains the January 1, 2010 date. (42 U.S.C. 6313 (a)(6)(A)(i)) Addendum f to ASHRAE/IESNA Standard 90.1–2004 was adopted on April 1, 2006, and in effect prior to January 1, 2010, the date before which DOE has no authority to consider adoption of an ASHRAE amendment affecting this equipment.

Subsection (a)(1)(A)–(B) establishes statutory standards for certain small commercial air conditioning and heating equipment that is manufactured after January 1, 1994, but before January 1, 2010. (42 U.S.C. 6313(a)(1)(A)–(B)) These standards are applicable to three-phase air conditioners and heat pumps less than 65,000 Btu/h, as well as SPVU's less than 65,000 Btu/h, discussed in Section II.E below.

While EPACT 2005 set standards for certain small, large, and very large commercial package air conditioning and heating equipment manufactured on or after January 1, 2010 (42 U.S.C. 6313 (7)–(9)), Congress did not provide standards for either three-phase air conditioning and heat pumps less than 65,000 Btu/h or SPVUs less than 65,000 Btu/h manufactured on or after January 1, 2010. Congress, however, did give DOE explicit rulemaking authority to consider and adopt more stringent standards for three-phase air conditioning and heat pumps less than 65,000 Btu/h and SPVUs less than 65,000 Btu/h, along with large and very large commercial package air conditioning and heating equipment, if ASHRAE/IESNA Standard 90.1 is not amended during the five-year period beginning on the effective date of a standard. (42 U.S.C. 6313(a)(6)(A)(ii)) The criteria for such a rulemaking are described in 42 U.S.C. 6313(a)(6)(B)(i)–(ii).

EPACT 2005 gives DOE authority to initiate a rulemaking ''[i]f ASHRAE/IES Standard 90.1 is not amended * * * during the 5-year period beginning on the effective date of a standard,'' but Congress does not define the term ''effective date of a standard.'' Since the effective date of the statutory standards in EPACT 2005 is the date of enactment of the legislation, that is, August 8, 2005, DOE interprets the five-year waiting period to begin on August 8, 2005. Therefore, EPACT 2005 provides ASHRAE from January 2, 2010, until August 8, 2010, to amend ASHRAE/IESNA Standard 90.1 on its own in order to trigger DOE action. After August 8, 2010, DOE may initiate its own rulemaking to set more stringent standards for this equipment.

Thus, the text of EPCA clearly prohibits amendments to the standards for small commercial package air conditioning and heating equipment, large commercial package air conditioning and heating equipment, and very large commercial package air conditioning and heating equipment until after January 1, 2010.

E. Single-Package Vertical Air Conditioners and Single-Package Vertical Heat Pumps Less Than 65,000 Btu/h

On June 2, 2002, ASHRAE published Addendum d to ASHRAE/IESNA Standard 90.1–1999, which incorporated efficiency levels for SPVUs. In the March 2006 NOA DOE stated that it was not able to adopt as Federal requirements the standards and test procedures in Addendum d for SPVUs for the following reasons: (1) Taking into account the ''Exclusions'' in the Scope section of ARI Standard 390–2001, the Addendum appeared to prescribe requirements for few if any of the equipment covered by EPCA; neither Addendum d nor any other provision of ASHRAE/IESNA Standard 90.1 defines or describes SPVUs; (2) assuming Addendum d did prescribe standards and test procedures for SPVUs covered by EPCA, the addendum did not clearly delineate SPVUs according to the statutory scheme set forth in EPCA, and disregarded EPCA's definitions and classifications for commercial air-conditioning equipment; and (3) to the extent it addressed equipment covered by EPCA, the addendum appeared to contain efficiency levels for some categories of equipment that were lower than the minimum efficiency standards currently required under EPCA. 71 FR 12643. DOE formally rejected Addendum d for reasons summarized above and submitted a formal comment to ASHRAE during the public review period. (Michael J. McCabe letter to Mr. Karim Amrane, Air-Conditioning and Refrigeration Institute, dated July 25, 2003).

In response to DOE's comment and in rejection of Addendum d, ASHRAE adopted Addendum b to ASHRAE/IESNA Standard 90.1–2004 (Addendum b). Addendum b redefined both SPVACs and SPVHPs from the definition provided in Addendum d to include encased air-cooled small or large commercial package air-conditioning and heating equipment. In addition, Addendum b created SPVU equipment categories corresponding to the existing cooling capacities in EPCA for commercial package air-conditioning and heating equipment (*i.e.*, less than 65,000 Btu/h, greater than or equal to 65,000 but less than 135,000 Btu/h, and greater than or equal to 135,000 but less than 240,000 Btu/h). Addendum b also adopted a revised set of efficiency levels for three categories of SPVUs. These amended energy conservation standards in Addendum b use EER and COP descriptors to provide SPVU efficiency levels in a manner consistent with other commercial HVAC equipment, thus eliminating the use of the common residential central AC and HP descriptors of SEER and HSPF.

In the March 2006 NOA, DOE considered the potential energy savings for efficiency levels higher than those in Addendum b for SPVU equipment and requested comments on the appropriateness of adopting Addendum b efficiency levels for SPVUs less than 65,000 Btu/h. 71 FR 12634, 12638, 12646. After the publication of the March 2006 NOA, DOE reexamined the amendments in EPACT 2005 to EPCA for commercial package air conditioning and heating equipment. As noted above, DOE determined that EPACT 2005 had revised the language in 42 U.S.C. 6313(a)(6)(A)(I,) to limit DOE's authority to adopt ASHRAE amendments for small, large, and very large commercial package air conditioning and heating equipment until after January 1, 2010.

SPVUs less than 65,000 Btu/h fall under the definition of small commercial package air conditioning and heating equipment. (42 U.S.C. 6311(8)(A)). Any SPVU with cooling capacities below 760,000 Btu/h would fit within the product categories listed in the clause that contains the January 1, 2010, date. (42 U.S.C. 6313(a)(6)(A)(i)) Accordingly, for the reasons stated above in Section II.D above, DOE has concluded that it cannot adopt the efficiency levels in Addendum b to ASHRAE/IESNA Standard 90.1–2004 for SPVUs less than 65,000 Btu/h, contrary to its stated intentions in the March 2006 NOA, because it is outside the scope of DOE's authority to adopt the ASHRAE/IESNA Standard 90.1 levels at this time for this equipment.

F. Single-Package Vertical Air Conditioners and Single-Package Vertical Heat Pumps Greater Than or Equal to 65,000 Btu/h and Less Than 240,000 Btu/h

In the March 2006 NOA, DOE stated that EPCA's energy efficiency standards for commercial packaged air conditioners and heat pumps implicitly cover SPVUs greater than or equal to 65,000 Btu/h and less than 240,000 Btu/h, and, specifically, the standards added to EPCA by EPACT 2005 apply to these larger units. DOE also stated that the rule under consideration in the March 2006 NOA only addressed SPVUs less than 65,000 Btu/h. 71 FR 12634, 12638.

DOE received several comments regarding its conclusion that SPVUs with larger capacities are covered under the standards specified by EPACT 2005. ARI disagreed with DOE's position, and argued that Addendum b to ASHRAE/IESNA Standard 90.1–2004 established a new product class for SPVUs in 2002 (three years before enactment of EPACT 2005); that DOE started a rulemaking on SPVUs well before EPACT 2005 was enacted into law according to the semi-annual regulatory agendas published in 2003 and 2004; and that the minimum efficiency standards for small, large, and very large commercial air conditioners established by EPACT 2005 were never intended to apply to SPVUs. (ARI, No. 26 at p. 5) Contrary to ARI's belief, the Joint Comment agreed with DOE's position as summarized in the March 2006 NOA and further argued that the EPACT 2005 standards for commercial unitary air-conditioning and heating equipment cover SPVUs with cooling capacities greater than or equal to 65,000 Btu/h. (Joint Comment, No. 27 at p. 4)

DOE is not persuaded by ARI's comment that the conclusion presented in the March 2006 NOA is incorrect and that SPVUs with cooling capacities greater than or equal to 65,000 Btu/h were not meant to be covered by EPACT 2005 levels and, instead, should be required to meet the lower standards found in Addendum b. The definition in EPACT 2005 for large commercial package air conditioning and heating equipment covers commercial packaged air-conditioning and heating equipment with cooling capacities greater than or equal to 65,000 Btu/h and less than 760,000 Btu/h, which would include SPVUs. Although the term SPVU itself is not used in EPCA, all SPVUs, regardless of cooling capacity, come within the definitions of small, large and very large commercial packaged air-conditioning and heating equipment. (42 U.S.C. 6311(8)(A)–(D). There is no language in EPCA to indicate that SPVUs are a separate product and should be subject to different energy conservation standards than in EPACT 2005. EPACT 2005 set energy efficiency standards for small, large and very large commercial package air conditioning and heat equipment, effective for equipment manufactured on or after January 1, 2010. (42 U.S.C. 6313(a)(7)–(9). Since EPACT 2005 set such standards, DOE must follow them. DOE cannot ignore the statutory standards. Only a legislative change could accomplish the result requested by ARI.

Bard commented that larger SPVUs (greater than 65,000 Btu/h) cannot be manufactured to meet the statutory standards in EPACT 2005 due to their geometry. (Bard, No. 29 at p. 4) In response, DOE notes that absent a legislative change, the only relief from these statutory standards is in the form of exception relief. The DOE Organization Act (DOEOA) authorizes DOE to grant exception relief. DOEOA section 504(a), 42 U.S.C. 7194(a). The DOEOA permits adjustments to any rule, regulation or order ''as may be necessary to prevent special hardship, inequity, or unfair distribution of burdens * * *'' *Id.* Manufacturers may apply for exception relief by following DOE's procedural regulations in 10 CFR Part 1003, Subparts B and C.

Accordingly, in today's final rule, consistent with the March 2006 NOA, DOE is affirming that the EPACT 2005 efficiency levels, as codified in § 431.97(b) of 10 CFR Part 431, apply to SPVUs greater than or equal to 65,000 Btu/h and less than 760,000 Btu/h.

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 (October 4, 1993). Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs.

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 rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, Proper Consideration of Small Entities in Agency Rulemaking, 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of General Counsel's Web site: *http://www.gc.doe.gov.*

DOE reviewed today's final rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. 68 FR 7990. This final rule does not impose any requirement on any entities, including small entities. Therefore, DOE certifies that today's action will not have a significant economic impact on a substantial number of small entities, and no regulatory flexibility analysis has been prepared.

C. Review Under the Paperwork Reduction Act of 1995

This rule imposes no new information or recordkeeping requirements. Accordingly, Office of Management and Budget 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

EPCA provides that if ASHRAE/IESNA Standard 90.1 is amended, the Secretary must adopt the amended efficiency requirements in ASHRAE/IESNA Standard 90.1 for covered equipment, unless the Secretary determines that certain conditions for requiring more stringent standards are met, or the amendment would increase the maximum allowable energy use or decrease the minimum required energy efficiency of a covered product or would result in the unavailability of a product

type in the United States. (42 U.S.C. 6313(a)(6)(A) and (B))

For the reasons discussed in II. above, DOE has concluded that it lacks authority to pursue higher standards for gas-fired instantaneous water heaters and large commercial packaged boilers. For small commercial packaged boilers with capacities greater than 300,000 Btu/h and less than or equal to 2.5 million British thermal units per hour, DOE is declining to adopt revised efficiency standards contained in the ASHRAE/IESNA Standard 90.1–1999 because they are not as stringent as those prescribed by EPCA. In addition, DOE has decided to conduct a separate rulemaking to consider whether standards at higher levels than those in the ASHRAE/IESNA Standard 90.1–1999 are warranted for packaged terminal air conditioners and packaged terminal heat pumps. Finally, DOE has concluded it does not have the authority to adopt, as uniform national standards, efficiency standards contained in Addenda f and Addenda b, respectively, to ASHRAE/IESNA Standard 90.1–2004 for three-phase commercial air conditioners and heat pumps with cooling capacities less than 65,000 British thermal units per hour, and single-package vertical air conditioners and single-package vertical heat pumps with cooling capacities less than 65,000 Btu/h.

Accordingly, to the extent that DOE lacks discretion to adopt the amended ASHRAE/IESNA Standard 90.1, NEPA does not apply. Moreover, because the final rule prescribing no new energy efficiency standards and would not change the environmental effect of compliance with 10 CFR Part 431, the Department has determined that this rule is, in any event, covered under the Categorical Exclusion found at paragraph A5 of Appendix A, 10 CFR Part 1021, which applies to rulemaking interpreting an existing rule or regulation with no change in environmental effect. Therefore, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and 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 developing such regulations. 65 FR 13735. DOE is prescribing no new standards and imposing no other requirements in this rulemaking. Therefore, this final rule does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

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 (February 7, 1996) imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. As a result of its analysis of the evidence and the law, DOE has decided not to prescribe amended standards for the equipment covered in this rulemaking. Because it is not imposing any requirement on any person or entity, Executive Order 12988 does not apply to this rulemaking.

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) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. For a proposed regulatory action likely to result in a rule that may cause expenditures 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 small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA (62 FR 12820) (also available at *http://www.gc.doe.gov*). This final rule prescribes no standards or other requirements, so these requirements under the 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 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 which might require compensation under the Fifth Amendment to the United States 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) requires agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by the Office of Management and Budget (OMB). OMB's guidelines were published at 67 FR 8452 (February 22, 2002); DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's notice 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

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001) requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use if the proposal were implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. This final rule is not a significant regulatory action under Executive Order 12866 or any successor order, and because DOE is imposing no requirements in this final rule, it will not have a significant adverse effect on supply, distribution, or use of energy, and has not been designated by the Administrator of OIRA as a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

L. Congressional Notification

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

IV. Approval of the Office of the Secretary

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

Issued in Washington, DC, on February 28, 2007.

Alexander A. Karsner,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. E7–3819 Filed 3–6–07; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–25261; Directorate Identifier 2006–CE–38–AD; Amendment 39–14971; AD 2007–05–10]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company Models 172R, 172S, 182S, 182T, T182T, 206H, and T206H Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA adopts a new airworthiness directive (AD) for certain Cessna Aircraft Company (Cessna) Models 172R, 172S, 182S, 182T, T182T, 206H, and T206H airplanes. This AD requires you to install Modification Kit MK172–25–10C or a steel lock rod/bar on both crew seat back cylinder lock assemblies. If a steel lock rod/bar has already been installed on the crew seat back cylinder lock assembly, no further action is required. If you have already installed Modification Kit MK172–25–10A or MK172–25–10B, this AD requires you to do an installation inspection and correct any discrepancies found. This AD results from reports of the crew seat back cylinder lock assembly failing at the aft end and other cylinder lock assemblies found cracked. We are issuing this AD to prevent the crew seat back cylinder lock assembly from bending, cracking, or failing. This failure could cause uncontrolled movement of the seat back, resulting in possible backward collapse during flight. Backward collapse of either crew seat back could result in an abrupt pitch-up if the affected crew member continues to hold on to the control yoke during this failure and could cause difficulty in exiting the airplane from an aft passenger seat after landing.

DATES: This AD becomes effective on April 11, 2007.

As of April 11, 2007, the Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation.

ADDRESSES: To get the service information identified in this AD, contact Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, KS 67277; telephone: (316) 517–5800; fax: (316) 942–9006.

To view the AD docket, go to the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001 or on the Internet at *http://dms.dot.gov*. The docket number is FAA–2006–25261; Directorate Identifier 2006–CE–38–AD.

FOR FURTHER INFORMATION CONTACT: Gary Park, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4123; facsimile: (316) 946–4107.

SUPPLEMENTARY INFORMATION:

Discussion

On August 3, 2006, we issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Cessna Models 172R, 172S, 182S, 182T, T182T, 206H, and T206H airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on August 9, 2006 (71 FR 45454). The NPRM proposed to require you to install a modification kit on both crew seat back cylinder lock assemblies, which replaces the cylinder lock with a new model cylinder lock, or install a steel lock rod/bar on both crew seat back cylinder lock assemblies. The NPRM also proposed to require you to do an installation inspection on previously installed modification kits and correct any discrepancies found.

Comments

We provided the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal and FAA's response to each comment:

Comment Issue No. 1: Need AD To Resolve Crew Seat Problem

Michael A. Zaite states that having flown a number of Cessna airplanes, he has experienced this problem first hand and supports the AD.

The Cessna Pilots Association (CPA) also supports the AD. The CPA states