

Rules and Regulations

Federal Register

Vol. 78, No. 136

Tuesday, July 16, 2013

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket Number EERE-2013-BT-STD-0020]

RIN 1904-AC98

Energy Conservation Program: Energy Conservation Standards for Residential Clothes Dryers and Room Air Conditioners

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

ACTION: Final rule.

SUMMARY: This final rule corrects the energy conservation standards for room air conditioners. In the direct final rule establishing amended energy conservation standards for residential clothes dryers and room air conditioners, published in the **Federal Register** on April 21, 2011, and the subsequent notices of effective date and compliance dates for the direct final rule and amendment of compliance dates, published on August 24, 2011, DOE erroneously specified the maximum cooling capacity for product class 5a for room air conditioners without reverse cycle and with louvered sides as 24,999 British thermal units per hour (Btu/h), and the minimum cooling capacity for product class 5b for room air conditioners without reverse cycle and with louvered sides as 25,000 Btu/h, rather than 27,999 Btu/h and 28,000 Btu/h, respectively. Additionally, DOE is fixing a printing error in the codification of the standards table for product classes 5a and 5b and 8a and 8b.

DATES: The effective date of this rule is August 15, 2013. Compliance with the standards established for room air conditioners in today's final rule is June 1, 2014.

ADDRESSES: The docket for this rulemaking is available for review at www.regulations.gov#!/docketDetail;D=EERE-2013-BT-STD-0020. The docket for the direct final rule establishing the standards for room air conditioners is also available for review at regulations.gov, including **Federal Register** notices, framework documents, public meeting attendee lists and transcripts, comments, and other supporting documents/materials. All documents in the docket are listed in the regulations.gov index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available. The regulations.gov Web page will contain simple instructions on how to access all documents, including public comments, in the docket.

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

FOR FURTHER INFORMATION CONTACT: Stephen L. Witkowski, 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. Telephone: (202) 586-7463. Email: Stephen.Witkowski@ee.doe.gov.

James Silvestro, Esq., U.S. Department of Energy, Office of General Counsel, GC-71, 1000 Independence Avenue SW., Washington, DC 20585-0121. Telephone: (202) 586-4224. Email: James.Silvestro@hq.doe.gov.

SUPPLEMENTARY INFORMATION: DOE published a direct final rule to establish amended energy conservation standards for residential clothes dryers and room air conditioners on April 21, 2011. 76 FR 22454.

EPCA (42 U.S.C. 6291 *et seq.*), as amended, grants DOE authority to issue a final rule (hereinafter referred to as a "direct final rule") establishing an energy conservation standard 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, which contains recommendations with respect to an energy conservation standard that are in accordance with the provisions of

42 U.S.C. 6295(o), 42 U.S.C. 6295(p)(4). EPCA requires a notice of proposed rulemaking (NOPR) that proposes an identical energy conservation standard to be published simultaneously with the direct final rule. *Id.* A public comment period of at least 110 days must be provided. *Id.* Not later than 120 days after issuance of the direct final rule, if one or more adverse comments or an alternative joint recommendation are 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. *Id.* If the Secretary makes such a determination, DOE must withdraw the direct final rule and proceed with the simultaneously published notice of proposed rulemaking. *Id.* DOE must publish in the **Federal Register** the reason why the direct final rule was withdrawn. *Id.*

During the rulemaking proceeding to develop amended standards for residential clothes dryers and room air conditioners, DOE received the "Agreement on Minimum Federal Efficiency Standards, Smart Appliances, Federal Incentives and Related Matters for Specified Appliances" (the "Joint Petition"), a comment submitted by groups representing manufacturers (the Association of Home Appliance Manufacturers (AHAM), Whirlpool Corporation (Whirlpool), General Electric Company (GE), Electrolux, LG Electronics, Inc. (LG), BSH Home Appliances (BSH), Alliance Laundry Systems (ALS), Viking Range, Sub-Zero Wolf, Friedrich A/C, U-Line, Samsung, Sharp Electronics, Miele, Heat Controller, AGA Marvel, Brown Stove, Haier, Fagor America, Airwell Group, Arcelik, Fisher & Paykel, Scotsman Ice, Indesit, Kuppersbusch, Kelon, and DeLonghi); energy and environmental advocates (American Council for an Energy Efficient Economy (ACEEE), Appliance Standards Awareness Project (ASAP), Natural Resources Defense Council (NRDC), Alliance to Save Energy (ASE), Alliance for Water Efficiency (AWE), Northwest Power and Conservation Council (NPCC), and Northeast Energy Efficiency Partnerships (NEEP)); and consumer groups (Consumer Federation of America (CFA) and the National Consumer Law Center (NCLC))

(collectively, the “Joint Petitioners”). This collective set of comments, which DOE refers to in this notice as the “Joint Petition”¹ or “Consensus Agreement” recommended specific energy conservation standards for residential clothes dryers and room air conditioners that, in the Joint Petitioners’ view, satisfied the EPCA requirements in 42 U.S.C. 6295(o). The Joint Petition also set forth compliance dates for these recommended standards of June 1, 2014 (room air conditioners) and January 1, 2015 (clothes dryers).

As discussed in the direct final rule, DOE determined that the relevant criteria under 42 U.S.C. 6295(o) were satisfied and adopted the amended energy conservation standards for clothes dryers and room air conditioners through the direct final rule, as authorized by 42 U.S.C. (p)(4). 76 FR 22454 (April 21, 2011). After considering comments received, DOE subsequently published a document in the **Federal Register** confirming adoption of the standards set forth in the direct final rule and announcing the effective date of the direct final rule. 76 FR 52856 (Aug. 24, 2011).

In a NOPR published in the **Federal Register** on April 8, 2013, DOE proposed to correct certain room air conditioner product class definitions that were inadvertently different than those that were provided in the Joint Petition and which were the basis of DOE’s analysis for the previous final rules. 78 FR 20842. Specifically, DOE proposed to correct the product class definitions for room air conditioners without reverse cycle and with louvered sides as follows:

Product class	Definition
5a	Without reverse cycle, with louvered sides, and 20,000 to 27,999 Btu/h.
5b	Without reverse cycle, with louvered sides, and 28,000 Btu/h or more.

DOE received two comments in response to the April 8, 2013 NOPR. Both the comment submitted by AHAM and the comment submitted jointly by ASAP, ASE, ACEEE, and NRDC (collectively, the “Joint Commenters”) were supportive of the proposed revisions to correct the product class definitions, such that the revised definitions are the same as those put forth in the Joint Petition. (AHAM, No. 2 at pp. 1–2;² Joint Commenters, No. 3 at p. 1) DOE adopts this correction to the product class definitions in today’s final rule.

Additionally, DOE is fixing a printing error in the codification of the standards table for product classes 5a and 5b and 8a and 8b. The direct final rule that was published in the **Federal Register** on April 21, 2011, showed, consistent with the Joint Petition, separate, but identical energy conservation standard levels for both product classes 5a and 5b and 8a and 8b. 76 FR 22454. However, in codification of the table, the energy efficiency ratio, effective from Oct. 1, 2000 to May 31, 2014, for product class 5a was combined with the ratio for product class 5b and the energy efficiency ratio, effective from Oct. 1, 2000 to May 31, 2014, for product class 8a was combined with the energy efficiency ratio for product class 8b, which resulted in a formatting error when published in the **Federal Register**. Today’s rule corrects that error by showing the standards for product classes 5a and 5b and 8a and 8b as separate cells in the table.

Procedural Issues and Regulatory Review

The regulatory reviews conducted for this rulemaking are identical to those set forth in the DOE’s direct final rule published on April 21, 2011 establishing amended energy conservation standards. 76 FR 22454. The amendments in the direct final rule become effective June 1, 2014.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Intergovernmental relations, Reporting and recordkeeping requirements, and Small businesses.

Issued in Washington, DC, on July 10, 2013.

Kathleen B. Hogan,
Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

For the reasons stated in the preamble, DOE amends part 430 of title 10 of the Code of Federal Regulations, as set forth below:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 2. Section 430.32 is amended by revising paragraph (b) to read as follows:

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

* * * * *

(b) *Room air conditioners.*

Product class	Energy efficiency ratio, effective from Oct. 1, 2000 to May 31, 2014	Combined energy efficiency ratio, effective as of June 1, 2014
1. Without reverse cycle, with louvered sides, and less than 6,000 Btu/h	9.7	11.0
2. Without reverse cycle, with louvered sides, and 6,000 to 7,999 Btu/h	9.7	11.0
3. Without reverse cycle, with louvered sides, and 8,000 to 13,999 Btu/h	9.8	10.9
4. Without reverse cycle, with louvered sides, and 14,000 to 19,999 Btu/h	9.7	10.7
5a. Without reverse cycle, with louvered sides, and 20,000 to 27,999 Btu/h	8.5	9.4
5b. Without reverse cycle, with louvered sides, and 28,000 Btu/h or more	8.5	9.0
6. Without reverse cycle, without louvered sides, and less than 6,000 Btu/h	9.0	10.0
7. Without reverse cycle, without louvered sides, and 6,000 to 7,999 Btu/h	9.0	10.0
8a. Without reverse cycle, without louvered sides, and 8,000 to 10,999 Btu/h	8.5	9.6
8b. Without reverse cycle, without louvered sides, and 11,000 to 13,999 Btu/h	8.5	9.5
9. Without reverse cycle, without louvered sides, and 14,000 to 19,999 Btu/h	8.5	9.3
10. Without reverse cycle, without louvered sides, and 20,000 Btu/h or more	8.5	9.4

¹ DOE Docket No. EERE–2007–BT–STD–0010, Comment 35.

² A notation in the form “AHAM, No. 2 at pp. 1–2” identifies a written comment: (1) Made by the

Association of Home Appliance Manufacturers; (2) recorded in document number 2 that is filed in the docket of the residential clothes dryer and room air conditioner energy conservation standards

rulemaking (Docket No. EERE–2013–BT–STD–0020) and available for review at www.regulations.gov; and (3) that appears on pages 1–2.

Product class	Energy efficiency ratio, effective from Oct. 1, 2000 to May 31, 2014	Combined energy efficiency ratio, effective as of June 1, 2014
11. With reverse cycle, with louvered sides, and less than 20,000 Btu/h	9.0	9.8
12. With reverse cycle, without louvered sides, and less than 14,000 Btu/h	8.5	9.3
13. With reverse cycle, with louvered sides, and 20,000 Btu/h or more	8.5	9.3
14. With reverse cycle, without louvered sides, and 14,000 Btu/h or more	8.0	8.7
15. Casement-Only	8.7	9.5
16. Casement-Slider	9.5	10.4

* * * * *
 [FR Doc. 2013-17005 Filed 7-15-13; 8:45 am]
BILLING CODE 6450-01-P

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 121 and 125

RIN 3245-AG22

Small Business Subcontracting

AGENCY: U.S. Small Business Administration.

ACTION: Final rule.

SUMMARY: The U.S. Small Business Administration (SBA or Agency) is amending its regulations governing small business subcontracting to implement provisions of the Small Business Jobs Act of 2010. In particular, this rule adds a provision providing that for a “covered contract” (a contract for which a small business subcontracting plan is required), a prime contractor must notify the contracting officer in writing whenever the prime contractor does not utilize a small business subcontractor used in preparing its bid or proposal during contract performance. This rule also adds a provision requiring a prime contractor to notify a contracting officer in writing whenever the prime contractor reduces payments to a small business subcontractor or when payments to a small business subcontractor are 90 days or more past due. In addition, this rule clarifies that the contracting officer is responsible for monitoring and evaluating small business subcontracting plan performance. The rule also clarifies which subcontracts must be included in subcontracting data reporting, which subcontracts should be excluded, and the way subcontracting data is reported. The rule also makes changes to update its subcontracting regulations, including changing subcontracting plan thresholds and referencing the electronic subcontracting reporting system (eSRS). Further, the rule adds a provision to the regulations which addresses subcontracting plan requirements and credit towards subcontracting goals in

connection with multiple award multi-agency, Federal Supply Schedule, Multiple Award Schedule and government-wide acquisition indefinite delivery, indefinite quantity contracts.

DATES: *Effective Date:* This rule will be effective August 15, 2013.

FOR FURTHER INFORMATION CONTACT: Dean Koppel, U.S. Small Business Administration, Office of Government Contracting, 409 Third Street SW., 8th Floor, Washington, DC 20416, (202) 205-7322, *dean.koppel@sba.gov*.

SUPPLEMENTARY INFORMATION: On October 5, 2011, SBA published in the **Federal Register** a proposed rule to implement provisions of the Jobs Act which pertain to small business subcontracting. 76 FR 61626. Section 1321 of the Jobs Act requires the SBA Administrator, in consultation with the Administrator of the Office of Federal Procurement Policy, to publish regulations establishing policies for subcontracting compliance, including assignment of compliance responsibilities between contracting offices, small business offices, and program offices.

The proposed rule called for a 60-day comment period, with comments to be received by SBA by December 5, 2011. SBA published a notice in the **Federal Register** on December 1, 2011, reopening the comment period for an additional 30 days, until to January 6, 2012. 76 FR 74749.

The proposed rule contained changes to SBA’s size regulations (Part 121) and the regulations governing SBA’s government contracting programs (Part 125). SBA received 105 written comments during the comment period. Many of these comments were lengthy and discussed numerous proposed amendments. SBA has made changes in this final rule in response to comments received to its notice of proposed rulemaking. With the exception of comments which are beyond the scope of this rule, or which did not set forth any rationale or make suggestions, SBA discusses and responds fully to all of the comments below.

Summary of Comments and SBA’s Responses

Part 121

SBA received one comment on proposed § 121.404(g)(3)(ii), which added a provision permitting a contracting officer to require a subcontracting plan if a prime contractor’s size status changes from small to other than small as a result of a size recertification. The commenter recommended adding that size status at time of contract award controls subcontracting plan requirements or clarifying how a subcontracting plan must change if a former small business subcontractor reclassifies. Section 121.404(g)(3)(ii) provides that recertification does not change the terms and conditions of a contract, including the requirement for a subcontracting plan, and otherwise size is determined at time of offer and will not change during performance. However, under the final rule a contracting officer has the discretion to require a subcontracting plan if size status changes as a result of recertification.

Part 125

The proposed rule revised § 125.3(a) to update the subcontracting plan thresholds, which were increased pursuant to the government-wide procurement program inflationary adjustments required by Section 807 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005. Public Law 108-375; *see also* 75 FR 53129 (Aug. 30, 2010). One commenter recommended removing the reference to “a public facility” in § 125.3(a) because the term is not defined in the Code of Federal Regulations. SBA does not adopt this comment. It is up to the contracting officer to determine whether the term applies to a particular acquisition. Further, this term comes from Section 8(d) of the Small Business Act, so removing it would require legislative action.

The proposed rule added § 125.3(a)(1) to define subcontract in order to clarify which subcontracts must be included when reporting on small business subcontracting performance. SBA