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## DEPARTMENT OF ENERGY

### 10 CFR Parts 429 and 430

[EERE-2016-BT-TP-0029]

RIN 1904-AD71

#### Energy Conservation Program: Test Procedures for Central Air Conditioners and Heat Pumps

**AGENCY:** Office of the General Counsel, Department of Energy.

**ACTION:** Notification of administrative stay.

**SUMMARY:** The Department of Energy (DOE) has postponed the effectiveness of certain provisions of a final rule, published in the *Federal Register* on January 5, 2017, that amends the test procedure and specific certification, compliance, and enforcement provisions for central air conditioners and heat pumps. Specifically, DOE postponed the effectiveness of two provisions of a recently issued rule that require outdoor unit models to be tested under the outdoor unit with no match if they meet either of the two following conditions: The outdoor unit is approved for use with a refrigerant that has a 95 °F midpoint saturation absolute pressure that is +/- 18 percent of the 95 °F saturation absolute pressure for HCFC-22; or the unit is shipped requiring the addition of more than two pounds of refrigerant to meet the charge required for testing under the rule and the factory charge is not equal to or greater than 70% of the outdoor unit internal volume times the liquid density of refrigerant at 95 °F.

**DATES:** As of July 3, 2017, the effectiveness of certain provisions of 10 CFR 429.16(a)(3)(i) was postponed under 5 U.S.C. 705.

**FOR FURTHER INFORMATION CONTACT:** Mr. Pete Cochran, U.S. Department of Energy, Office of the General Counsel, 1000 Independence Ave. SW., Washington, DC 20585-0121. Phone:

(202) 586-9496. Email: *Peter.Cochran@hq.doe.gov*.

#### SUPPLEMENTARY INFORMATION:

##### Background

On January 5, 2017, DOE published a final rule (January 2017 final rule) amending the test procedure and certification, compliance, and enforcement provisions for central air conditioners and heat pumps (CAC/HP). 82 FR 1426. Among other changes, the January 2017 final rule added a paragraph at 10 CFR 429.16(a)(3)(i) that requires, among other things: (1) If any of the refrigerants approved for use with an outdoor unit model is HCFC-22 or has a 95 °F midpoint saturation absolute pressure that is +/- 18 percent of the 95 °F saturation absolute pressure for HCFC-22, or if there are no refrigerants designated as approved for use, a manufacturer to determine represented values (including SEER, EER, HSPF, SEER2, EER2, HSPF2, PW, OFF, cooling capacity, and heating capacity, as applicable) for, at a minimum, an outdoor unit with no match; and (2) if a model of outdoor unit is not charged with a specified refrigerant from the point of manufacture or if the unit is shipped requiring the addition of more than two pounds of refrigerant to meet the charge required for testing per section 2.2.5 of appendix M or appendix M1 (unless either (a) the factory charge is equal to or greater than 70% of the outdoor unit internal volume times the liquid density of refrigerant at 95 °F or (b) an A2L refrigerant is approved for use and listed in the certification report), a manufacturer to determine represented values (including SEER, EER, HSPF, SEER2, EER2, HSPF2, PW, OFF, cooling capacity, and heating capacity, as applicable) for, at a minimum, an outdoor unit with no match.

The original effective date of the January 2017 final rule was February 6, 2017. Subsequently, DOE delayed the effective date of the January 2017 final rule until March 21, 2017 (82 FR 8985), and then further delayed the effective date until July 5, 2017 (82 FR 14425; 82 FR 15457).

On March 3, 2017, Johnson Controls, Inc. (JCI) filed a petition for review of the January 2017 final rule in the United States Court of Appeals for the Seventh Circuit. JCI manufactures outdoor units with an approved refrigerant that has a

95 °F midpoint saturation absolute pressure that is +/- 18 percent of the 95 °F saturation absolute pressure for HCFC-22. These same models are also shipped requiring the addition of more than two pounds of refrigerant to meet the charge required for testing per section 2.2.5 of appendix M or appendix M1, and the factory charge is not equal to or greater than 70% of the outdoor unit internal volume times the liquid density of refrigerant at 95 °F. Thus, under either of the two provisions at 10 CFR 429.16(a)(3)(i), these models would need to be tested as outdoor units with no match under appendix M or M1.

On May 31, 2017, JCI requested that DOE grant it an administrative stay pending judicial review of two elements of the January 2017 final rule challenged in the Seventh Circuit case: The requirements that a manufacturer determine represented values (including SEER, EER, HSPF, SEER2, EER2, HSPF2, PW, OFF, cooling capacity, and heating capacity, as applicable) for, at a minimum, an outdoor unit with no match, when testing outdoor unit models that are either: (1) Approved for a refrigerant that has a 95 °F midpoint saturation absolute pressure that is +/- 18 percent of the 95 °F saturation absolute pressure for HCFC-22; or (2) shipped requiring the addition of more than two pounds of refrigerant to meet the charge required for testing per section 2.2.5 of appendix M or Appendix M1, and the factory charge is not equal to or greater than 70% of the outdoor unit internal volume times the liquid density of refrigerant at 95 °F. On June 6, 2017, JCI requested that DOE hold its stay request in abeyance, noting that DOE's June 2, 2017, grant of an 180-day extension of the date by which JCI must comply with the two provisions specified above obviated the need for an immediate grant of an administrative stay.

#### Administrative Stay and Effectiveness

Under the Administrative Procedure Act (5 U.S.C. 705), “[w]hen an agency finds that justice so requires, it may postpone the effective date of action taken by it, pending judicial review.” The result of the issuance of a stay is to leave in place the status quo.

DOE has determined that, during the pendency of the lawsuit brought by JCI, it is in the interests of justice to postpone the effectiveness of the

provisions of the January 2017 final rule that require a manufacturer to determine represented values (including SEER, EER, HSPF, SEER2, EER2, HSPF2, PW, OFF, cooling capacity, and heating capacity, as applicable) for, at a minimum, an outdoor unit with no match, when testing outdoor unit models that are either: (1) Approved for a refrigerant that has a 95 °F midpoint saturation absolute pressure that is +/- 18 percent of the 95 °F saturation absolute pressure for HCFC-22; or (2) shipped requiring the addition of more than two pounds of refrigerant to meet the charge required for testing per section 2.2.5 of appendix M or appendix M1, and the factory charge is not equal to or greater than 70% of the outdoor unit internal volume times the liquid density of refrigerant at 95 °F. DOE has determined to postpone the effectiveness of these provisions based on JCI's submissions to DOE that raise concerns about significant potential impacts on JCI, and further to ensure all manufacturers of central air conditioners and heat pumps have the same relief granted to JCI.

Issued in Washington, DC, on July 3, 2017.

**George Fibbe,**

*Deputy General Counsel for Litigation,  
Regulation and Enforcement.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 97

[Docket No. 31139; Amdt. No. 3751]

#### Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This rule establishes, amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures (ODPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe

and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** This rule is effective July 13, 2017. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 13, 2017.

**ADDRESSES:** Availability of matters incorporated by reference in the amendment is as follows:

#### For Examination

1. U.S. Department of Transportation, Docket Ops-M30, 1200 New Jersey Avenue SE., West Bldg., Ground Floor, Washington, DC 20590-0001.

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

#### Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center at [nfdc.faa.gov](http://nfdc.faa.gov) to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

#### FOR FURTHER INFORMATION CONTACT:

Thomas J. Nichols, Flight Procedure Standards Branch (AFS-420), Flight Technologies and Programs Divisions, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) Telephone: (405) 954-4164.

**SUPPLEMENTARY INFORMATION:** This rule amends Title 14 of the Code of Federal Regulations, part 97 (14 CFR part 97), by establishing, amending, suspending, or removes SIAPs, Takeoff Minimums and/or ODPs. The complete regulatory description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA

form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part § 97.20. The applicable FAA forms are FAA Forms 8260-3, 8260-4, 8260-5, 8260-15A, and 8260-15B when required by an entry on 8260-15A.

The large number of SIAPs, Takeoff Minimums and ODPs, their complex nature, and the need for a special format make publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs, Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure, and the amendment number.

#### Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPs, Takeoff Minimums and/or ODPs as identified in the amendatory language for part 97 of this final rule.

#### The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as Amended in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPs and Takeoff Minimums and ODPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and