Public Law 100-12
100th Congress

An Act

To amend the Energy Policy and Conservation Act with respect to energy conservation standards for appliances.

Mar. 17, 1987
[S. 83]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

National Appliance Energy Conservation Act of 1987. 42 USC 6201 note.

SECTION 1. SHORT TITLE.

This Act may be referred to as the "National Appliance Energy Conservation Act of 1987".

SEC. 2. DEFINITIONS.

(a) ENERGY CONSERVATION STANDARD.—Section 321(a)(6) of the Energy Policy and Conservation Act (42 U.S.C. 6291(a)(6)) is amended to read as follows:

"(6) The term 'energy conservation standard' means—

"(A) a performance standard which prescribes a minimum level of energy efficiency or a maximum quantity of energy use for a covered product, determined in accordance with test procedures prescribed under section 323; or

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"(B) a design requirement for the products specified in paragraphs (6), (7), (8), (10), and (13) of section 322(a); and

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includes any other requirements which the Secretary may prescribe under section 325(o)."

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(b) NEW DEFINITIONS.—Section 321(a) of the Energy Policy and Conservation Act (42 U.S.C. 6291(a)) is amended by adding at the end the following paragraphs:

"(19) The term 'AV' is the adjusted volume for refrigerators, refrigerator-freezers, and freezers, as defined in the applicable test procedure prescribed under section 323.

"(20) The term 'annual fuel utilization efficiency' means the efficiency descriptor for furnaces and boilers, determined using test procedures prescribed under section 323 and based on the assumption that all—

"(A) weatherized warm air furnaces or boilers are located out-of-doors;

"(B) warm air furnaces which are not weatherized are located indoors and all combustion and ventilation air is admitted through grills or ducts from the outdoors and does not communicate with air in the conditioned space; and

"(C) boilers which are not weatherized are located within the heated space.

"(21) The term 'central air conditioner' means a product, other than a packaged terminal air conditioner, which—

"(A) is powered by single phase electric current;

"(B) is air-cooled;

"(C) is rated below 65,000 Btu per hour;

"(D) is not contained within the same cabinet as a furnace the rated capacity of which is above 225,000 Btu per hour; and

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"(E) is a heat pump or a cooling only unit.

"(22) The term 'efficiency descriptor' means the ratio of the useful output to the total energy input, determined using the test procedures prescribed under section 323 and expressed for the following products in the following terms:

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"(A) For furnaces and direct heating equipment, annual fuel utilization efficiency.

"(B) For room air conditioners, energy efficiency ratio.

"(C) For central air conditioning and central air conditioning heat pumps, seasonal energy efficiency ratio.

"(D) For water heaters, energy factor.

"(E) For pool heaters, thermal efficiency.

"(23) The term 'furnace' means a product which utilizes only single-phase electric current, or single-phase electric current or DC current in conjunction with natural gas, propane, or home heating oil, and which—

"(A) is designed to be the principal heating source for the living space of a residence;

"(B) is not contained within the same cabinet with a central air conditioner whose rated cooling capacity is above 65,000 Btu per hour;

"(C) is an electric central furnace, electric boiler, forced-air central furnace, gravity central furnace, or low pressure steam or hot water boiler; and

"(D) has a heat input rate of less than 300,000 Btu per hour for electric boilers and low pressure steam or hot water boilers and less than 225,000 Btu per hour for forced-air central furnaces, gravity central furnaces, and electric central furnaces.

"(24) The terms 'heat pump' or 'reverse cycle' mean a product, other than a packaged terminal heat pump, which—

"(A) consists of one or more assemblies;

"(B) is powered by single phase electric current;

"(C) is rated below 65,000 Btu per hour;

"(D) utilizes an indoor conditioning coil, compressors, and refrigerant-to-outdoor-air heat exchanger to provide air heating; and

"(E) may also provide air cooling, dehumidifying, humidifying circulating, and air cleaning.

"(25) The term 'pool heater' means an appliance designed for heating nonpotable water contained at atmospheric pressure, including heating water in swimming pools, spas, hot tubs and similar applications.

"(26) The term 'thermal efficiency of pool heaters' means a measure of the heat in the water delivered at the heater outlet divided by the heat input of the pool heater as measured under test conditions specified in section 2.8.1 of the American National Standard for Gas Fired Pool Heaters, Z21.56-1986, or as may be prescribed by the Secretary.

"(27) The term 'water heater' means a product which utilizes oil, gas, or electricity to heat potable water for use outside the heater upon demand, including—

"(A) storage type units which heat and store water at a thermostatically controlled temperature, including gas storage water heaters with an input of 75,000 Btu per hour or less, oil storage water heaters with an input of 105,000 Btu

per hour or less, and electric storage water heaters with an input of 12 kilowatts or less;

"(B) instantaneous type units which heat water but contain no more than one gallon of water per 4,000 Btu per hour of input, including gas instantaneous water heaters with an input of 200,000 Btu per hour or less, oil instantaneous water heaters with an input of 210,000 Btu per hour or less, and electric instantaneous water heaters with an input of 12 kilowatts or less; and

"(C) heat pump type units, with a maximum current rating of 24 amperes at a voltage no greater than 250 volts, which are products designed to transfer thermal energy from one temperature level to a higher temperature level for the purpose of heating water, including all ancillary equipment such as fans, storage tanks, pumps, or controls necessary for the device to perform its function.

"(28) The term 'weatherized warm air furnace or boiler' means a furnace or boiler designed for installation outdoors, approved for resistance to wind, rain, and snow, and supplied with its own venting system."

SEC. 3. COVERAGE.

Section 322(a) of the Energy Policy and Conservation Act (42 U.S.C. 6292(a)) is amended to read as follows:

"COVERAGE

"SEC. 322. (a) IN GENERAL.—The following consumer products, excluding those consumer products designed solely for use in recreational vehicles and other mobile equipment, are covered products:

"(1) Refrigerators, refrigerator-freezers, and freezers which can be operated by alternating current electricity, excluding—

"(A) any type designed to be used without doors; and

"(B) any type which does not include a compressor and condenser unit as an integral part of the cabinet assembly.

"(2) Room air conditioners.

"(3) Central air conditioners and central air conditioning heat pumps.

"(4) Water heaters.

"(5) Furnaces.

"(6) Dishwashers.

"(7) Clothes washers.

"(8) Clothes dryers.

"(9) Direct heating equipment.

"(10) Kitchen ranges and ovens.

"(11) Pool heaters.

"(12) Television sets.

"(13) Any other type of consumer product which the Secretary classifies as a covered product under subsection (b)."

SEC. 4. TEST PROCEDURES.

Section 323 of the Energy Policy and Conservation Act (42 U.S.C. 6293) is amended to read as follows:

"TEST PROCEDURES

"SEC. 323. (a) GENERAL RULE.—All test procedures and related determinations prescribed or made by the Secretary with respect to any covered product (or class thereof) which are in effect on the date of enactment of the National Appliance Energy Conservation Act of 1987 shall remain in effect until the Secretary amends such test procedures and related determinations under subsection (b).

"(b) AMENDED AND NEW PROCEDURES.—(1)(A) The Secretary may amend test procedures with respect to any covered product if the Secretary determines that amended test procedures would more accurately or fully comply with the requirements of paragraph (3).

"(B) The Secretary may, in accordance with the requirements of this subsection, prescribe test procedures for any consumer product classified as a covered product under section 322(b).

42 USC 6292.

"(C) The Secretary shall direct the National Bureau of Standards to assist in developing new or amended test procedures.

Federal Register, publication.

"(2) If the Secretary determines, on his own behalf or in response to a petition by any interested person, that a test procedure should be prescribed or amended, the Secretary shall promptly publish in the Federal Register proposed test procedures and afford interested persons an opportunity to present oral and written data, views, and arguments with respect to such procedures. The comment period shall not be less than 60 days and may be extended for good cause shown to not more than 270 days. In prescribing or amending a test procedure, the Secretary shall take into account such information as the Secretary determines relevant to such procedure, including technological developments relating to energy use or energy efficiency of the type (or class) of covered products involved.

"(3) Any test procedures prescribed or amended under this section shall be reasonably designed to produce test results which measure energy efficiency, energy use, or estimated annual operating cost of a covered product during a representative average use cycle or period of use, as determined by the Secretary, and shall not be unduly burdensome to conduct.

"(4) If the test procedure is a procedure for determining estimated annual operating costs, such procedure shall provide that such costs shall be calculated from measurements of energy use in a representative average use cycle or period of use, as determined by the Secretary, and from representative average unit costs of the energy needed to operate such product during such cycle. The Secretary shall provide information to manufacturers with respect to representative average unit costs of energy.

"(c) RESTRICTION ON CERTAIN REPRESENTATIONS.—(1) No manufacturer, distributor, retailer, or private labeler may make any representation—

"(A) in writing (including a representation on a label); or

"(B) in any broadcast advertisement,

with respect to the energy use or efficiency of a covered product to which a test procedure is applicable under subsection (a) or the cost of energy consumed by such product, unless such product has been tested in accordance with such test procedure and such representation fairly discloses the results of such testing.

Effective date.

"(2) Effective 180 days after an amended or new test procedure applicable to a covered product is prescribed under subsection (b), no manufacturer, distributor, retailer, or private labeler may make any representation—

"(A) in writing (including a representation on a label); or

"(B) in any broadcast advertisement,

with respect to energy use or efficiency of such product or cost of energy consumed by such product, unless such product has been tested in accordance with such amended or new test procedures and such representation fairly discloses the results of such testing.

"(3) On the petition of any manufacturer, distributor, retailer, or private labeler, filed not later than the 60th day before the expiration of the period involved, the 180-day period referred to in paragraph (2) may be extended by the Secretary with respect to the petitioner (but in no event for more than an additional 180 days) if the Secretary determines that the requirements of paragraph (2) would impose an undue hardship on such petitioner.

"(d) CASE IN WHICH TEST PROCEDURE IS NOT REQUIRED.—(1) The Secretary is not required to publish and prescribe test procedures for a covered product (or class thereof) if the Secretary determines, by rule, that test procedures cannot be developed which meet the requirements of subsection (b)(3) and publishes such determination in the Federal Register, together with the reasons therefor. Federal Register, publication.

"(2) For purposes of section 327, a determination under paragraph (1) with respect to any covered product or class shall have the same effect as would a standard prescribed for a covered product (or class). *Post*, p. 117.

"(e) AMENDMENT OF STANDARD.—(1) In the case of any amended test procedure which is prescribed pursuant to this section, the Secretary shall determine, in the rulemaking carried out with respect to prescribing such procedure, to what extent, if any, the proposed test procedure would alter the measured energy efficiency or measured energy use of any covered product as determined under the existing test procedure.

"(2) If the Secretary determines that the amended test procedure will alter the measured efficiency or measured use, the Secretary shall amend the applicable energy conservation standard during the rulemaking carried out with respect to such test procedure. In determining the amended energy conservation standard, the Secretary shall measure, pursuant to the amended test procedure, the energy efficiency or energy use of a representative sample of covered products that minimally comply with the existing standard. The average of such energy efficiency or energy use levels determined under the amended test procedure shall constitute the amended energy conservation standard for the applicable covered products.

"(3) Models of covered products in use before the date on which the amended energy conservation standard becomes effective (or revisions of such models that come into use after such date and have the same energy efficiency or energy use characteristics) that comply with the energy conservation standard applicable to such covered products on the day before such date shall be deemed to comply with the amended energy conservation standard.

"(4) The Secretary's authority to amend energy conservation standards under this subsection shall not affect the Secretary's obligation to issue final rules as described in section 325." *Infra.*

SEC. 5. ENERGY CONSERVATION STANDARDS.

Section 325 of the Energy Policy and Conservation Act (42 U.S.C. 6295) is amended to read as follows:

"ENERGY CONSERVATION STANDARDS

"SEC. 325. (a) PURPOSES.—The purposes of this section are to—

"(1) provide Federal energy conservation standards applicable to covered products; and

"(2) authorize the Secretary to prescribe amended or new energy conservation standards for each type (or class) of covered product.

"(b) STANDARDS FOR REFRIGERATORS, REFRIGERATOR-FREEZERS, AND FREEZERS.—(1) The following is the maximum energy use allowed in kilowatt hours per year for the following products (other than those described in paragraph (2)) manufactured on or after January 1, 1990:

	Energy Standards Equations
"Refrigerators and Refrigerator-Freezers with manual defrost	16.3 AV+316
Refrigerator-Freezers—partial automatic defrost	21.8 AV+429
Refrigerator-Freezers—automatic defrost with:	
Top mounted freezer without ice	23.5 AV+471
Side mounted freezer without ice	27.7 AV+488
Bottom mounted freezer without ice	27.7 AV+488
Top mounted freezer with through the door ice service	26.4 AV+535
Side mounted freezer with through the door ice	30.9 AV+547
Upright Freezers with:	
Manual defrost	10.9 AV+422
Automatic defrost	16.0 AV+623
Chest Freezers and all other freezers	14.8 AV+223

"(2) The standards described in paragraph (1) do not apply to refrigerators and refrigerator-freezers with total refrigerated volume exceeding 39 cubic feet or freezers with total refrigerated volume exceeding 30 cubic feet.

Regulations.

"(3)(A)(i) The Secretary shall publish a proposed rule, no later than July 1, 1988, to determine if the standards established by paragraph (1) should be amended. The Secretary shall publish a final rule no later than July 1, 1989, which shall contain such amendment, if any, and provide that the amendment shall apply to products manufactured on or after January 1, 1993. If such a final rule is not published before January 1, 1990, any amendment of such standards shall apply to products manufactured on or after January 1, 1995. Nothing in this subsection provides any justification or defense for a failure by the Secretary to comply with the nondiscretionary duty to publish final rules by the dates stated in this paragraph.

Effective date.

"(ii)(I) If the Secretary does not publish a final rule before January 1, 1990, relating to the revision of the energy conservation standards for refrigerators, refrigerator-freezers and freezers, the regulations which established standards for such products and were promulgated by the California Energy Commission on December 14, 1984, to be effective January 1, 1992 (or any amendments to such standards that are not more stringent than the standards in the original regulations), shall apply in California to such products, effective beginning January 1, 1993, and shall not be preempted after such effective date by any energy conservation standard established in this section or prescribed, on or after January 1, 1990, under this section.

State and local governments.

"(II) If the Secretary does not publish a final rule before January 1, 1992, relating to the revision of the energy conservation standards for refrigerators, refrigerator-freezers and freezers, State regulations which apply to such products manufactured on or after

January 1, 1995, shall apply to such products until the effective date of a rule issued under this section with respect to such products.

"(B) After the publication of a final rule under subparagraph (A), the Secretary shall publish a final rule no later than five years after the date of publication of the previous final rule. The Secretary shall determine in such rule whether to amend the standards in effect for the products described in paragraph (1). Regulations.

"(C) Any amendment prescribed under subparagraph (B) shall apply to products manufactured after a date which is five years after—

"(i) the effective date of the previous amendment; or

"(ii) if the previous final rule did not amend the standards, the earliest date by which the previous amendment could have been effective;

except that in no case may any amended standard apply to products manufactured within three years after publication of the final rule establishing such amended standard.

"(c) STANDARDS FOR ROOM AIR CONDITIONERS.—(1) The energy efficiency ratio of room air conditioners shall be not less than the following for products manufactured on or after January 1, 1990:

"Product Class:	Ratio
Without Reverse Cycle and With Louvered Sides:	
Less than 6,000 Btu	8.0
6,000 to 7,999 Btu	8.5
8,000 to 13,999 Btu	9.0
14,000 to 19,999 Btu	8.8
20,000 and more Btu	8.2
Without Reverse Cycle and Without Louvered Sides:	
Less than 6,000 Btu	8.0
6,000 to 7,999 Btu	8.5
8,000 to 13,999 Btu	8.5
14,000 to 19,999 Btu	8.5
20,000 and more Btu	8.2
With Reverse Cycle and With Louvered Sides	8.5
With Reverse Cycle, Without Louvered Sides	8.0

"(2)(A) The Secretary shall publish a final rule no later than January 1, 1992, to determine if the standards established under paragraph (1) should be amended. Such rule shall contain such amendment, if any, and provide that the amendment shall apply to products manufactured on or after January 1, 1995. Regulations.

"(B) After January 1, 1992, the Secretary shall publish a final rule no later than five years after the date of publication of a previous final rule. The Secretary shall determine in such rule whether to amend the standards in effect for room air conditioners. Regulations.

"(C) Any amendment prescribed under subparagraph (B) shall apply to products manufactured after a date which is five years after—

"(i) the effective date of the previous amendment; or

"(ii) if the previous final rule did not amend the standards, the earliest date by which a previous amendment could have been effective;

except that in no case may any amended standard apply to products manufactured within three years after publication of the final rule establishing such amended standard.

"(d) STANDARDS FOR CENTRAL AIR CONDITIONERS AND HEAT PUMPS.—(1) The seasonal energy efficiency ratio of central air conditioners and central air conditioning heat pumps shall be not less than the following:

"(A) Split Systems: 10.0 for products manufactured on or after January 1, 1992.

"(B) Single Package Systems: 9.7 for products manufactured on or after January 1, 1993.

"(2) The heating seasonal performance factor of central air conditioning heat pumps shall be not less than the following:

"(A) Split Systems: 6.8 for products manufactured on or after January 1, 1992.

"(B) Single Package Systems: 6.6 for products manufactured on or after January 1, 1993.

Regulations. "(3)(A) The Secretary shall publish a final rule no later than January 1, 1994, to determine whether the standards established under paragraph (1) should be amended. Such rule shall contain such amendment, if any, and provide that the amendment shall apply to products manufactured on or after January 1, 1999. The Secretary shall publish a final rule no later than January 1, 1994, to determine whether the standards established under paragraph (2) shall be amended. Such rule shall contain such amendment, if any, and provide that the amendment shall apply to products manufactured on or after January 1, 2002.

Regulations. "(B) The Secretary shall publish a final rule after January 1, 1994, and no later than January 1, 2001, to determine whether the standards in effect for central air conditioners and central air conditioning heat pumps should be amended. Such rule shall provide that any amendment shall apply to products manufactured on or after January 1, 2006.

"(e) STANDARDS FOR WATER HEATERS; POOL HEATERS; DIRECT HEATING EQUIPMENT.—(1) The energy factor of water heaters shall be not less than the following for products manufactured on or after January 1, 1990:

"(A) Gas Water Heater:	.62−(.0019 x Rated Storage Volume in gallons)
"(B) Oil Water Heater:	.59−(.0019 x Rated Storage Volume in gallons)
"(C) Electric Water Heater:	.95−(.00132 x Rated Storage in gallons)

"(2) The thermal efficiency of pool heaters manufactured on or after January 1, 1990, shall not be less than 78 percent.

"(3) The efficiencies of gas direct heating equipment manufactured on or after January 1, 1990, shall be not less than the following:

"Wall	
Fan type	
Up to 42,000 Btu/hour	73% AFUE
Over 42,000 Btu/hour	74% AFUE
Gravity type	
Up to 10,000 Btu/hour	59% AFUE
Over 10,000 Btu/hour up to 12,000 Btu/hour	60% AFUE
Over 12,000 Btu/hour up to 15,000 Btu/hour	61% AFUE
Over 15,000 Btu/hour up to 19,000 Btu/hour	62% AFUE
Over 19,000 Btu/hour up to 27,000 Btu/hour	63% AFUE
Over 27,000 Btu/hour up to 46,000 Btu/hour	64% AFUE
Over 46,000 Btu/hour	65% AFUE
"Floor	
Up to 37,000 Btu/hour	56% AFUE
Over 37,000 Btu/hour	57% AFUE

"Room

Up to 18,000 Btu/hour	57% AFUE
Over 18,000 Btu/hour up to 20,000 Btu/hour	58% AFUE
Over 20,000 Btu/hour up to 27,000 Btu/hour	63% AFUE
Over 27,000 Btu/hour up to 46,000 Btu/hour	64% AFUE
Over 46,000 Btu/hour	65% AFUE

"(4)(A) The Secretary shall publish final rules no later than January 1, 1992, to determine whether the standards established by paragraphs (1), (2), or (3) for water heaters, pool heaters, and direct heating equipment should be amended. Such rule shall provide that any amendment shall apply to products manufactured on or after January 1, 1995. Regulations.

"(B) The Secretary shall publish a final rule no later than January 1, 2000, to determine whether standards in effect for such products should be amended. Such rule shall provide that any such amendment shall apply to products manufactured on or after January 1, 2005. Regulations.

"(f) STANDARDS FOR FURNACES.—(1) Furnaces (other than furnaces designed solely for installation in mobile homes) manufactured on or after January 1, 1992, shall have an annual fuel utilization efficiency of not less than 78 percent, except that— Mobile homes.

"(A) boilers (other than gas steam boilers) shall have an annual fuel utilization efficiency of not less than 80 percent and gas steam boilers shall have an annual fuel utilization efficiency of not less than 75 percent; and

"(B) the Secretary shall prescribe a final rule not later than January 1, 1989, establishing an energy conservation standard— Regulations.

"(i) which is for furnaces (other than furnaces designed solely for installation in mobile homes) having an input of less than 45,000 Btu per hour and manufactured on or after January 1, 1992;

"(ii) which provides that the annual fuel utilization efficiency of such furnaces shall be a specific percent which is not less than 71 percent and not more than 78 percent; and

"(iii) which the Secretary determines is not likely to result in a significant shift from gas heating to electric resistance heating with respect to either residential construction or furnace replacement.

"(2) Furnaces which are designed solely for installation in mobile homes and which are manufactured on or after September 1, 1990, shall have an annual fuel utilization efficiency of not less than 75 percent.

"(3)(A) The Secretary shall publish a final rule no later than January 1, 1992, to determine whether the standards established by paragraph (2) for mobile home furnaces should be amended. Such rule shall provide that any amendment shall apply to products manufactured on or after January 1, 1994. Regulations.

"(B) The Secretary shall publish a final rule no later than January 1, 1994, to determine whether the standards established by this subsection for furnaces (including mobile home furnaces) should be amended. Such rule shall provide that any amendment shall apply to products manufactured on or after January 1, 2002.

"(C) After January 1, 1997, and before January 1, 2007, the Secretary shall publish a final rule to determine whether standards in effect for such products should be amended. Such rule shall contain such amendment, if any, and provide that any amendment shall apply to products manufactured on or after January 1, 2012.

"(g) STANDARDS FOR DISHWASHERS; CLOTHES WASHERS; CLOTHES DRYERS.—(1) Dishwashers manufactured on or after January 1, 1988, shall be equipped with an option to dry without heat.

"(2) All rinse cycles of clothes washers shall include an unheated water option, but may have a heated water rinse option, for products manufactured on or after January 1, 1988.

"(3) Gas clothes dryers shall not be equipped with a constant burning pilot for products manufactured on or after January 1, 1988.

Regulations. "(4)(A) The Secretary shall publish final rules no later than January 1, 1990, to determine if the standards established under this subsection for products described in paragraphs (1), (2), and (3) should be amended. Such rules shall provide that any amendment shall apply to products the manufacture of which is completed on or after January 1, 1993.

"(B) After January 1, 1990, the Secretary shall publish a final rule no later than five years after the date of publication of the previous final rule. The Secretary shall determine in such rule whether to amend the standards in effect for such products.

"(C) Any such amendment shall apply to products manufactured after a date which is five years after—

"(i) the effective date of the previous amendment; or

"(ii) if the previous final rule did not amend the standard, the earliest date by which a previous amendment could have been in effect;

except that in no case may any amended standard apply to products manufactured within three years after publication of the final rule establishing such standard.

"(h) STANDARDS FOR KITCHEN RANGES AND OVENS.—(1) Gas kitchen ranges and ovens having an electrical supply cord shall not be equipped with a constant burning pilot for products manufactured on or after January 1, 1990.

Regulations. "(2)(A) The Secretary shall publish a final rule no later than January 1, 1992, to determine if the standards established for kitchen ranges and ovens in this subsection should be amended. Such rule shall contain such amendment, if any, and provide that the amendment shall apply to products manufactured on or after January 1, 1995.

"(B) The Secretary shall publish a final rule no later than January 1, 1997, to determine whether standards in effect for such products should be amended. Such rule shall apply to products manufactured on or after January 1, 2000.

"(i) STANDARDS FOR OTHER COVERED PRODUCTS.—(1) The Secretary may prescribe an energy conservation standard for any type (or class) of covered products of a type specified in paragraph (13) of section 322(a) if the requirements of subsections (l) and (m) are met and the Secretary determines that—

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"(A) the average per household energy use within the United States by products of such type (or class) exceeded 150 kilowatt-hours (or its Btu equivalent) for any 12-month period ending before such determination;

"(B) the aggregate household energy use within the United States by products of such type (or class) exceeded 4,200,000,000 kilowatt-hours (or its Btu equivalent) for any such 12-month period;

"(C) substantial improvement in the energy efficiency of products of such type (or class) is technologically feasible; and

"(D) the application of a labeling rule under section 324 to such type (or class) is not likely to be sufficient to induce manufacturers to produce, and consumers and other persons to purchase, covered products of such type (or class) which achieve the maximum energy efficiency which is technologically feasible and economically justified. 42 USC 6294.

"(2) Any new or amended standard for covered products of a type specified in paragraph (13) of section 322(a) shall not apply to products manufactured within five years after the publication of a final rule establishing such standard. *Ante*, p. 105.

"(3) The Secretary may, in accordance with subsections (l) and (m), prescribe an energy conservation standard for television sets. Any such standard may not become effective with respect to products manufactured before January 1, 1992.

"(j) FURTHER RULEMAKING.—After issuance of the last final rules required under subsections (b) through (h) of this section, the Secretary may publish final rules to determine whether standards for a covered product should be amended. An amendment prescribed under this subsection shall apply to products manufactured after a date which is 5 years after—

"(A) the effective date of the previous amendment made pursuant to this part; or

"(B) if the previous final rule published under this part did not amend the standard, the earliest date by which a previous amendment could have been in effect, except that in no case may an amended standard apply to products manufactured within 3 years (for refrigerators, refrigerator-freezers, and freezers, room air conditioners, dishwashers, clothes washers, clothes dryers, and kitchen ranges and ovens) or 5 years (for central air conditioners and heat pumps, water heaters, pool heaters, direct hearing equipment and furnaces) after publication of the final rule establishing a standard.

"(k) PETITION FOR AN AMENDED STANDARD.—(1) With respect to each covered product described in paragraphs (1) through (11) of section 322(a), any person may petition the Secretary to conduct a rulemaking to determine for a covered product if the standards contained either in the last final rule required under subsections (b) through (h) of this section or in a final rule published under this section should be amended.

"(2) The Secretary shall grant a petition if he finds that it contains evidence which, assuming no other evidence were considered, provides an adequate basis for amending the standards under the following criteria—

"(A) amended standards will result in significant conservation of energy;

"(B) amended standards are technologically feasible; and

"(C) amended standards are cost effective as described in subsection (l)(2)(B)(i)(II).

The grant of a petition by the Secretary under this subsection creates no presumption with respect to the Secretary's determination of any of the criteria in a rulemaking under this section.

"(3) An amendment prescribed under this subsection shall apply to products manufactured after a date which is 5 years after—

"(A) the effective date of the previous amendment pursuant to this part; or

"(B) if the previous final rule published under this part did not amend the standard, the earliest date by which a previous

amendment could have been in effect, except that in no case may an amended standard apply to products manufactured within 3 years (for refrigerators, refrigerator-freezers, and freezers, room air conditioners, dishwashers, clothes washers, clothes dryers, and kitchen ranges and ovens) or 5 years (for central air conditioners and heat pumps, water heaters, pool heaters, direct heating equipment and furnaces) after publication of the final rule establishing a standard.

"(l) CRITERIA FOR PRESCRIBING NEW OR AMENDED STANDARDS.—(1) The Secretary may not prescribe any amended standard which increases the maximum allowable energy use, or decreases the minimum required energy efficiency, of a covered product.

"(2)(A) Any new or amended energy conservation standard prescribed by the Secretary under this section for any type (or class) of covered product shall be designed to achieve the maximum improvement in energy efficiency which the Secretary determines is technologically feasible and economically justified.

"(B)(i) In determining whether a standard is economically justified, the Secretary shall, after receiving views and comments furnished with respect to the proposed standard, determine whether the benefits of the standard exceed its burdens by, to the greatest extent practicable, considering—

"(I) the economic impact of the standard on the manufacturers and on the consumers of the products subject to such standard;

"(II) the savings in operating costs throughout the estimated average life of the covered product in the type (or class) compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered products which are likely to result from the imposition of the standard;

"(III) the total projected amount of energy savings likely to result directly from the imposition of the standard;

"(IV) any lessening of the utility or the performance of the covered products likely to result from the imposition of the standard;

"(V) the impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the imposition of the standard;

"(VI) the need for national energy conservation; and

"(VII) other factors the Secretary considers relevant.

"(ii) For purposes of clause (i)(V), the Attorney General shall make a determination of the impact, if any, of any lessening of competition likely to result from such standard and shall transmit such determination, not later than 60 days after the publication of a proposed rule prescribing or amending an energy conservation standard, in writing to the Secretary, together with an analysis of the nature and extent of such impact. Any such determination and analysis shall be published by the Secretary in the Federal Register.

Federal Register, publication.

"(iii) If the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure, there shall be a rebuttable presumption that such standard level is economically justified. A determination by the Secretary that such criterion is not met shall not be taken into

consideration in the Secretary's determination of whether a standard is economically justified.

"(3) The Secretary may not prescribe an amended or new standard under this section for a type (or class) of covered product if—

"(A) for products other than dishwashers, clothes washers, clothes dryers, and kitchen ranges and ovens, a test procedure has not been prescribed pursuant to section 323 with respect to that type (or class) of product; or

Ante, p. 105.

"(B) the Secretary determines, by rule, that the establishment of such standard will not result in significant conservation of energy or that the establishment of such standard is not technologically feasible or economically justified.

For purposes of section 327, a determination under subparagraph (B) with respect to any type (or class) of covered products shall have the same effect as would a standard prescribed for such type (or class).

Post, p. 117.

"(4) The Secretary may not prescribe an amended or new standard under this section if the Secretary finds (and publishes such finding) that interested persons have established by a preponderance of the evidence that the standard is likely to result in the unavailability in the United States in any covered product type (or class) of 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. The failure of some types (or classes) to meet this criterion shall not affect the Secretary's determination of whether to prescribe a standard for other types (or classes).

"(m) PROCEDURE FOR PRESCRIBING NEW OR AMENDED STANDARDS.—Any new or amended energy conservation standard shall be prescribed in accordance with the following procedure:

"(1) The Secretary—

"(A) shall publish an advance notice of proposed rulemaking which specifies the type (or class) of covered products to which the rule may apply;

"(B) shall invite interested persons to submit, within 60 days after the date of publication of such advance notice, written presentations of data, views, and arguments in response to such notice; and

"(C) may identify proposed or amended standards that may be prescribed.

"(2) A proposed rule which prescribes an amended or new energy conservation standard or prescribes no amendment or no new standard for a type (or class) of covered products shall be published in the Federal Register. In prescribing any such proposed rule with respect to a standard, the Secretary shall determine the maximum improvement in energy efficiency or maximum reduction in energy use that is technologically feasible for each type (or class) of covered products. If such standard is not designed to achieve such efficiency or use, the Secretary shall state in the proposed rule the reasons therefor.

Federal Register, publication.

"(3) After the publication of such proposed rulemaking, the Secretary shall, in accordance with section 336, afford interested persons an opportunity, during a period of not less than 60 days, to present oral and written comments (including an opportunity to question those who make such presentations, as provided in such section) on matters relating to such proposed rule, including—

Post, p. 123.

"(A) whether the standard to be prescribed is economically justified (taking into account those factors which the Secretary must consider under subsection (l)(2)) or will result in the effects described in subsection (l)(4);

"(B) whether the standard will achieve the maximum improvement in energy efficiency which is technologically feasible;

"(C) if the standard will not achieve such improvement, whether the reasons for not achieving such improvement are adequate; and

"(D) whether such rule should prescribe a level of energy use or efficiency which is higher or lower than that which would otherwise apply in the case of any group of products within the type (or class) that will be subject to such standard.

Federal Register, publication.

"(4) A final rule prescribing an amended or new energy conservation standard or prescribing no amended or new standard for a type (or class) of covered products shall be published as soon as is practicable, but not less than 90 days, after publication of the proposed rule in the Federal Register.

"(n) SPECIAL RULE FOR CERTAIN TYPES OR CLASSES OF PRODUCTS.—(1) A rule prescribing an energy conservation standard for a type (or class) of covered products shall specify a level of energy use or efficiency higher or lower than that which applies (or would apply) for such type (or class) for any group of covered products which have the same function or intended use, if the Secretary determines that covered products within such group—

"(A) consume a different kind of energy from that consumed by other covered products within such type (or class); or

"(B) have a capacity or other performance-related feature which other products within such type (or class) do not have and such feature justifies a higher or lower standard from that which applies (or will apply) to other products within such type (or class).

In making a determination under this paragraph concerning whether a performance-related feature justifies the establishment of a higher or lower standard, the Secretary shall consider such factors as the utility to the consumer of such a feature, and such other factors as the Secretary deems appropriate.

"(2) Any rule prescribing a higher or lower level of energy use or efficiency under paragraph (1) shall include an explanation of the basis on which such higher or lower level was established.

"(o) INCLUSION IN STANDARDS OF TEST PROCEDURES AND OTHER REQUIREMENTS.—Any new or amended energy conservation standard prescribed under this section shall include, where applicable, test procedures prescribed in accordance with section 323 and may include any requirement which the Secretary determines is necessary to assure that each covered product to which such standard applies meets the required minimum level of energy efficiency or maximum quantity of energy use specified in such standard.

Ante, p. 105.

"(p) DETERMINATION OF COMPLIANCE WITH STANDARDS.—Compliance with, and performance under, the energy conservation standards (except for design standards authorized by this part) established in, or prescribed under, this section shall be determined using the test procedures and corresponding compliance criteria prescribed under section 323.

"(q) SMALL MANUFACTURER EXEMPTION.—(1) Subject to paragraph (2), the Secretary may, on application of any manufacturer, exempt such manufacturer from all or part of the requirements of any energy conservation standard established in or prescribed under this section for any period not longer than the 24-month period beginning on the date such rule becomes effective, if the Secretary finds that the annual gross revenues of such manufacturer from all its operations (including the manufacture and sale of covered products) does not exceed $8,000,000 for the 12-month period preceding the date of the application. In making such finding with respect to any manufacturer, the Secretary shall take into account the annual gross revenues of any other person who controls, is controlled by, or is under common control with, such manufacturer.

"(2) The Secretary may not exercise the authority granted under paragraph (1) with respect to any type (or class) of covered product subject to an energy conservation standard under this section unless the Secretary makes a finding, after obtaining the written views of the Attorney General, that a failure to allow an exemption under paragraph (1) would likely result in a lessening of competition."

SEC. 6. REQUIREMENTS OF MANUFACTURERS.

Section 326(d) of the Energy Policy and Conservation Act (42 U.S.C. 6296(d)) is amended to read as follows:

"(d) INFORMATION REQUIREMENTS.—(1) For purposes of carrying out this part, the Secretary may require, under this part or other provision of law administered by the Secretary, each manufacturer of a covered product to submit information or reports to the Secretary with respect to energy efficiency or energy use of such covered product and the economic impact of any proposed energy conservation standard, as the Secretary determines may be necessary to establish and revise test procedures, labeling rules, and energy conservation standards for such product and to insure compliance with the requirements of this part. In making any determination under this paragraph, the Secretary shall consider existing public sources of information, including nationally recognized certification programs of trade associations. Reports. Labeling.

"(2) The Secretary shall exercise authority under this section in a manner designed to minimize unnecessary burdens on manufacturers of covered products.

"(3) The provisions of section 11(d) of the Energy Supply and Environmental Coordination Act of 1974 shall apply with respect to information obtained under this subsection to the same extent and in the same manner as they apply with respect to energy information obtained under section 11 of such Act." 15 USC 796.

SEC. 7. EFFECT ON OTHER LAW.

Section 327 of the Energy Policy and Conservation Act (42 U.S.C. 6297) is amended to read as follows:

"EFFECT ON OTHER LAW

"SEC. 327. (a) PREEMPTION OF TESTING AND LABELING REQUIREMENTS.—(1) Effective on the date of enactment of the National Appliance Energy Conservation Act of 1987, this part supersedes any State regulation insofar as such State regulation provides at any time for the disclosure of information with respect to any measure of energy consumption of any covered product if— State and local governments.

"(A) such State regulation requires testing or the use of any measure of energy consumption or energy descriptor in any manner other than that provided under section 323; or

Ante, p. 105.

"(B) such State regulation requires disclosure of information with respect to the energy use or energy efficiency of any covered product other than information required under section 324.

42 USC 6294.

"(2) For purposes of this section, the term 'State regulation' means a law, regulation, or other requirement of a State or its political subdivisions.

"(b) GENERAL RULE OF PREEMPTION FOR ENERGY CONSERVATION STANDARDS BEFORE FEDERAL STANDARD BECOMES EFFECTIVE FOR A PRODUCT.—Effective on the date of enactment of the National Appliance Energy Conservation Act of 1987 and ending on the effective date of an energy conservation standard established under section 325 for any covered product, no State regulation, or revision thereof, concerning the energy efficiency or energy use of the covered product shall be effective with respect to such covered product, unless the State regulation or revision—

Ante, p. 107.

"(1) was prescribed or enacted before January 8, 1987, and is applicable to products before January 3, 1988;

"(2) is a State procurement regulation described in subsection (e);

"(3) is a regulation described in subsection (f)(1) or is prescribed or enacted in a building code for new construction described in subsection (f)(2);

"(4) is a regulation prohibiting the use in pool heaters of a constant burning pilot;

"(5) is a regulation described in subsection (d)(5)(B) for which a waiver has been granted under subsection (d); or

"(6) is a regulation effective on or after January 1, 1992, concerning the energy efficiency or energy use of television sets.

"(c) GENERAL RULE OF PREEMPTION FOR ENERGY CONSERVATION STANDARDS WHEN FEDERAL STANDARD BECOMES EFFECTIVE FOR A PRODUCT.—Except as provided in section 325(b)(3)(A)(ii) and effective on the effective date of an energy conservation standard established in or prescribed under section 325 for any covered product, no State regulation concerning the energy efficiency or energy use of such covered product shall be effective with respect to such product unless the regulation—

"(1) is a regulation described in paragraph (2) or (4) of subsection (b);

"(2) is a regulation which has been granted a waiver under subsection (d); or

"(3) is in a building code for new construction described in subsection (f)(3).

"(d) WAIVER OF FEDERAL PREEMPTION.—(1)(A) Any State with a State regulation which provides for any energy conservation standard or other requirement with respect to energy use or energy efficiency for any type (or class) of covered product for which there is a Federal energy conservation standard under section 325 may file a petition with the Secretary requesting a rule that such State regulation become effective with respect to such covered product.

"(B) Subject to paragraphs (2) through (5), the Secretary shall, within the period described in paragraph (2) and after consideration of the petition and the comments of interested persons, prescribe such rule if the Secretary finds (and publishes such finding) that the

State has established by a preponderance of the evidence that such State regulation is needed to meet unusual and compelling State or local energy interests.

"(C) For purposes of this subsection, the term 'unusual and compelling State or local energy interests' means interests which—

"(i) are substantially different in nature or magnitude than those prevailing in the United States generally; and

"(ii) are such that the costs, benefits, burdens, and reliability of energy savings resulting from the State regulation make such regulation preferable or necessary when measured against the costs, benefits, burdens, and reliability of alternative approaches to energy savings or production, including reliance on reasonably predictable market-induced improvements in efficiency of all products subject to the State regulation.

The factors described in clause (ii) shall be evaluated within the context of the State's energy plan and forecast.

"(2) The Secretary shall give notice of any petition filed under paragraph (1)(A) and afford interested persons a reasonable opportunity to make written comments, including rebuttal comments, thereon. The Secretary shall, within the 6-month period beginning on the date on which any such petition is filed, deny such petition or prescribe the requested rule, except that the Secretary may publish a notice in the Federal Register extending such period to a date certain but no longer than one year after the date on which the petition was filed. Such notice shall include the reasons for delay. In the case of any denial of a petition under this subsection, the Secretary shall publish in the Federal Register notice of, and the reasons for, such denial.

Federal Register, publication.

Federal Register, publication.

"(3) The Secretary may not prescribe a rule under this subsection if the Secretary finds (and publishes such finding) that interested persons have established, by a preponderance of the evidence, that such State regulation will significantly burden manufacturing, marketing, distribution, sale, or servicing of the covered product on a national basis. In determining whether to make such finding, the Secretary shall evaluate all relevant factors, including—

"(A) the extent to which the State regulation will increase manufacturing or distribution costs of manufacturers, distributors, and others;

"(B) the extent to which the State regulation will disadvantage smaller manufacturers, distributors, or dealers or lessen competition in the sale of the covered product in the State;

"(C) the extent to which the State regulation would cause a burden to manufacturers to redesign and produce the covered product type (or class), taking into consideration the extent to which the regulation would result in a reduction—

"(i) in the current models, or in the projected availability of models, that could be shipped on the effective date of the regulation to the State and within the United States; or

"(ii) in the current or projected sales volume of the covered product type (or class) in the State and the United States; and

"(D) the extent to which the State regulation is likely to contribute significantly to a proliferation of State appliance efficiency requirements and the cumulative impact such requirements would have.

"(4) The Secretary may not prescribe a rule under this subsection if the Secretary finds (and publishes such finding) that interested

persons have established, by a preponderance of the evidence, that the State regulation is likely to result in the unavailability in the State of any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the State at the time of the Secretary's finding, except that the failure of some classes (or types) to meet this criterion shall not affect the Secretary's determination of whether to prescribe a rule for other classes (or types).

"(5) No final rule prescribed by the Secretary under this subsection may—

"(A) permit any State regulation to become effective with respect to any covered product manufactured within three years after such rule is published in the Federal Register or within five years if the Secretary finds that such additional time is necessary due to the substantial burdens of retooling, redesign, or distribution needed to comply with the State regulation; or

"(B) become effective with respect to a covered product manufactured before the earliest possible effective date specified in section 325 for the initial amendment of the energy conservation standard established in such section for the covered product; except that such rule may become effective before such date if the Secretary finds (and publishes such finding) that, in addition to the other requirements of this subsection the State has established, by a preponderance of the evidence, that—

Ante, p. 107.

"(i) an energy emergency condition exists within the State which—

"(I) imperils the health, safety, and welfare of its residents because of the inability of the State or utilities within the State to provide adequate quantities of gas or electric energy to its residents at less than prohibitive costs; and

"(II) cannot be substantially alleviated by the importation of energy or the use of interconnection agreements; and

"(ii) the State regulation is necessary to alleviate substantially such condition.

"(6) In any case in which a State is issued a rule under paragraph (1) with respect to a covered product and subsequently a Federal energy conservation standard concerning such product is amended pursuant to section 325, any person subject to such State regulation may file a petition with the Secretary requesting the Secretary to withdraw the rule issued under paragraph (1) with respect to such product in such State. The Secretary shall consider such petition in accordance with the requirements of paragraphs (1), (3), and (4), except that the burden shall be on the petitioner to show by a preponderance of the evidence that the rule received by the State under paragraph (1) should be withdrawn as a result of the amendment to the Federal standard. If the Secretary determines that the petitioner has shown that the rule issued by the State should be so withdrawn, the Secretary shall withdraw it.

"(e) EXCEPTION FOR CERTAIN STATE PROCUREMENT STANDARDS.—Any State regulation which sets forth procurement standards for a State (or political subdivision thereof) shall not be superseded by the provisions of this part if such standards are more stringent than the corresponding Federal energy conservation standards.

"(f) EXCEPTION FOR CERTAIN BUILDING CODE REQUIREMENTS.—(1) A regulation or other requirement enacted or prescribed before January 8, 1987, that is contained in a State or local building code for new construction concerning the energy efficiency or energy use of a covered product is not superseded by this part until the effective date of the energy conservation standard established in or prescribed under section 325 for such covered product.

Ante, p. 107.

"(2) A regulation or other requirement, or revision thereof, enacted or prescribed on or after January 8, 1987, that is contained in a State or local building code for new construction concerning the energy efficiency or energy use of a covered product is not superseded by this part until the effective date of the energy conservation standard established in or prescribed under section 325 for such covered product if the code does not require that the energy efficiency of such covered product exceed—

"(A) the applicable minimum efficiency requirement in a national voluntary consensus standard; or

"(B) the minimum energy efficiency level in a regulation or other requirement of the State meeting the requirements of subsection (b)(1) or (b)(5),

whichever is higher.

"(3) Effective on the effective date of an energy conservation standard for a covered product established in or prescribed under section 325, a regulation or other requirement contained in a State or local building code for new construction concerning the energy efficiency or energy use of such covered product is not superseded by this part if the code complies with all of the following requirements:

"(A) The code permits a builder to meet an energy consumption or conservation objective for a building by selecting items whose combined energy efficiencies meet the objective.

"(B) The code does not require that the covered product have an energy efficiency exceeding the applicable energy conservation standard established in or prescribed under section 325, except that the required efficiency may exceed such standard up to the level required by a regulation of that State for which the Secretary has issued a rule granting a waiver under subsection (d).

"(C) The credit to the energy consumption or conservation objective allowed by the code for installing covered products having energy efficiencies exceeding such energy conservation standard established in or prescribed under section 325 or the efficiency level required in a State regulation referred to in subparagraph (B) is on a one-for-one equivalent energy use or equivalent cost basis.

"(D) If the code uses one or more baseline building designs against which all submitted building designs are to be evaluated and such baseline building designs contain a covered product subject to an energy conservation standard established in or prescribed under section 325, the baseline building designs are based on the efficiency level for such covered product which meets but does not exceed such standard or the efficiency level required by a regulation of that State for which the Secretary has issued a rule granting a waiver under subsection (d).

"(E) If the code sets forth one or more optional combinations of items which meet the energy consumption or conservation objective, for every combination which includes a covered product the efficiency of which exceeds either standard or level

referred to in subparagraph (D), there also shall be at least one combination which includes such covered product the efficiency of which does not exceed such standard or level by more than 5 percent, except that at least one combination shall include such covered product the efficiency of which meets but does not exceed such standard.

"(F) The energy consumption or conservation objective is specified in terms of an estimated total consumption of energy (which may be calculated from energy loss- or gain-based codes) utilizing an equivalent amount of energy (which may be specified in units of energy or its equivalent cost).

"(G) The estimated energy use of any covered product permitted or required in the code, or used in calculating the objective, is determined using the applicable test procedures prescribed under section 323, except that the State may permit the estimated energy use calculation to be adjusted to reflect the conditions of the areas where the code is being applied if such adjustment is based on the use of the applicable test procedures prescribed under section 323 or other technically accurate documented procedure.

Ante, p. 105.

"(4)(A) Subject to subparagraph (B), a State or local government is not required to submit a petition to the Secretary in order to enforce or apply its building code or to establish that the code meets the conditions set forth in this subsection.

"(B) If a building code requires the installation of covered products with efficiencies exceeding both the applicable Federal standard established in or prescribed under section 325 and the applicable standard of such State, if any, that has been granted a waiver under subsection (d), such requirement of the building code shall not be applicable unless the Secretary has granted a waiver for such requirement under subsection (d).

Ante, p. 107.

"(g) NO WARRANTY.—Any disclosure with respect to energy use, energy efficiency, or estimated annual operating cost which is required to be made under the provisions of this part shall not create an express or implied warranty under State or Federal law that such energy efficiency will be achieved or that such energy use or estimated annual operating cost will not be exceeded under conditions of actual use.".

SEC. 8. CITIZEN SUITS.

Section 335(a) of the Energy Policy and Conservation Act (42 U.S.C. 6305) is amended—

(1) by striking out "or" at the end of paragraph (1);

(2) by striking out the period at the end of paragraph (2) and inserting in lieu thereof "; or";

(3) by inserting after paragraph (2) the following new paragraph:

"(3) the Secretary in any case in which there is an alleged failure of the Secretary to comply with a nondiscretionary duty to issue a proposed or final rule according to the schedules set forth in section 325."; and

(4) by adding after the last sentence the following:

"The courts shall advance on the docket, and expedite the disposition of, all causes filed therein pursuant to paragraph (3) of this subsection. If the court finds that the Secretary has failed to comply with a deadline established in section 325, the court shall have jurisdiction to order appropriate relief, including relief that will

ensure the Secretary's compliance with future deadlines for the same covered product."

SEC. 9. ADMINISTRATIVE REVIEW AND JUDICIAL REVIEW.

Section 336 of the Energy Policy and Conservation Act (42 U.S.C. 6306) is amended to read as follows:

"ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW

"SEC. 336. (a)(1) In addition to the requirements of section 553 of title 5, United States Code, rules prescribed under section 323, 324, 325, 327, or 328 of this part shall afford interested persons an opportunity to present written and oral data, views, and arguments with respect to any proposed rule.

Ante, p. 105; 42 USC 6294; *ante*, p. 107; *post*, p. 117; 42 USC 6298.

"(2) In the case of a rule prescribed under section 325, the Secretary shall, by means of conferences or other informal procedures, afford any interested person an opportunity to question—

"(A) other interested persons who have made oral presentations; and

"(B) employees of the United States who have made written or oral presentations with respect to disputed issues of material fact.

Such opportunity shall be afforded to the extent the Secretary determines that questioning pursuant to such procedures is likely to result in a more timely and effective resolution of such issues.

"(3) A transcript shall be kept of any oral presentations made under this subsection.

"(b)(1) Any person who will be adversely affected by a rule prescribed under section 323, 324, or 325 may, at any time within 60 days after the date on which such rule is prescribed, file a petition with the United States court of appeals for the circuit in which such person resides or has his principal place of business, for judicial review of such rule. A copy of the petition shall be transmitted by the clerk of the court to the agency which prescribed the rule. Such agency shall file in the court the written submissions to, and transcript of, the proceedings on which the rule was based, as provided in section 2112 of title 28, United States Code.

"(2) Upon the filing of the petition referred to in paragraph (1), the court shall have jurisdiction to review the rule in accordance with chapter 7 of title 5, United States Code, and to grant appropriate relief as provided in such chapter. No rule under section 323, 324, or 325 may be affirmed unless supported by substantial evidence.

5 USC 701 *et seq.*

"(3) The judgment of the court affirming or setting aside, in whole or in part, any such rule shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

"(4) The remedies provided for in this subsection shall be in addition to, and not in substitution for, any other remedies provided by law.

"(5) The procedures applicable under this part shall not—

"(A) be considered to be modified or affected by any other provision of law unless such other provision specifically amends this part (or provisions of law cited herein); or

"(B) be considered to be superseded by any other provision of law unless such other provision does so in specific terms by referring to this part and declaring that such provision supersedes, in whole or in part, the procedures of this part.

"(c) Jurisdiction is vested in the Federal district courts of the United States over actions brought by—

State and local governments.

"(1) any adversely affected person to determine whether a State or local government is complying with the requirements of this part; and

Ante, p. 107.

"(2) any person who files a petition under section 325(k) which is denied by the Secretary.".

SEC. 10. ANNUAL REPORT.

Section 338 of the Energy Policy and Conservation Act (42 U.S.C. 6308) is amended by adding at the end the following: "Nothing in this section provides a defense or justification for a failure by the Secretary to comply with a nondiscretionary duty as provided for in this part."

SEC. 11. CONFORMING AMENDMENTS.

(a) IN GENERAL.—Part B of title III of the Energy Policy and Conservation Act is amended as follows:

42 USC 6294.

(1) Section 324 is amended—

(A) in subsection (a)(1), by striking out "paragraphs (1) through (9)" and inserting in lieu thereof "paragraphs (1), (2), (4), (6), and (8) through (12)";

(B) in subsection (a)(2), by striking out "paragraphs (10) through (13)" and inserting in lieu thereof "paragraphs (3), (5), and (7)"; and

(C) in subsection (a)(3)—

(i) by striking out "paragraph (14)" and inserting in lieu thereof "paragraph (13)";

(ii) by striking out subparagraph (A) and inserting in lieu thereof the following:

"(A) the Commission or the Secretary has made a determination with respect to such type (or class thereof) that labeling in accordance with this section will assist purchasers in making purchasing decisions,"; and

(iii) by striking out "section 323(a)(5)" in subparagraph (B) and inserting in lieu thereof "section 323(b)(1)(B)";

Ante, p. 105.

(D) by striking out subsection (b)(1) and inserting in lieu thereof the following:

Labeling.

"(b) RULES IN EFFECT; NEW RULES.—(1)(A) Any labeling rule in effect on the date of the enactment of the National Appliance Energy Conservation Act of 1987 shall remain in effect until amended, by rule, by the Commission.

"(B) After the date of the enactment of the National Appliance Energy Conservation Act of 1987 and not later than 30 days after the date on which a proposed test procedure applicable to a covered product of any of the types specified in paragraphs (1) through (13) of section 322(a) (or class thereof) is prescribed under section 323(b), the Commission shall publish a proposed labeling rule applicable to such type (or class thereof).";

Ante, p. 105.

(E) in subsection (b)(3)—

(i) by striking out "section 323" both places in which it appears and inserting in lieu thereof "section 323(b)";

(ii) by striking out "(13)" and inserting in lieu thereof "(12)"; and

(iii) by striking out "(14)" and inserting in lieu thereof "(13)";

(F) in subsection (b)(5)—

(i) by striking out "(10) through (13)" and inserting in lieu thereof "(3), (5), and (7)"; and

(ii) by striking out "(14)" and inserting in lieu thereof "(13)"; and

(G) in subsection (f), by striking out "or (2)" in the second sentence.

(2) Section 326(b)(3)(A) is amended by inserting "established in or" before "prescribed under". 42 USC 6296.

(3) Section 332(a)(5) is amended by striking out "energy efficiency standard prescribed under" and inserting in lieu thereof "energy conservation standard established in or prescribed under". 42 USC 6302.

(b) STYLISTIC CONFORMING AMENDMENTS.—Part B of title III of the Energy Policy and Conservation Act is amended as follows: 42 USC 6321 *et seq.*

(1) Section 322(b)(1) is amended by striking out "(b)(1)" and inserting in lieu thereof "(b) SPECIAL CLASSIFICATION OF CONSUMER PRODUCT.—(1)". 42 USC 6292.

(2) Section 324 is amended— 42 USC 6294.

(A) by striking out "SEC. 324. (a)(1)" and inserting in lieu thereof "SEC. 324. (a) IN GENERAL.—(1)";

(B) in subsection (c)(1), by striking out "(c)(1)" and inserting in lieu thereof "(c) CONTENT OF LABEL.—(1)";

(C) in subsection (d), by striking out "(d)" and inserting in lieu thereof "(d) EFFECTIVE DATE.—";

(D) in subsection (e), by striking out "(e)" and inserting in lieu thereof "(e) STUDY OF CERTAIN PRODUCTS.—";

(E) in subsection (f), by striking out "(f)" and inserting in lieu thereof "(f) CONSULTATION.—"; and

(F) in subsection (g), by striking out "(g)" and inserting in lieu thereof "(g) OTHER AUTHORITY OF THE COMMISSION.—".

(3) Section 326 is amended— 42 USC 6296.

(A) in subsection (a), by striking out "(a)" and inserting in lieu thereof "(a) IN GENERAL.—";

(B) in subsection (b)(1), by striking out "(b)(1)" and inserting in lieu thereof "(b) NOTIFICATION.—(1)"; and

(C) in subsection (c), by striking out "(c) Each" and inserting in lieu thereof "(c) DEADLINE.—Each".

(4) Section 329 is amended— 42 USC 6299.

(A) in subsection (a), by striking out "(a)" and inserting in lieu thereof "(a) IN GENERAL.—"; and

(B) in subsection (b), by striking out "(b)" and inserting in lieu thereof "(b) CONFIDENTIALITY.—".

(5) Section 332 is amended— 42 USC 6302.

(A) in subsection (a), by striking out "SEC. 332. (a)" and inserting in lieu thereof "SEC. 332. (a) IN GENERAL.—"; and

(B) in subsection (b), by striking out "(b)" and inserting in lieu thereof "(b) DEFINITION.—".

(6) Section 333 is amended— 42 USC 6303.

(A) in subsection (a), by striking out "SEC. 333. (a)" and inserting in lieu thereof "SEC. 333. (a) IN GENERAL.—";

(B) in subsection (b), by striking out "(b)" and inserting in lieu thereof "(b) DEFINITION.—";

(C) in subsection (c), by striking out "(c) It" and inserting in lieu thereof "(c) SPECIAL RULE.—It"; and

(D) in subsection (d)(1), by striking out "(d)(1)" and inserting in lieu thereof "(d) PROCEDURE FOR ASSESSING PENALTY.—(1)".

42 USC 6305.

(7) Section 335 is amended—

(A) in subsection (b), by striking out "(b)" and inserting in lieu thereof "(b) LIMITATION.—";

(B) in subsection (c), by striking out "(c)" and inserting in lieu thereof "(c) RIGHT TO INTERVENE.—";

(C) in subsection (d), by striking out "(d)" and inserting in lieu thereof "(d) AWARD OF COSTS OF LITIGATION.—";

(D) in subsection (e), by striking out "(e)" and inserting in lieu thereof "(e) PRESERVATION OF OTHER RELIEF.—"; and

(E) in subsection (f), by striking out "(f)" and inserting in lieu thereof "(f) COMPLIANCE IN GOOD FAITH.—".

42 USC 6309.

(8) Section 339 is amended—

(A) in subsection (a), by striking out "(a)" and inserting in lieu thereof "(a) AUTHORIZATIONS FOR THE SECRETARY.—";

(B) in subsection (b), by striking out "(b)" and inserting in lieu thereof "(b) AUTHORIZATIONS FOR THE COMMISSION.—"; and

(C) in subsection (c), by striking out "(c)" and inserting in lieu thereof "(c) OTHER AUTHORIZATIONS.—".

Approved March 17, 1987.

LEGISLATIVE HISTORY—S. 83 (H.R. 87):

HOUSE REPORTS: No. 100-11 accompanying H.R. 87 (Comm. on Energy and Commerce).

SENATE REPORTS: No. 100-6 (Comm. on Energy and Natural Resources).

CONGRESSIONAL RECORD, Vol. 133 (1987):

Feb. 5, 17, considered and passed Senate.

Mar. 3, H.R. 87 considered and passed House; proceedings vacated and S. 83 passed in lieu.