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[6450-01-P]

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket Number EERE-BT-PET-0038]

RIN: 1904-AD05

**Energy Conservation Program for Consumer Products: First Co. Petition for
Reconsideration**

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

ACTION: Petition for Rulemaking; Request for Comments.

SUMMARY: The Department of Energy (DOE) received a petition from Howe, Anderson & Steyer, P.C., on behalf of First Co., requesting that DOE conduct a rulemaking to amend certification regulations applicable to residential central air conditioners and heat pumps (together "CAC") under 10 CFR Part 429, Subpart B, to: (i) collect Energy Efficiency Rating (EER) information from manufacturers through the Compliance, Certification Management System ("CCMS") as part of annual certification reporting requirements; and (ii) publish the information in DOE's Compliance Certification Database ("CCD"). As an interim measure prior to the completion of the rulemaking, they request that DOE collect EER information from manufacturers on an expedited and voluntary basis and publish EER information in the CCD. They contend that voluntary collection and publication of EER information on an interim basis is

necessary to prevent harm to manufacturers and consumers. To the extent that the collection of EER information is subject to OMB approval under the Paperwork Reduction Act, they further request that DOE, pursuant to 5 CFR § 1320.13, seek OMB authorization for "emergency" or expedited processing of DOE's request to collect EER information on a voluntary basis. DOE seeks comment on whether to grant the petition and proceed with a rulemaking on this matter.

DATES: Any comments must be received by DOE not later than [INSERT DATE **30** DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Comments must be submitted, identified by docket number EERE–BT–PET–0038, by one of the following methods:

1. *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
2. *E-mail:* FirstCoPetition2013PET0038@ee.doe.gov. Include either the docket number EERE–BT–PET–0038, and/or “First Co. Petition” in the subject line of the message.
3. *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, Room 1J–018, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Please submit one signed original paper copy.
4. *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Room 1J–018, 1000 Independence Avenue, SW., Washington, DC 20585– 0121.
5. *Instructions:* All submissions received must include the agency name and docket number for this proceeding.

Docket: For access to the docket to read background documents, or comments received, go to the *Federal eRulemaking Portal* at www.regulations.gov. In addition, electronic copies of the

Petition are available online at DOE's Web site at the following URL address:

http://www1.eere.energy.gov/buildings/appliance_standards/current_rulemakings-notice.html.

FOR FURTHER INFORMATION CONTACT:

Ashley Armstrong, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE-2J, 1000 Independence Avenue, SW., Washington, DC 20585-0121, (202) 586-6590, or *e-mail:* Ashley.Armstrong@ee.doe.gov.

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

SUPPLEMENTARY INFORMATION: The Administrative Procedure Act (APA), 5 U.S.C. 551 et seq., provides among other things that, “[e]ach agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule.” 5 U.S.C. 553(e). DOE received a petition from Howe, Anderson & Steyer, P.C., on behalf of First Co., requesting that DOE conduct a rulemaking to amend certification regulations applicable to residential central air conditioners and heat pumps (together "CAC") under 10 CFR Part 429, Subpart B, to: (i) collect Energy Efficiency Rating (EER) information from manufacturers through the Compliance, Certification Management System ("CCMS") as part of annual certification reporting requirements; and (ii) publish the information in DOE's Compliance Certification Database ("CCD").

Manufacturers must certify, by means of an annual compliance statement and certification report, that each basic model CAC meets the applicable energy conservation standard. Under existing regulations, the annual reporting requirements include submission of various information by manufacturers, but not EER information. Under the direct final rule establishing regional energy conservation standards for CACs, the standard for CACs installed in the Southwestern Region includes a requirement for minimum EER. 76 FR 37408 (June 27, 2011). However, the direct final rule did not amend existing certification regulations to require manufacturers to supply EER information through CCMS. The petition states that collecting EER information enhances the existing certification reporting system and its ability to enforce applicable energy efficiency standards, including regional standards. The petition further states that collecting and publishing EER information also benefits consumers, contractors, engineers, architects, utilities, manufacturers and state agencies that use CCMS/CCD as the government source of manufacturer certified efficiency information. Finally, the petition states that because of regional standards, CCMS/CCD must include EER information to continue to be a valuable resource for users in the Southwestern Region.

As an interim measure prior to the completion of its requested rulemaking, the petition requests that DOE collect EER information from manufacturers on an expedited and voluntary basis and publish the EER information that is voluntarily submitted in the CCD. It contends that the voluntary collection and publication of EER information on an interim basis is necessary to prevent harm to manufacturers and consumers. The petition states that manufacturers that rely on CCMS/CCD are likely to lose substantial business in the Southwestern Region until CCMS/CCD

includes EER information, and that consumers will also suffer harm if they are unable to compare the EER of various models and potentially decide to purchase certain high-efficiency equipment that would better meet their needs. The petition notes that the potential harm to manufacturers and consumers can be averted by collecting information through CCMS on a voluntary basis and publishing it in CCD by January 2014.

To the extent that the collection of EER information is subject to OMB approval under the Paperwork Reduction Act, the petition further requests that DOE, pursuant to 5 CFR § 1320.13, seek OMB authorization for "emergency" or expedited processing of DOE's request to collect EER information on a voluntary basis. It states that the voluntary collection of EER information under the emergency procedure would place no additional burden on manufacturers because they already have and maintain the EER information that is derived from the test required under existing certification and compliance regulations.

In promulgating this petition for public comment, DOE seeks public comment on whether to grant the petition and undertake a rulemaking to consider the proposals contained in the petition. By seeking such comment, DOE takes no position at this time on the merits of the suggested rulemaking.

Issued in Washington, D.C. on July 19, 2013.



Kathleen B. Hogan
Deputy Assistant Secretary of Energy Efficiency
Energy Efficiency and Renewable Energy

Set forth below is the full text of the First Co. petition.

May 13, 2013

Via e-mail

John Cymbalsky

U.S. Department of Energy

Office of Building Technologies (EE-2J)

1000 Independence Ave., SW

Washington, D.C. 20585-0121

RE: Petition for Rulemaking and Expedited Processing of OMB Clearance

Dear Mr. Cymbalsky:

On behalf of our client First Co., we request that the Department of Energy (“DOE”) conduct a rulemaking to amend certification regulations applicable to residential central air conditioners and heat pumps (together “CAC”) under 10 CFR Part 429, Subpart B, to: (i) collect Energy Efficiency Rating (EER) information from manufacturers through the Compliance, Certification Management System (“CCMS”) as part of annual certification reporting requirements; and (ii) publish the EER information in DOE’s Compliance Certification Database (“CCD”).

As an interim measure prior to the completion of the rulemaking, we request that DOE collect EER information from manufacturers on an expedited and voluntary basis and publish

the EER information in CCD. Voluntary collection and publication of EER information on an interim basis is necessary to prevent harm to manufacturers and consumers as described below. To the extent that the collection of EER information is subject to OMB approval under the Paperwork Reduction Act, we further request that DOE, pursuant to 5 CFR §1320.13, seek OMB authorization for “emergency” or expedited processing of DOE’s request to collect EER information on a voluntary basis.

We respectfully request that these actions be undertaken as soon as possible in 2013.

Certification Reporting and Regional Standards

As you know, manufacturers must certify, by means of a compliance statement and certification report, that each basic model CAC meets the applicable energy conservation standard. Under existing regulations, the annual reporting requirements include submission of various information by manufacturers, but not EER information.

DOE published a direct final rule on June 27, 2011 establishing regional standards for various consumer products including CACs. Under the rule, while national standards for CACs

remained 13 SEER, effective January 1, 2015, the standard for CACs installed in the Southeastern Region becomes 14 SEER and the standard for CACs installed in the Southwestern Region¹ becomes 14 SEER and 12.2 EER (for units installed with a rated cooling capacity less than 45,000 Btu/h)/11.7 EER (for units with a rated cooling capacity

¹ The Southwestern Region contains the States of Arizona, California, Nevada and New Mexico.

equal to or greater than 45,000 Btu/h.) The direct final rule did not amend existing certification regulations to require manufacturers to supply EER information through CCMS.

CCMS/CCD needs to include EER information. Collecting EER information enhances DOE's existing certification reporting system and its ability to enforce applicable energy efficiency standards, including regional standards. As DOE stated when it proposed enhanced certification reporting in a prior rulemaking, "By requiring additional relevant data to be supplied in the certification report, DOE will be able to more effectively enforce compliance with the conservation standards. Additionally, the public would have information to use in evaluating the energy efficiency of a covered product or covered equipment." 75 F.R 56798 (Sept. 16, 2010).

Collecting and publishing EER information also benefits consumers, contractors, engineers, architects, utilities, manufacturers and state agencies that use CCMS/CCD as the government source of manufacturer certified efficiency information. For example, CCMS/CCD may be used by (i) architects and engineers to verify energy efficiency ratings of equipment for installation in their projects; (ii) utilities to qualify equipment for rebates; and (iii) state agencies to verify compliance with state laws. Manufacturers, especially those that do not list their products in a voluntary industry directory, rely on CCMS/CCD as the official government source for energy efficiency information of their products. Because of regional standards, CCMS/CCD must include EER information to continue to be a valuable resource for users in the Southwestern Region.

Interim Collection of EER Information

The rulemaking requested by this petition is likely to extend well into 2014, even if commenced reasonably soon. DOE has made clear that regional standards are based on installation dates, so that CACs installed on or after January 1, 2015 in the Southeastern and Southwestern Regions must meet the new standards, including the EER standard in the Southwestern Region.

Residential projects, especially multi-family projects, require substantial lead times. Architects, engineers and builders often select HVAC systems for such projects up to 9-12 months in advance of the install date. In practical terms, this means that an architect or an engineer selecting CACs for a multi-family project in the Southwestern Region must be able to verify the SEER and EER of the unit during the first quarter of 2014 for an install date in January, 2015. CCMS/CCD, therefore, needs to include EER information by January 2014 in order to be an available resource for projects being “spec’d” for installation in January 2015.

In addition, the State of California has adopted new mandatory requirements for appliances including CACs. It is our understanding that under regulations promulgated by the California Energy Commission, effective January 1, 2014, energy efficiency ratings of CACs that exceed minimum federal standards (13 SEER) must be verified using data from an approved database or directory. Verification of both SEER and EER is required. CCMS/CCD is an approved directory under these regulations, but it cannot be used to verify ratings for higher efficiency CACs in California in 2014 unless it includes EER information.

Manufacturers that rely on CCMS/CCD are likely to lose substantial business in the Southwestern Region until CCMS/CCD includes EER information. The harm will be particularly great in California because of the new verification requirements for higher

SEER/EER equipment. Consumers will also suffer harm if they are unable to purchase certain high efficiency equipment that would better meet their needs.

The potential harm to manufacturers and consumers can be averted by collecting EER information through CCMS on a voluntary basis and publishing it in CCD by January 2014. If adopted as an interim measure until the rulemaking is completed, the voluntary collection and publication of EER information could be accomplished quickly since manufacturers already have and maintain the EER information, which is derived from the “A” test required under existing certification and compliance regulations.

Request for Emergency OMB Approval Under PRA

The Paperwork Reduction Act imposes certain requirements on federal agencies before collecting data from the public. It is our understanding that before a federal agency can require or request information from the public, the agency must (1) seek public comment on the proposed collections, and (2) submit the proposed collections for review and approval by OMB. Based on published guidance from the Executive Branch, it appears that the regular review and approval process can take anywhere from 6-9 months from the date the process is initiated by the agency.

The rulemaking requested in this petition appears to involve the collection of information subject to PRA requirements. For the reasons stated above, however, a delay of up to 9 months after the initiation of the rulemaking will cause harm to manufacturers and consumers that can and must be avoided.

Under certain circumstances, an agency may obtain expedited or “emergency” OMB review of an information collection request. The regulations applicable to a request for emergency processing are set forth in 5 CFR §1320.13 and state, in relevant part:

- (a) Any such request shall be accompanied by a written determination that:
 - (1) The collection of information:
 - (i) Is needed prior to the expiration of time periods established under this Part; and
 - (ii) Is essential to the mission of the agency; and
 - (2) The agency cannot reasonably comply with the normal clearance procedures under this Part because:
 - (i) Public harm is reasonably likely to result if normal clearance procedures are followed; (or)
 - (ii) An unanticipated event has occurred; ...

The circumstances described in this petition meet the requirements for expedited emergency review. Collecting EER information is based on regional standards that include minimum EER standards for CACs installed in the Southwestern Region. Collection of EER information, therefore, is essential to DOE’s ability to effectively enforce compliance with regional EER standards, and to provide complete information for the public to use in evaluating the energy efficiency of a covered product or covered equipment. [subsection (a)(1)(ii).]

EER information must be collected and published in CCMS/CCD before completion of normal clearance procedures or significant public harm to manufacturers and consumers is

likely to result. [subsection (a) (1) (ii), and (2)(i).] In addition, the adoption of regulations by the California Energy Commission applicable to higher efficiency CACs installed on or after January 1, 2014 may be regarded as an unanticipated event in light of the January 1, 2015 effective date for regional standards under federal law. [subsection (a)(2)(ii)]. The voluntary collection of EER information under the emergency procedure would place no additional burden on manufacturers, because they already have and maintain the EER information which is derived from the “A” test required under existing certification and compliance regulations.

Very truly yours,

HOWE, ANDERSON & STEYER, P.C.

Richard A. Steyer
Attorney for First Co.

cc: Ashley Armstrong, DOE
Laura Barhydt, DOE
First Co.