

[6450-01-P]

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 Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Withdrawal of administrative stay.

SUMMARY: On July 3, 2017, the Department of Energy (DOE) issued an administrative stay postponing the effective date of certain provisions of a final rule, published in the Federal Register on January 5, 2017. The January 5, 2017 final rule amended the test procedure and certain certification, compliance, and enforcement provisions for central air conditioners and heat pumps. Specifically, in issuing the administrative stay, DOE stayed the effective date of two provisions of the January 5, 2017 final rule that require outdoor unit models be tested under the outdoor unit with no match procedure if they meet either of two enumerated conditions. By this action, DOE withdraws the administrative stay of the two provisions.

DATES: Effective August 3, 2018, the administrative stay of certain provisions of 10 CFR 429.16(a)(3)(i) is withdrawn.

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) requiring, among other things, that central air conditioners and heat pumps be tested under the outdoor unit with no match provisions if: (1) 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; or (2) 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).

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. This litigation is subject to ongoing mediation. JCI manufactures outdoor units with an approved refrigerant that has a 95 °F midpoint saturation absolute pressure that is \pm 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 that were added at 10 CFR 429.16(a)(3)(i) by the January 2017 final rule, these models would need to be tested as outdoor units with no match under appendix M or M1.

Also on March 3, 2017, JCI submitted to DOE a petition for a 180-day extension of the requirement that JCI make efficiency representations for its GAW Series products in accordance with the two new provisions of the January 2017 final rule. DOE granted this request on June 2, 2017.

On April 6, 2017, JCI submitted to DOE a petition for waiver and application for interim waiver from these two test procedure provisions. JCI subsequently submitted an amended petition for waiver and application for interim waiver on June 5, 2018.

On May 31, 2017, JCI requested that DOE grant it an administrative stay of the above described two provisions pending judicial review of the January 2017 final rule. On June 6, 2017, JCI requested that DOE hold its stay request in abeyance, noting that DOE's June 2, 2017 grant of a 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. Subsequently, on June 29, 2017, Lennox International Inc. (Lennox), a manufacturer of central air conditioners and heat pumps, filed a complaint in the U.S. District Court for the Northern District of Texas challenging DOE's decision to grant the 180-day extension to JCI.

On July 3, 2017, DOE issued an administrative stay in accordance with the Administrative Procedure Act (5 U.S.C. 705).¹ DOE's determination to issue the stay and postpone the effectiveness of the two provisions was based on JCI's submissions that raised concerns about significant potential impacts of the test procedure provisions on JCI, as well as the desire to ensure that all manufacturers of central air conditioners and heat pumps would have the same relief granted to JCI. 82 FR 32228. On July 17, 2017, following the denial of its request for stay of the 180-day extension and/or for preliminary injunctive relieve, Lennox voluntarily dismissed its lawsuit.

Grant of JCI's Application for Interim Waiver

¹ The administrative stay was made publicly available on DOE's website on July 3, 2017: <https://www.energy.gov/sites/prod/files/2017/07/f35/Grant%20of%20Administrative%20Stay%20Concerning%20Test%20Procedure%20For%20Central%20Air%20Conditioners%20and%20Heat%20Pumps.pdf>. The administrative stay was subsequently published in the Federal Register on July 13, 2017. 82 FR 32227. On September 14, 2017, the Natural Resources Defense Council filed a complaint in the U.S. District Court for the Southern District of New York challenging DOE's decision to issue the administrative stay.

As stated above, JCI submitted initial and amended petitions for waiver and interim waiver that raise concerns about the equity of the challenged test procedure provisions. JCI contends that the challenged test procedure provisions unfairly require central air conditioner systems that are approved for use with R-407C refrigerant and are offered as new, matched systems to be tested as outdoor units with no match. Under the outdoor unit with no match testing provisions, these systems are treated as replacement outdoor units, regardless of whether they are sold as new, matched systems or replacement outdoor units, and are rated using default indoor parameters that approximate the performance of an old, previously installed indoor unit. As such, JCI argues that the test procedure is not representative of the energy consumption of such central air conditioners when installed in the field as new, matched systems. JCI proposes to evaluate the 1,178 system combinations listed in its amended waiver petition and certified in DOE's Compliance Certification Management System in a manner that is representative of the true energy consumption of these products when installed as new, matched systems, similar to how central air conditioners that use other refrigerants and are sold both as new, matched systems and as replacement outdoor units are treated under DOE's test procedure.

While the administrative stay has been in place, DOE has continued to evaluate JCI's initial and amended petitions for waiver and interim waiver. Based on a review of these petitions and JCI's public-facing materials, it is DOE's current understanding that the basic models listed in JCI's amended petition, similar to central air conditioners that use other refrigerants, are offered as both matched, new systems and as replacement outdoor units for existing systems. As a result, DOE determined that JCI's amended petition for waiver would likely be granted and issued a decision granting JCI an interim waiver subject to certain conditions.

Withdrawal of the Administrative Stay

In issuing the administrative stay, DOE determined that it was in the interest of justice to do so based on two concerns: (1) the potential for significant economic impacts for JCI resulting from a possibly unrepresentative test procedure; and (2) the desire to maintain a level playing field for all central air conditioner manufacturers. The issuance of the interim waiver removes the first concern and subjects the final determination on the waiver request to the administrative process, including a notice-and-comment period, in DOE's waiver regulations at 10 C.F.R. 430.27. Further, even if DOE ultimately denies JCI's amended waiver petition, an administrative stay would still no longer be needed as DOE would have determined that the results of the test procedure issued in the January 2017 final rule accurately represent the energy use of JCI's products.² In that case, there would be no concern about possible significant economic impacts to JCI resulting from an unrepresentative test procedure.

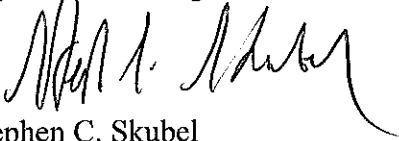
The waiver petition process also addresses the second concern as any manufacturer of a similar product may also submit a waiver petition. In fact, if DOE ultimately grants JCI's amended waiver petition, a manufacturer of a similar product would be required to submit a petition for waiver under DOE's regulations. 10 CFR 430.27(j). Further, DOE has determined that the waiver petition process is a better, more tailored approach to ensuring a level playing field as manufacturers are required to propose alternative test procedures to the test procedure

² DOE will grant a waiver from the test procedure requirements if the prescribed test procedures evaluate the basic model in a manner so unrepresentative of its true energy or water consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 430.27(f)(2). JCI argues that the test procedure provisions in question result in materially inaccurate comparative data for the basic models listed in its amended petition.

from which the waiver is sought, which are then subject to potential modification and approval by DOE. 10 CFR 430.27(b)(1)(iii). Because DOE explicitly approves alternative test procedures, there is no possibility of uncertainty regarding how a product subject to a waiver should be tested. This also allows DOE to ensure that manufacturers of similar products are making energy efficiency representations using the same alternative test procedure, which is essential for maintaining integrity in a market.

Based on the foregoing reasons, DOE withdraws the administrative stay issued on July 3, 2017.

Signed in Washington, D.C., on August 3, 2018

A handwritten signature in black ink, appearing to read "Stephen C. Skubel". The signature is fluid and cursive, with a long, sweeping tail on the final letter.

Stephen C. Skubel
Assistant General Counsel for Litigation