

This document, concerning walk-in cooler and freezers is an action issued by the Department of Energy. Though it is not intended or expected, should any discrepancy occur between the document posted here and the document published in the Federal Register, the Federal Register publication controls. This document is being made available through the Internet solely as a means to facilitate the public's access to this document.

[6450-01-P]

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket Number EERE-2014-BT-PET-0041]

Energy Conservation Program for Certain Commercial and Industrial Equipment: Energy Conservation Standards for Walk-in Coolers and Freezers; Air-Conditioning, Heating, & Refrigeration Institute Petition for Reconsideration

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

ACTION: Petition for Reconsideration; Agency Response.

SUMMARY: The Department of Energy (DOE) received a petition from the Air-Conditioning, Heating, and Refrigeration Institute (AHRI), requesting that DOE reconsider its June 3, 2014 final rule setting energy conservation standards for walk-in coolers and freezers. AHRI sought reconsideration of the final rule based on its view that errors purportedly committed by DOE led to the adoption of standards that were neither technologically feasible nor economically justified. DOE is denying the petition.

DATES: This denial is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT:

John Cymbalsky, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE-5B, 1000 Independence Avenue, SW., Washington, DC 20585-0121, (202) 287-1692, or *e-mail*: john.cymbalsky@ee.doe.gov

Michael Kido, U.S. Department of Energy, Office of General Counsel, GC-71, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-8145, *e-mail*: Michael.Kido@hq.doe.gov

SUPPLEMENTARY INFORMATION: The U.S. Department of Energy (DOE) received a petition from the Air-Conditioning, Heating, and Refrigeration Institute (AHRI) dated July 30, 2014, requesting that DOE reconsider its final rule setting energy conservation standards for walk-in coolers and freezers (“WICFs” or “walk-ins”). Energy Conservation Standards for Walk-In Coolers and Freezers, Docket No. EERE-2008-BT-STD-0015, RIN 1904-AB86, 79 FR 32050 (June 3, 2014) (“WICF Final Rule” or, in context, “the Rule”).

DOE adopted the WICF Final Rule in accordance with the Energy Policy and Conservation Act of 1975, as amended (“EPCA”). EPCA, as amended, governs the manner in which DOE will implement its rulemaking process for prescribing energy conservation standards for various consumer products and certain commercial and industrial equipment. At issue in AHRI’s petition is the stringency of the energy conservation standards DOE adopted for refrigeration systems of WICFs. Those standards relied in part on certain modifications made to the walk-in test procedure that DOE adopted to ease the testing burden on refrigeration system

manufacturers. *See* 79 FR 27387 (May 14, 2014). DOE determined these standards would result in the significant conservation of energy and are technologically feasible and economically justified, thereby meeting the statutorily required elements for an energy conservation standard. 42 U.S.C. 6295(o)(2)(A). AHRI asserted that the standards adopted by DOE for walk-in refrigeration systems were based on what AHRI characterizes as “errors” that resulted in standards that were neither technologically feasible nor economically justified.

Unlike some other statutes governing standard-setting through rulemaking, EPCA contains no provision setting forth a procedure for agency reconsideration of already prescribed final rules that established or revised energy conservation standards. Instead, the legal framework established in EPCA by Congress provides a means to enable a person to seek amendment of DOE’s existing rules under certain circumstances, not reconsideration of a newly promulgated rule. *See* 42 U.S.C. 6295(n). Accordingly, AHRI’s self-styled “petition for reconsideration” is procedurally improper.

Alternatively, even if DOE were to construe AHRI’s petition for reconsideration as seeking amendment, rather than reconsideration of the WICF rule, pursuant to 42 U.S.C. 6295(n), AHRI would still fail to establish a valid basis for granting the petition. First, consistent with the statutory structure described above and the general requirement that agencies provide an interested person the right to petition for “the issuance, amendment, or repeal of a rule,” *see* 5 U.S.C. 553(e), EPCA permits interested persons to petition DOE to amend its standards. *See* 42 U.S.C. 6295(n). While that provision applies to any final rule, it also requires that the petition satisfy certain criteria. With regard to these criteria, DOE may only grant such a

petition if, assuming no other information were considered, the petition provides evidence providing an adequate basis to amend the standard if the amended standard would result in the significant conservation of energy, would be technologically feasible, and would be cost effective, as described under 42 U.S.C. 6295(o)(2)(B)(i)(II) (*i.e.*, “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”). *See* 42 U.S.C. 6295(n)(2). AHRI’s petition, which focuses on newly issued standards, which are not yet in effect, and makes claims regarding those standards and certain procedural steps, does not meet the prescribed criteria under the statute. Moreover, even if AHRI’s petition satisfied the criteria under 42 U.S.C. 6295(n), it does not establish a valid basis for amendment of the final rule because AHRI seeks an amended standard that would increase the maximum allowable energy use or decrease the minimum required energy efficiency of a covered product, contrary to EPCA. *See* 42 U.S.C. 6295(o)(1).

Further, DOE notes that AHRI’s petition appears to reflect a fundamental misunderstanding of how to perform the calculations required to rate a given refrigeration component. Accordingly, AHRI’s petition is predicated on a flawed set of calculations and assumptions.

While the issues raised in AHRI’s petition do not warrant amending the WICF standards, DOE believes that it would be beneficial to hold a public meeting to demonstrate how DOE’s test procedure and refrigeration system standards interact with each other and how manufacturers

must calculate the efficiency of their respective refrigeration systems. The public meeting, which DOE had already planned to hold in response to inquiries regarding this interaction, will help ensure that stakeholders properly apply the test procedure when assessing the compliance of their equipment with the applicable standard. A parallel notice in the Federal Register contains details regarding this public meeting.

Issued in Washington, D.C. on September 23, 2014.



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