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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket No. EERE-2008-BT-TP-0010]

Compliance Testing Procedures: Correction Factor for Room Air Conditioners

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

ACTION: Decision on petition for rulemaking.

SUMMARY: On November 15, 2010, the Department of Energy (DOE) received a petition for rulemaking from the Association of Home Appliance Manufacturers (AHAM). The petition requests the initiation of a rulemaking regarding compliance testing procedures for room air conditioners. The petition seeks temporary enforcement forbearance, or in the alternative, a temporary, industry-wide waiver or guidance, to allow the use of a data correction factor in compliance testing procedures for room air conditioners. In this document, DOE denies the petition as moot because the amended test procedure for room air conditioners and clothes dryers incorporates use of the correction factor requested in the AHAM petition.

DATES: The petition is denied as of April 11, 2011.

ADDRESSES: You may review copies of all materials related to this petition and the test procedure rulemaking for room air conditioners and clothes dryers at the U.S. Department of Energy, Resource Room of the Building Technologies Program, 950 L'Enfant Plaza, SW., Suite 600, Washington, DC, (202) 586-2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards at the above telephone number for additional information regarding visiting the Resource Room.

FOR FURTHER INFORMATION CONTACT: Ms. 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, e-mail: ashley.armstrong@ee.doe.gov.

Ms. Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, GC-71, 1000 Independence Avenue, SW., Washington, DC 20585-0121. Telephone: (202) 586-7796. E-mail: Elizabeth.Kohl@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)). Pursuant to this provision of the APA, AHAM petitioned the Department of Energy for the issuance of a new rule to allow manufacturers of room air conditioners to use a correction factor that was not included in the regulations governing DOE's compliance testing procedures at that time. The petition also sought temporary enforcement forbearance, or a temporary industry-wide waiver or guidance, to allow use of this methodology. DOE published the petition for public comment until December 27, 2010, seeking views on whether it should grant the petition and undertake a rulemaking to consider the proposal contained in the petition. (75 FR 72739, Nov. 26, 2010).

In addition to a comment from AHAM reiterating support for their petition, DOE received a jointly filed comment from the Appliance Standards Awareness Project (ASAP) and Earth Justice regarding AHAM's petition. ASAP and Earth Justice were concerned that the correction factor is not appropriate and may not have a sound technical basis. ASAP and Earth Justice stated that the cooling capacity of a room air conditioner may actually be higher rather than lower when barometric pressure is lower than standard pressure (due to greater moisture content in the air, which generally increases latent heat removal). As a result, the correction factor, which adjusts the measured capacity upwards when barometric pressure for the test is lower than standard pressure, may actually correct the capacity in the wrong direction. ASAP and Earth Justice also commented that the correction factor referenced in AHAM's

petition applies to test room conditions only where the barometric pressure is lower than standard pressure, but that it would seem appropriate that the correction factor should account for any deviation from standard barometric pressure regardless of the direction (*i.e.*, both higher and lower). (ASAP and Earth Justice, No. 42 at pp. 1-2)

ASAP and Earth Justice indicated their understanding that in the latest revision of ASHRAE Standard 37 (which applies to central air conditioners), the correction factor was removed when the committee could not find any reference as to where the correction factor originated or data demonstrating the problem of barometric pressure variation and how this problem could be addressed. ASAP and Earth Justice stated their understanding that the correction factor will be removed in the next revision of ASHRAE Standard 16. ASAP and Earth Justice also stated that DOE should fully investigate the issue in the test procedure rulemaking, which was ongoing at the time the comment was submitted, to ensure that the correction factor appropriately reflects the relationship between barometric pressure and measured total capacity. (ASAP and Earth Justice, No. 42 at pp. 1-2)

ASAP and Earth Justice commented that any use of a correction factor is contrary to DOE's regulations for room air conditioners to meet specific Energy Efficiency Ratio (EER) levels as prescribed under 10 CFR 430.23(f)(2) and 430.32(b), and determined in accordance with ASHRAE Standard 16-69. ASHRAE Standard 16-69 does not contain a correction factor to adjust the tested unit's capacity to a standard barometric pressure. Further, ASAP and Earth Justice stated that any deviation from DOE's test procedure regulations negates the effect of any demonstration of compliance with the applicable room air conditioner standards. (ASAP and Earth Justice, No. 42 at p. 2)

DOE notes that the removal of the correction factor in ASHRAE Standard 37 (which applies to central air conditioners) does not indicate that its use is inappropriate in ASHRAE Standard 16, which is used for rating of room air conditioners. Room air conditioners operate with a "wet" condenser in rating test conditions, because room air conditioners use the

condensate from the evaporator side of the product to enhance performance of the condenser. Central air conditioners, which are covered under ASHRAE Standard 37, generally do not have this feature and operate primarily with dry condensers. DOE notes that changes in the barometric pressure have an impact on the moist air conditions, and this may affect room air conditioner performance differently than it would affect central air conditioners because of the difference in condenser operation. This factor could lead to different efficiency measurement impacts of barometric pressure for these two types of products. DOE has not received any information from ASHRAE indicating that ASHRAE is considering revisions to Standard 16 at this time.

DOE also received additional information from AHAM supporting the inclusion of the barometric pressure

correction factor in the calculation of cooling capacity from ASHRAE Standard 16. AHAM indicated that as atmospheric pressure drops, so does the air density and, therefore, the mass of air in a room. As atmospheric pressure drops, the efficiency of a unit would also drop because there would be less medium for heat transfer. "The performance of the cooling coil is considerably influenced, and the cooling capacity of the air supplied to the conditioned room is reduced, by altitude effects because air density reduces * * *. Air mass flow rate is probably the most important effect of barometric pressure changes upon system performance. It is the air mass flow rate that transfers heat between cooler coils or condensers and airstreams and removes the sensible and latent heat gains from the conditioned space. Therefore, it is of vital

importance that the correct air density or specific volume be used in calculations." (William Peter Jones, *Air Conditioning Applications and Design*, 32 (2d Ed. 1997)). AHAM indicated that because barometric pressure is connected to the measured efficiency of the unit, multiple tests of the same unit, under slightly different barometric pressure conditions, will likely produce different results.

AHAM also provided data from a room air conditioner performance simulation using IMST-ART version 3.30 modeling software of five simulations, in each case progressively reducing the barometric pressure inputs by 1 in. Hg starting from standard barometric pressure (29.92 in. Hg). The results from this simulation, presented below in Table 1, show that the cooling capacity decreases as atmospheric pressure decreases.

TABLE 1—AHAM ROOM AIR CONDITIONER PERFORMANCE SIMULATION DATA

| | 1. Units | 2. Case 1 | 3. Case 2 | 4. Case 3 | 5. Case 4 | 6. Case 5 |
|--|-------------|-----------|-----------|-----------|-----------|-----------|
| Evaporator Inlet Pressure (Atmospheric Pressure Inputs). | psia | 14.695 | 14.204 | 13.713 | 13.222 | 12.731 |
| Condenser Inlet Pressure (Atmospheric Pressure Inputs). | psia | 14.695 | 14.204 | 13.713 | 13.222 | 12.731 |
| Condensation Temp. | °F | 122.21 | 122.65 | 123.12 | 123.62 | 124.15 |
| Evaporation Temp. | °F | 47.867 | 47.689 | 47.511 | 47.33 | 47.144 |
| Condensation Press. | psia | 446.62 | 449.1 | 451.8 | 454.7 | 457.8 |
| Evaporation Press. | psia | 151.96 | 151.53 | 151.09 | 150.64 | 150.18 |
| EER Fan/Pump Included | | 11 | 10.8 | 10.7 | 10.6 | 10.4 |
| Cooling Capacity | Btu/h | 11,740 | 11,670 | 11,590 | 11,500 | 11,420 |
| Refrigerant | | R410A | R410A | R410A | R410A | R410A |

DOE recently published a final rule to amend the test procedure for room air conditioners and clothes dryers. (75 FR 972, Jan. 6, 2011). In the final rule, DOE noted that section 6.1.3 of ANSI/ASHRAE Standard 16–1983 (RA 2009) introduces a correction factor based on the test room condition's deviation from the standard barometric pressure of 29.92 inches (in.) of mercury (Hg) (101 kilopascal (kPa)). Section 6.1.3 of ANSI/ASHRAE Standard 16–1983 (RA 2009) states that the cooling capacity may be increased 0.8 percent for each in. of Hg below 29.92 in. of Hg (0.24 percent for each kPa below 101 kPa). For the reasons stated in the final rule, DOE amended the DOE test procedure to reference the relevant section of the ANSI/ASHRAE Standard and include use of the barometric pressure correction factor.

The amended test procedure was effective February 7, 2011 and applies prospectively. DOE notes that the Administrative Procedure Act defines a rule as being prospective in nature. 5 U.S.C. 551(4) ("rule" means the whole

or a part of an agency statement of general or particular applicability and future effect * * *") In addition, the Supreme Court has stated that absent express statutory authority, agencies cannot promulgate retroactive rules. *See Bowen v. Georgetown University Hospital*, 488 U.S. 204 (1988). The Energy Policy and Conservation Act of 1975, as amended, 42 U.S.C. 6291, *et seq.*, does not authorize DOE to specify retroactive application of any portion of the test procedure in a test procedure rulemaking.

For the reasons stated above, DOE denies AHAM's petition as moot.

Issued in Washington, DC, on April 4, 2010.

Sean A. Lev,

Acting General Counsel.

[FR Doc. 2011–8588 Filed 4–8–11; 8:45 am]

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CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1224

[CPSC Docket No. CPSC–2011–0019]

Safety Standard for Portable Bed Rails: Notice of Proposed Rulemaking

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: Section 104(b) of the Consumer Product Safety Improvement Act of 2008 ("CPSIA") requires the U.S. Consumer Product Safety Commission ("CPSC," "Commission," or "we") to promulgate consumer product safety standards for durable infant or toddler products. These standards are to be "substantially the same as" applicable voluntary standards or more stringent than the voluntary standard if the Commission concludes that more stringent requirements would further reduce the risk of injury associated with the product. The Commission is proposing a more stringent safety