

**DEPARTMENT OF ENERGY****Office of Energy Efficiency and Renewable Energy****10 CFR Parts 433, 434, and 435**

[Docket No. EE-RM/STD-02-112]

RIN 1904-AB13

**Energy Conservation Standards for New Federal Commercial and Multi-Family High-Rise Residential Buildings and New Federal Low-Rise Residential Buildings****AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.**ACTION:** Final rule.

**SUMMARY:** The U.S. Department of Energy (DOE) is adopting with changes the interim final rule published on December 4, 2006 (71 FR 70275) that implemented provisions in the Energy Policy Act of 2005 that require DOE to establish revised energy efficiency performance standards for the construction of all new Federal buildings. The standards in today's final rule apply to commercial and multi-family high-rise residential buildings and low-rise residential buildings, as designed and constructed.

**DATES:** This rule is effective January 22, 2008.

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**I. Introduction****A. Background**

Section 305 of the Energy Conservation and Production Act (ECPA), as amended by the Energy

Policy Act of 1992 (Pub. L. 102-486) requires DOE to establish building energy efficiency standards for all new Federal buildings. (42 U.S.C. 6834) Section 305(a)(1) requires standards that contain energy efficiency measures that are technologically feasible and economically justified but, at a minimum, require the subject buildings to meet the energy saving and renewable energy specifications in the applicable voluntary consensus energy code specified in section 305(a)(2). (42 U.S.C. 6834(a)(1) and (2))

Until amended by the Energy Policy Act of 2005 (EPAct 2005; Pub. L. 109-58), section 305(a)(2) set the minimum or baseline standards as the CABO (Council of American Building Officials) Model Energy Code, 1992 (for residential buildings) and ASHRAE (American Society of Heating, Refrigerating, and Air-Conditioning Engineers) Standard 90.1-1989 (for commercial and multi-family high rise residential buildings). Section 305(a)(2)(C) of ECPA requires that DOE consider, in consultation with the Environmental Protection Agency and other Federal agencies, and where appropriate, measures regarding radon and other indoor air pollutants.

Section 306(a)(1) of ECPA provides that each Federal agency must adopt procedures to ensure that new Federal buildings will meet or exceed the Federal building energy efficiency standards established under section 305. (42 U.S.C. 6835(a)(1)) Additionally, section 306(a)(2) extends the requirements for new Federal buildings established under section 305 to buildings under the jurisdiction of the Architect of the Capitol. (42 U.S.C. 6835(a)(2)) Section 306(b) bars the head of a Federal agency from expending Federal funds for the construction of a new Federal building unless the building meets or exceeds the applicable Federal building energy standards established under section 305. (42 U.S.C. 6835(b))

DOE established Federal building standards under ECPA and initially placed both the commercial and residential standards in Part 435 of Title 10 of the Code of Federal Regulations (CFR). In a final rule published on October 6, 2000, DOE established new energy efficiency standards for new Federal commercial and multi-family high-rise residential buildings. 65 FR 59999. DOE placed the revised Federal commercial and multi-family high-rise residential building standards in a new 10 CFR part 434, entitled "Energy Code for New Federal Commercial and Multi-Family High Rise Residential Buildings." The standards for Federal

low-rise residential buildings remain in 10 CFR part 435.

Section 109 of EPAct 2005 amended section 305 of ECPA. (42 U.S.C. 6835) Section 109 replaced the minimum standards referenced in section 305(a)(2)(A) with references to updated building codes that are widely used today. For residential buildings, CABO Model Energy Code, 1992, was replaced with the 2004 International Energy Conservation Code (IECC). For commercial and multi-family high rise buildings, ASHRAE Standard 90.1-1989 was replaced with ASHRAE Standard 90.1-2004.

Section 109 of EPAct 2005 also added a new section 305(a)(3)(A) that requires DOE, by rule, to establish revised Federal building energy efficiency performance standards not later than August 8, 2006. (42 U.S.C. 6834(a)(3)(A)) Under the revised standards, new Federal buildings must be designed to achieve energy consumption levels that are at least 30 percent below the updated minimum standards referenced in section 305(a)(2), if life-cycle cost-effective. (42 U.S.C. 6834(a)(3)(A)(i)(I))

**B. Interim Final Rule**

On December 4, 2006, the Department published an interim final rule establishing energy conservation standards for the design and construction of new Federal commercial and multi-family high rise residential buildings (10 CFR part 433) and the design and construction of new Federal low-rise residential buildings (10 CFR part 435, subpart A). 71 FR 70275. DOE determined that establishing these requirements through an interim final rule offered the best opportunity to achieve the energy efficiency goals of section 109 of the EPAct 2005 as soon as possible. Further, the standards are applicable only to the design and construction of Federal buildings, which are public property. Regulations applicable only to public property are exempted from the Administrative Procedure Act's prior notice and comment requirements. (5 U.S.C. 553(a)(2)) Additionally, the explicitness of the direction provided to DOE for this rule in section 109 of the EPAct 2005 supported the issuance of an interim final rule, as a matter of policy.

The interim final rule established an energy efficiency baseline for new Federal commercial and multi-family high rise residential buildings and new Federal low-rise residential buildings based on referencing ASHRAE Standard 90.1-2004 and the 2004 IECC, respectively. These standards establish requirements for the structure and major

systems of a building and are mandatory for new Federal buildings. The interim final rule established a requirement for new Federal buildings to achieve a level of energy efficiency 30 percent greater than that of the ANSI/ASHRAE/IESNA or the 2004 IECC levels, as appropriate, when life-cycle cost-effective, again as directed by the statute.

The standards established in the interim final rule do not take a prescriptive approach as to how the 30 percent reduction is to be obtained. The baseline standards contain a limited set of mandatory requirements, such as sealing leaks in the building envelope and air duct systems. Beyond this, there are no restrictions on how a Federal agency is to achieve cost-effective energy savings. DOE believes that Federal agencies should be given the flexibility necessary to determine the most effective ways to achieve energy savings above that of the incorporated standards, rather than relying on prescriptive requirements that may not be appropriate in all cases.

The interim final rule became effective January 3, 2007. All new Federal buildings for which design for construction began on or after that date must comply with the requirements established in this rule. Again, the interim final rule applied to the design and construction of Federal buildings, as opposed to the operation of Federal buildings following construction. All new Federal buildings for which design for construction began prior to that date must comply with the requirements in 10 CFR part 434 or subpart C of part 435, as applicable.

DOE provided a list of resources to help Federal agencies achieve building energy efficiency levels of at least 30 percent below that of ASHRAE Standard 90.1-2004 or the 2004 IECC. 71 FR 70278-70279. The resources were provided in three categories—for all buildings, specifically for commercial and high-rise multi-family residential buildings, and specifically for low-rise residential buildings.

### C. Summary of the Final Rule

In today's final rule, the Department makes a number of minor changes to the interim final rule. These changes are described in Section II below.

## II. Discussion of Comments and Changes to the Interim Final Rule

DOE received a variety of comments from twenty different parties in response to the interim final rule. The comments covered a variety of topics. There were comments and questions on scope and timing of new Federal standards, such as what energy end-uses

the rules cover, and whether they should apply to major retrofits and leased buildings. Some comments suggested changes or alternatives to the baseline minimum standards. In particular, several commenters requested an update to the 2006 IECC in place of 2004 IECC for low-rise residential buildings. A number of comments suggested that the rules require more than 30 percent energy savings if cost effective. Some commenters wanted DOE to actively enforce that Federal agencies comply with the standards and/or provide support and guidance for implementing the standards. DOE received two comments (United States Postal Service, No. 15; Edison Electric Institute No. 18<sup>1</sup>) that simply expressed support for the content of the new Federal standards. Comments are discussed and addressed in greater detail below.

### Questions on Scope and Timing of New Federal Standards

As stated above, the interim final rule applies to Federal buildings for which design for construction began on or after January 3, 2007. Los Alamos National Laboratory (Comment No. 6) and the Department of Veterans Affairs (Comment No. 20) requested clarification of when "design for construction" begins as this establishes the applicable stage when the new rule applies. The rule becomes effective at the design stage when the impact of the rule needs to be accounted for in the procurement process. Specifically, this is the stage when the energy efficiency and sustainability details (such as insulation levels, HVAC systems, water-using systems, etc.) are either explicitly determined or implicitly included in a project cost specification. If prior to January 3, 2007, energy efficiency and sustainability details were incorporated into a building design, and thus a costly redesign would be required to meet this rule, the new rule is not applicable. Today's final rule clarifies the applicability of the new Federal building standards.

Four comments questioned if the standards apply to leased buildings (Naval Facilities Engineering Command, No. 3; The Alliance to Save Energy, No. 9; The American Institute of Architects; No. 10 and No. 14). The last three comments recommended that the scope of the interim rule be expanded to apply to leased buildings.

<sup>1</sup> The number accompanying an identified commenter indicates the location of the comment with in the docket for this rulemaking. There were 20 comments received in total. All comments can be reviewed at [http://www2.eere.energy.gov/femp/pdfs/ee\\_rm\\_std\\_02\\_112.pdf](http://www2.eere.energy.gov/femp/pdfs/ee_rm_std_02_112.pdf).

ECPA specifically defines "Federal building" to mean any building to be "constructed by, or for the use of, any Federal agency which is not legally subject to State or local building codes or similar requirements." (42 U.S.C. 6832(6)) DOE applied the statutory definition to define "new Federal buildings" for the purpose of 10 CFR 433.2 and 435.2. A building being constructed for lease by a Federal agency would be for the use of the Federal agency and therefore would be a "new Federal building" subject to the requirements established in the interim final rule if it is not legally subject to State or local building codes.

Four comments suggested the rule should apply to additions and/or major renovations. (Comments No. 6; No. 9; No. 10; No. 14). Commenters noted that the previous building standards applied to major renovations.

Section 305 of ECPA specifies that the rule shall apply to only new buildings. Today's final rule provides additional clarity on the distinction between a "new" building and a major renovation. Under today's final rule the definition of "new Federal building" specifies that a building is a new building if it is completely replaced from the foundation up. DOE notes that the recent Executive Order 13423, *Strengthening Federal Environmental, Energy, and Transportation Management*, includes mandatory energy efficiency requirements for major renovations to Federal buildings. 72 FR 3919 (January 24, 2007).

### Request for Use of the 2006 IECC Instead of the 2004 IECC for Low-Rise Residential Buildings

Five commenters (Birch Point Consulting, No. 1; American Architectural Manufacturers Association, No. 4; Pilkington North America No. 5; APA-The Engineered Wood Association No. 12; and a combined comment from Icynene, Nu-Wool Co., Inc., and Building Quality, No. 13) requested that the residential standards be updated from the 2004 IECC Edition to the 2006 IECC. These commenters stated that the 2004 IECC is what is referred to as a "supplement edition" that is published at the midpoint between the three year cycles when stand-alone editions of the IECC are published. Some of the commenters further stated that the 2004 IECC is "not a code." Comments stated that the 2006 IECC is the most current version of the IECC and the 2004 Supplement is now an older version. Additionally, several commenters objected to requirements in the 2004 IECC and stated a preference for the alterations to these requirements

in the 2006 IECC. Conversely, one commenter believes the Department was correct to use the 2004 IECC (Responsible Energy Codes Alliance, No. 11)

Several commenters observed that ECPA requires that the Department determine whether the Federal standards should be updated within one year after approval of revisions to the IECC (or ASHRAE Standard 90.1). These commenters requested that consistent with this provision of EPCA DOE incorporate the 2006 version of the IECC.

The interim final rule reflected Congress's specific instruction as to which voluntary consensus standard DOE is to incorporate into the requirements as the baseline for Federal residential buildings, 2004 IECC. Further, the 2004 IECC is code language that is fully sanctioned by the International Code Council. As directed by ECPA, DOE will consider updating to the 2006 IECC based on the cost effectiveness of the revisions contained in the 2006 IECC. However, at this time DOE has not completed the analysis necessary to determine if the standard should be updated to cite the 2006 IECC.

#### Suggestions for Use of Alternative Baseline Standards

DOE received a number of comments suggesting the use of alternative baseline standards to the 2004 IECC (for low-rise residential buildings) and ASHRAE Standard 90.1-2004 (for commercial and high-rise residential buildings). Suggestions included the use of the IECC for commercial and high-rise residential buildings (Comment No. 1; Responsible Energy Codes Alliance, No. 11) and use of the IRC (Comment No. 1) or ASHRAE Standard 90.2-2004 (Comment No. 14; No. 18) for low-rise residential buildings.

Today's final rule does not amend the use of ASHRAE Standard 90.1-2004 and the 2004 IECC as the baselines for the requirement. As stated above, section 109 of EPCA 2005 is explicit in the voluntary standards that are to be incorporated as the baseline.

#### Comments Requesting Clarification of Requirements

Under the requirements established in the interim final rule, Federal buildings must exceed the energy efficiency level of the appropriate consensus standard by 30 percent if life-cycle cost effective. 10 CFR 433.4(a)(2) and 435.4(a)(2). DOE received several comments on the 30 percent level specified in the standards and the reliance on "life-cycle cost effective."

Regarding the energy savings target, four commenters suggested that DOE require the maximum cost-effective energy efficiency, even if it is beyond 30% (Comments No. 9; No. 10; No. 14; and Natural Resources Defense Council, No. 17). These commenters interpreted the direction in EPCA 2005 to be to achieve the maximum level of energy efficiency that is cost-effective relative to the baseline standards, not just to achieve at least 30 percent savings.

As stated in the preamble to the interim final rule, Congress expressly specified a minimum performance requirement of a 30 percent improvement, if life-cycle cost effective. 71 FR 70277. Although the statute requires DOE to establish performance standards that are "at least" 30 percent below the levels in the incorporated ASHRAE and IECC standards, the standards that DOE established in the interim final rule do not require Federal agencies to consider the life-cycle cost effectiveness of improvements beyond the 30 percent level.

It is DOE's view that had Congress sought to require improvements at a maximum energy savings with the condition that it has an equal or lower life-cycle cost relative to the baseline standard, it would have mandated designs to achieve that level and would not have specified the 30 percent minimum. The rule uses the same language in EPCA—that at least 30 percent savings be achieved if cost-effective. Federal agencies are not precluded from designing buildings to achieve greater improvements, and DOE encourages agencies to design new Federal buildings to achieve lower energy consumption levels if life-cycle cost effective. Further, DOE has made a minor modification to Sections 433.4(c) and 435.4(c) of the final rule to permit energy efficient better than the maximum level that is cost effective. This allows Federal agencies the flexibility to pursue additional energy efficiency for demonstration projects, such as zero energy buildings.

One commenter objected to the performance based nature of the 30 percent requirements. The commenter stated that DOE should establish more prescriptive standards (Comment No. 17). The standards established in the interim final rule allow Federal designers flexibility in choosing a compliant design and assign the responsibility of ensuring compliance to the Federal agencies. The commenter's statements suggest a preference for prescriptive standards to achieve the additional 30 percent savings compared to the reference national standards, with explicit minimum requirements for

individual building components (such as walls, windows, and floors) and systems (such as lighting and mechanical systems).

Previous standards for Federal buildings were generally prescriptive in nature. However, given the complexity of developing a set of prescriptive requirements that meet both the energy efficiency and cost-effectiveness goals of section 109 of the EPCA 2005 for all Federal buildings of all types, DOE established a performance-based approach, utilizing the prescriptive requirements of the private sector standards as the absolute minimum if higher levels are not cost-effective. This approach permits the applicable construction costs and fuel costs for any given project to be accounted for, allowing for most cost-effective solution, which may indeed result in a greater than 30 percent savings over the minimum reference standards.

One commenter (Comment No. 3) stated that "life-cycle cost-effectiveness" had not been adequately defined. The definition in the interim final rule specifies that life cycle cost-effectiveness is determined in accordance with 10 CFR part 436. The definition of "life-cycle cost effective" in 10 CFR part 436 provides agencies a choice of 4 methods of showing life cycle cost effectiveness, including lowest life cycle costs (10 CFR 436.19), positive net savings (10 CFR 436.20), a saving-to-investment ratio greater than one (10 CFR 436.21), or an internal rate of return higher than the discount rate published by OMB (10 CFR 436.22). The methodologies specified in 10 CFR 436 have been widely established in Federal projects, with the National Institute of Standards and Technology (NIST) responsible for providing support for implementing 10 CFR 436 (<http://www.bfrl.nist.gov/oae/projects/04ps75.html>).

#### Comments Related to the Handling of Receptacle and Process Loads

DOE received five comments about addressing plug and process loads in Federal buildings. Two of the comments (Environmental Protection Agency, No. 7; Department of Interior, No. 19) objected to the fact that receptacle and process loads were exempted from calculation of the savings for the 30 percent requirement for commercial and high-rise residential buildings in the interim final rule. Laclede Gas (Comment No. 16) urged the Department to keep food service ventilation classified as process load. Conversely, the Department of Veterans Affairs (Comment No. 20) asked that medical equipment loads be exempt from the

energy consumption savings requirements. Another comment (Los Alamos National Laboratory, No. 6) suggested that it be recognized that there are situations that should be excluded from the evaluation of energy savings such as industrial, manufacturing, or commercial processes.

The energy efficiency of many receptacle loads (anything that is plugged in, such as a personal computer) is addressed through a separate section of EPCAct 2005. Section 104 of EPCAct 2005 requires Federal agencies to purchase energy efficient appliances and equipment. (42 U.S.C. 8259b). Additionally, today's final rule applies to buildings as designed and constructed and it is often not possible to identify all receptacle loads when a building is designed or constructed as the occupants will to some degree establish what is plugged in. As equipment is replaced over time the initial savings from receptacle loads may diminish. As such DOE is maintaining the exclusion of receptacle loads for the purpose of calculating energy savings under the Federal building standards.

With respect to process loads (for example, medical or industrial equipment), the Department is excluding these energy end-uses from the energy savings metric. Process loads typically involve specialized equipment for which improvements in energy efficiency may affect the functionality of the equipment or where improvements are not available at all. Some Federal buildings use most of their energy serving process loads, and application of the energy savings requirement to these buildings would likely place an undo burden on the rest of the building if the 30 percent savings is to be achieved.

In order to provide additional clarity, DOE is establishing definitions of "receptacle load" and "process load."

#### Suggestion to Use Source Energy Instead of Site Energy

DOE received a comment from the American Gas Association (Comment No. 8) suggesting the use of source energy instead of site energy as the energy metric to be used for determining energy consumption in the new Federal standards. Site energy is the energy used at the building. Source energy is the site energy and all energy used to produce and deliver the energy to the site. EPCA as modified by EPCAct 2005 specifies the use of ASHRAE Standard 90.1 and the IECC as the reference standards. The procedures for calculating energy efficiency performance in these

reference standards are annual energy cost. These procedures are adopted in this rulemaking. Energy costs implicitly account for the complete process of producing energy.

#### Comments on Implementation and Enforcement of the Rules

DOE received a number of comments requesting that additional actions be taken to implement and enforce the rule. Two commenters (Comments No. 10 and No. 14) urged the Department to issue rulemakings with provisions for sustainable design principles and water conservation technologies as required by EPCA, as amended by section 109 of EPCAct 2005. DOE is currently preparing a notice of proposed rulemaking to address these provisions.

Three commenters (The Polyisocyanurate Insulating Manufacturers Association, No. 2; Comments No. 9; and No. 14) suggested the Department take actions to ensure that agencies are complying with the standards. DOE again notes that today's final rule applies to the design and construction of new Federal buildings. Section 109 of EPCAct 2005 assigns the responsibility of reporting compliance to the individual agencies as part of their annual budget request. Agencies are required to submit a list of all new Federal buildings owned, operated, or controlled by the Federal agency, and a statement specifying whether the Federal buildings have been constructed (or designed to be constructed) to meet or exceed the standards adopted in this notice. (42 U.S.C. 6834(a)(3)(C)) DOE has determined that the existing reporting requirement is sufficient to identify agency compliance.

The interim final rule provided a list of resources to provide guidance on compliance with the requirements. 71 FR 70278-70279. Additionally, DOE, through its Federal Energy Management Program, is preparing training for federal agencies on how to comply with today's final rule.

The Alliance to Save Energy commented that DOE should add requirements for commissioning and energy metering (Comment No. 9). DOE notes that section 103 of EPCAct 2005 amended EPCA to require that all Federal buildings be metered. (42 U.S.C. 8253) The rule does not contain requirements for commissioning as the applicable Federal agencies are responsible for ensuring that the energy efficiency measures be properly installed.

The Alliance to Save Energy commented that the Department should consider innovative provisions to make buildings more adaptable to new and

emerging technologies (Comment No. 9). DOE notes that it participates in the development of new energy-efficient technologies for buildings and does promote the use of new energy-efficient technologies in buildings. Private sector standards and codes (ASHRAE Standard 90.1-2004 and the 2004 IECC) are typically "technology-neutral." Particular technologies may be used to set the level of performance for energy codes or standards, but it would be this level of performance and not the specific technology that would be embodied in the code or standard. As stated above, the 30-percent requirement is a performance based requirement. Federal agencies are free to rely on a variety of technologies that they determine to be appropriate for their specific applications.

The Alliance to Save Energy suggested that the provisions of section 104 of EPCAct 2005 for building equipment to meet Energy Star and FEMP-designated efficiency criteria be included in this rule (Comment No. 9). As discussed above, DOE does not believe that it is appropriate to address receptacle loads in the Federal building standards. DOE is addressing the procurement requirements of section 104 in a separate rulemaking. 72 FR 33696 (June 19, 2007).

#### Comments Requesting Support in Implementing the Rule

One commenter (No. 2; 2) requested that the Department develop a comprehensive database of energy-efficiency features. FEMP maintains a database on high performance Federal buildings. (<http://www.eere.energy.gov/femp/highperformance/>) Three commenters (Comments No. 2; No. 10; and No. 14) requested that DOE provide support for education and training. FEMP intends to provide training and education on the new Federal standards, beginning in late 2007.

DOE received a comment (Comment No. 10) suggesting that DOE implement the requirements of the new Federal standards in design specifications and model contract language that could be used by all agencies. The Department believes this is a good suggestion and will take this under consideration for action.

#### Suggestion To Remove a Single Reference From the Preamble

DOE received a comment from the American Gas Association (Comment No. 8) requesting that the references to the ASHRAE Advanced Energy Design Guide (AEDG) be removed from the preamble because it "encourages more buildings to use electric resistance."

DOE notes that the references provided in the preamble of the interim final rule are for informational purposes only and the AEDG is approved by ASHRAE, a leading national technical society. The references are not intended to promote any single method for achieving compliance with the requirements.

### III. Regulatory Analyses

#### A. Review Under Executive Order 12866, "Regulatory Planning and Review"

Today's final rule is a "significant regulatory action" under section 3(f)(1) of Executive Order 12866, "Regulatory Planning and Review." 58 FR 51735 (October 4, 1993). Accordingly, today's action was subject to review by the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB). OMB has completed its review.

#### B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires the preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, *Proper Consideration of Small Entities in Agency Rulemaking*, 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process (68 FR 7990). The Department has made its procedures and policies available on the Office of General Counsel's Web site: <http://www.gc.doe.gov>.

Today's rule amending standards on energy efficiency performance standards for the design and construction of new Federal buildings is a rule relating to public property, and therefore, is not subject to any legal requirement to publish a general notice of proposed rulemaking. The Regulatory Flexibility Act does not apply.

#### C. Review Under the Paperwork Reduction Act of 1995

This rulemaking will impose no new information or record keeping requirements. Accordingly, Office of Management and Budget (OMB) clearance is not required under the Paperwork Reduction Act. (44 U.S.C. 3501 *et seq.*)

#### D. Review Under the National Environmental Policy Act of 1969

DOE prepared an Environmental Assessment (EA) (DOE/EA-1463) entitled, Draft Environmental Assessment for Interim Final Rule, 10 CFR Part 433, "Energy Efficiency Standards for New Federal Commercial and Multi-Family High-Rise Residential Buildings," and 10 CFR Part 435, "Energy Efficiency Standards for New Federal Low-Rise Residential Buildings," pursuant to the Council on Environmental Quality's (CEQ) Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (40 CFR Parts 1500-1508), the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), and DOE's NEPA Implementing Procedures (10 CFR Part 1021).

The EA addresses the possible environmental effects attributable to the implementation of the interim final rule. The only projected impact is a decrease in outdoor air pollutants resulting from decreased fossil fuel burning for energy use in Federal buildings. Today's minor changes to the interim final rule do not affect the findings of the EA or the discussion of those findings in the preamble to the interim final rule. 71 FR 70280.

#### E. Review Under Executive Order 13132, "Federalism"

Executive Order 13132, "Federalism," 64 FR 43255 (August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. (65 FR 13735). DOE examined this rule and determined that it does not preempt State law and does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various

levels of Government. No further action is required by Executive Order 13132.

#### F. Review Under Executive Order 12988, "Civil Justice Reform"

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct, rather than a general standard and promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct, while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law: this rule meets the relevant standards of Executive Order 12988.

#### G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and tribal governments and the private sector. For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a) and (b)). The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and tribal

governments on a proposed "significant intergovernmental mandate," and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA (62 FR 12820) (also available at <http://www.gc.doe.gov>). This final rule contains neither an intergovernmental mandate nor a mandate that may result in the expenditure of \$100 million or more in any year, so these requirements under the Unfunded Mandates Reform Act do not apply.

*H. Review Under the Treasury and General Government Appropriations Act of 1999*

Section 654 of the Treasury and General Government Appropriations Act of 1999 (Pub. L. 105-277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This final rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

*I. Review Under Executive Order 12630, "Governmental Actions and Interference With Constitutionally Protected Property Rights"*

The Department has determined, under Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights," 53 FR 8859 (March 18, 1988), that this rule would not result in any takings which might require compensation under the Fifth Amendment to the United States Constitution.

*J. Review Under the Treasury and General Government Appropriations Act, 2001*

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's final rule under the OMB and DOE guidelines and has

concluded that it is consistent with applicable policies in those guidelines.

*K. Review Under Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use"*

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. This final rule would not have a significant adverse effect on the supply, distribution, or use of energy and, therefore, is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

**IV . Congressional Notification**

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this rule prior to its effective date. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 804(2).

**V. Approval of the Office of the Secretary**

The Secretary of Energy has approved publication of today's final rule.

**List of Subjects in 10 CFR Parts 433, 434, and 435**

Buildings, Energy conservation, Engineers, Federal buildings and facilities, Housing, Incorporation by reference.

Issued in Washington, DC, on December 4, 2007.

**Alexander A. Karsner,**  
*Assistant Secretary, Energy Efficiency and Renewable Energy.*

■ Accordingly, the interim final rule amending 10 CFR parts 433, 434 and

435, which was published at 71 FR 70275 on December 4, 2006, is adopted as a final rule with the following changes:

**PART 433—ENERGY EFFICIENCY STANDARDS FOR THE DESIGN AND CONSTRUCTION OF NEW FEDERAL COMMERCIAL AND MULTI-FAMILY HIGH-RISE RESIDENTIAL BUILDINGS**

■ 1. The authority citation for part 433 continues to read as follows:

**Authority:** 42 U.S.C. 6831–6832, 6834–6835; 42 U.S.C. 7101 *et seq.*

■ 2. Amend § 433.2 by adding in alphabetical order definitions of "Design for construction," "Process load" and "Receptacle load" and revise the definition of "New Federal building" to read as follows:

**§ 433.2 Definitions.**

\* \* \* \* \*

*Design for construction* means the stage when the energy efficiency and sustainability details (such as insulation levels, HVAC systems, water-using systems, etc.) are either explicitly determined or implicitly included in a project cost specification.

\* \* \* \* \*

*New Federal building* means any building to be constructed on a site that previously did not have a building or a complete replacement of an existing building from the foundation up, by, or for the use of, any Federal agency which is not legally subject to State or local building codes or similar requirements.

\* \* \* \* \*

*Process load* means the load on a building resulting from energy consumed in support of a manufacturing, industrial, or commercial process. Process loads do not include energy consumed maintaining comfort and amenities for the occupants of the building (including space conditioning for human comfort).

*Receptacle load* means the load on a building resulting from energy consumed by any equipment plugged into electrical outlets.

\* \* \* \* \*

■ 3. Revise paragraph (c) of § 433.4 to read as follows:

**§ 433.4 Energy efficiency performance standard.**

\* \* \* \* \*

(c) If a 30 percent reduction is not life-cycle cost-effective, the design of the proposed building shall be modified so as to achieve an energy consumption level at or better than the maximum level of energy efficiency that is life-cycle cost-effective, but at a minimum

complies with paragraph (a) of this section.

#### **PART 434—ENERGY CODE FOR NEW FEDERAL COMMERCIAL AND MULTI-FAMILY HIGH-RISE RESIDENTIAL BUILDINGS**

■ 4. The authority citation for part 434 continues to read as follows:

**Authority:** 42 U.S.C. 6831–6832, 6834–6836; 42 U.S.C. 8253–54; 42 U.S.C. 7101 *et seq.*

■ 5. In § 434.101, paragraph 101.1.1, paragraphs (a)(2) and (3) are revised to read as follows:

##### **§ 434.101 Scope.**

\* \* \* \* \*

101.1.1 (a) \* \* \*

(2) An addition for which design for construction began before January 3, 2007, that adds new space with provision for a heating or cooling system, or both, or for a hot water system; or

(3) A substantial renovation of a building for which design for construction began before January 3, 2007, involving replacement of a heating or cooling system, or both, or hot water system, that is either in service or has been in service.

\* \* \* \* \*

#### **PART 435—ENERGY EFFICIENCY STANDARDS FOR NEW FEDERAL LOW-RISE RESIDENTIAL BUILDINGS**

■ 6. The authority citation for part 435 continues to read as follows:

**Authority:** 42 U.S.C. 6831–6832, 6834–6835; 42 U.S.C. 8253–54; 42 U.S.C. 7101 *et seq.*

■ 6a. Amend part 435 by revising the part heading to read as set forth above.

■ 7. Amend § 435.2 by adding in alphabetical order a definition of “Design for construction” and revise the definition of “New Federal building” to read as follows:

##### **§ 435.2 Definitions.**

\* \* \* \* \*

*Design for construction* means the stage when the energy efficiency and sustainability details (such as insulation levels, HVAC systems, water-using systems, etc.) are either explicitly determined or implicitly included in a project cost specification.

\* \* \* \* \*

*New Federal building* means any building to be constructed by, or for the use of, any Federal agency which is not legally subject to State or local building codes or similar requirements. A new building is a building constructed on a

site that previously did not have a building or a complete replacement of an existing building from the foundation up.

\* \* \* \* \*

■ 8. Revise paragraph (c) of § 435.4 to read as follows:

##### **§ 435.4 Energy efficiency performance standard.**

\* \* \* \* \*

(c) If a 30 percent reduction is not life-cycle cost-effective, the design of the proposed building shall be modified so as to achieve an energy consumption level at or better than the maximum level of energy efficiency that is life-cycle cost-effective, but at a minimum complies with paragraph (a) of this section.

[FR Doc. E7–24615 Filed 12–20–07; 8:45 am]

**BILLING CODE 6450–01–P**

## **DEPARTMENT OF THE TREASURY**

### **Office of the Comptroller of the Currency**

#### **12 CFR Part 25**

[Docket ID OCC–2007–0021]

RIN 1557–AD05

## **FEDERAL RESERVE SYSTEM**

#### **12 CFR Part 228**

[Regulation BB; Docket No. R–1302]

## **FEDERAL DEPOSIT INSURANCE CORPORATION**

#### **12 CFR Part 345**

RIN 3064–AD24

## **DEPARTMENT OF TREASURY**

### **Office of Thrift Supervision**

#### **12 CFR Part 563e**

[Docket ID OTS–2007–0024]

RIN 1550–AC18

### **Community Reinvestment Act Regulations**

**AGENCIES:** Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); Office of Thrift Supervision (OTS).

**ACTION:** Joint final rule; technical correction.

**SUMMARY:** The OCC, the Board, the FDIC, and the OTS (collectively, the

“agencies”) are amending their Community Reinvestment Act (CRA) regulations to adjust the asset-size thresholds used to define “small bank” or “small savings association” and “intermediate small bank” or “intermediate small savings association.” As required by the CRA regulations, the adjustment to the threshold amount is based on the annual percentage change in the Consumer Price Index. The agencies are also correcting a paragraph heading that is inaccurate as a result of annual revisions to the small institution threshold.

**DATE:** Effective January 1, 2008.

#### **FOR FURTHER INFORMATION CONTACT:**

**OCC:** Margaret Hesse, Special Counsel, Community and Consumer Law Division, (202) 874–5750; or Karen Tucker, National Bank Examiner, Compliance Policy Division, (202) 874–4428, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

**Board:** Anjanette M. Kichline, Senior Supervisory Consumer Financial Services Analyst, (202) 785–6054; or Brett Lattin, Attorney, (202) 452–3667, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

**FDIC:** Deirdre Foley, Senior Policy Analyst, Compliance Policy Section, (202) 898–6612, and Faye Murphy, Review Examiner, Compliance Examination Support, (202) 898–6613, Division of Supervision and Consumer Protection; or Susan van den Toorn, Counsel, Legal Division, (202) 898–8707, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

**OTS:** Celeste Anderson, Senior Project Manager, Compliance and Consumer Protection, (202) 906–7990; or Richard Bennett, Senior Compliance Counsel, Regulations and Legislation Division, (202) 906–7409, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

#### **SUPPLEMENTARY INFORMATION:**

#### **Background and Description of the Joint Final Rule**

The agencies’ CRA regulations establish CRA performance standards for small and intermediate small banks and savings associations. The regulations define small and intermediate small institutions by reference to asset-size criteria expressed in dollar amounts, and they further require the agencies to publish annual adjustments to these dollar figures based