

Section of OMB guidance	Section in this part where supplemented	What the supplementation clarifies
(1) 2 CFR 182.225(a) .....	§ 1536.225	Whom in the Environmental Protection Agency a recipient other than an individual must notify if an employee is convicted for a violation of a criminal drug statute in the workplace.
(2) 2 CFR 182.300(b) .....	§ 1536.300	Whom in the Environmental Protection Agency a recipient who is an individual must notify if he or she is convicted of a criminal drug offense resulting from a violation occurring during the conduct of any award activity.
(3) 2 CFR 182.500 .....	§ 1536.500	Who in the Environmental Protection Agency is authorized to determine that a recipient other than an individual is in violation of the requirements of 2 CFR part 182, as implemented by this part.
(4) 2 CFR 182.505 .....	§ 1536.505	Who in the Environmental Protection Agency is authorized to determine that a recipient who is an individual is in violation of the requirements of 2 CFR part 182, as implemented by this part.

(c) Sections of the OMB guidance that this part does not supplement. For any section of OMB guidance in Subparts A through F of 2 CFR part 182 that is not listed in paragraph (b) of this section, Environmental Protection Agency policies and procedures are the same as those in the OMB guidance.

**Subpart A—Purpose and Coverage [Reserved.]**

**Subpart B—Requirements for Recipients Other Than Individuals**

**§ 1536.225 Whom in the Environmental Protection Agency does a recipient other than an individual notify about a criminal drug conviction?**

A recipient other than an individual that is required under 2 CFR 182.225(a) to notify Federal agencies about an employee's conviction for a criminal drug offense must notify the EPA award official from each Environmental Protection Agency office from which it currently has an award.

**Subpart C—Requirements for Recipients Who Are Individuals**

**§ 1536.300 Whom in the Environmental Protection Agency does a recipient who is an individual notify about a criminal drug conviction?**

A recipient who is an individual and is required under 2 CFR 182.300(b) to notify Federal agencies about a conviction for a criminal drug offense must notify the EPA award official from each Environmental Protection Agency office from which it currently has an award.

**Subpart D—Responsibilities of Agency Awarding Officials**

**§ 1536.400 What method do I use as an agency awarding official to obtain a recipient's agreement to comply with the OMB guidance?**

To obtain a recipient's agreement to comply with applicable requirements in the OMB guidance at 2 CFR part 182,

you must include the following term or condition in the award:

Drug-free workplace. You as the recipient must comply with drug-free workplace requirements in Subpart B (or Subpart C, if the recipient is an individual) of 2 CFR Subtitle B, Chapter XV, Part 1536, which adopts the Governmentwide implementation (2 CFR part 182) of sec. 5152–5158 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701–707).

**Subpart E—Violations of This Part and Consequences**

**§ 1536.500 Who in the Environmental Protection Agency determines that a recipient other than an individual violated the requirements of this part?**

The EPA Administrator or designee is the official authorized to make the determination under 2 CFR 182.500.

**§ 1536.505 Who in the Environmental Protection Agency determines that a recipient who is an individual violated the requirements of this part?**

The EPA Administrator or designee is the official authorized to make the determination under 2 CFR 182.505.

**Title 40—Protection of Environment Chapter I**

**PART 36—[REMOVED]**

■ 2. Remove Part 36.

[FR Doc. 2010–32134 Filed 12–21–10; 8:45 am]

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**DEPARTMENT OF ENERGY**

**10 CFR Part 430**

[Docket No. EERE–2010–BT–STD–WAV–0045]

**Energy Efficiency Program for Consumer Products: Waiver of Federal Preemption of State Regulations Concerning the Water Use or Water Efficiency of Showerheads, Faucets, Water Closets and Urinals**

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

**ACTION:** Final rule.

**SUMMARY:** The U.S Department of Energy (DOE) waives the general rule of Federal preemption for energy conservation standards under 42 U.S.C. 6297(c) with respect to any State regulation concerning the water use or water efficiency of faucets, showerheads, water closets and urinals if such State regulation is: More stringent than Federal regulation concerning the water use or water efficiency for that same type or class of product; and applicable to any sale or installation of all products in that particular type or class.

**DATES:** *Effective Date:* This rule is effective December 22, 2010.

**ADDRESSES:** The public may review copies of all materials related to this rulemaking 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.

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##### I. Authority and Discussion

Title III, Part B of the Energy Policy and Conservation Act (EPCA), Public Law 94-163 (42 U.S.C. 6291-6309, as codified), established the Energy Conservation Program for "Consumer Products Other Than Automobiles."<sup>1</sup> The consumer products subject to this program (hereafter "covered products") include faucets, showerheads, water closets and urinals, the subjects of today's notice. Under EPCA, the overall program consists essentially of testing, labeling, and Federal energy conservation standards, including water conservation standards for faucets, showerheads, water closets and urinals. National standards for these water-using products are based on the American Society of Mechanical Engineers (ASME)/American National Standards Institute (ANSI) standards A112.18.1M, for showerheads and faucets, and A112.19.6, for water closets and urinals. 42 U.S.C. 6295(j), (k).

42 U.S.C. 6295(j)(3)(C) and 6295(k)(3)(C) requires that, not later than six months after the conclusion of a five-consecutive-year period during which the ASME/ANSI has not amended these faucet, showerhead, water closet or urinal standards in order to improve water efficiency, DOE must

publish a final rule waiving preemption for Federal standards under 42 U.S.C. 6297(c) with respect to any State regulation concerning the water use or water efficiency of such type or class of showerhead, faucet, water closet or urinal if such State regulation meets the following two conditions. First, the State regulation concerning water use or water efficiency for a particular type or class of showerhead, faucet, water closet or urinal must be more stringent than the Federal regulation concerning water use or water efficiency for that same type or class of showerhead, faucet, water closet or urinal. 42 U.S.C. 6295(j)(3)(C)(i), 6295(k)(3)(C)(i). Second, the State regulation concerning the water use or water efficiency for a particular type or class of showerhead, faucet, water closet or urinal must be applicable to any sale or installation of all products in that particular type or class. 42 U.S.C. 6295(j)(3)(C)(ii), 6295(k)(3)(C)(ii).

The provisions in 42 U.S.C. 6295(j)(3)(C) and 6295(k)(3)(C) represent a choice by Congress to deviate from the general rule of Federal preemption, where the relevant industry consensus body has failed to act to improve water efficiency for a significant period of time. ASME/ANSI last made a substantive amendment to its standards regarding the water efficiency requirements for showerheads and faucets on May 29, 1996 (ASME/ANSI A112.18.1M-1996), and for water closets and urinals on April 19, 1996 (ASME/ANSI A112.19.6-1995). Both of these standards were incorporated by reference into the Code of Federal Regulations in a final rule issued by DOE on March 18, 1998. 63 FR 13308. Because more than five years have passed since ASME/ANSI last amended the water efficiency requirements in either of these standards, DOE must issue this final rule waiving the provisions of 42 U.S.C. 6297(c) with respect to any State regulation concerning the water use or water efficiency of a particular type or class of showerhead, faucet, water closet or urinal that is both more stringent than the relevant Federal regulation and is applicable to any sale or installation of all products in that particular type or class.

##### II. Procedural Requirements

###### A. Executive Order 12866

Today's regulatory action is not a "significant regulatory action" under section 3(f) of Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (October 4, 1993). Accordingly, this action was not subject

to review under that Executive Order by the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB).

###### B. Administrative Procedure Act

The Department of Energy finds good cause to waive prior notice and an opportunity for public comment on these regulations pursuant to 5 U.S.C. 533(b)(B), because such procedures are unnecessary. EPCA imposes a non-discretionary duty on DOE to waive Federal preemption in a defined factual circumstance. That circumstance has occurred. Therefore, this rule is necessary for DOE to implement this statutorily-imposed obligation. Public comment on DOE's implementation of this legal mandate would serve no useful purpose. For the same reason, DOE finds good cause, pursuant to 5 U.S.C. 553(d)(3), to waive the 30-day delay in effective date for this rule. Therefore, these regulations are being published as final regulations and are effective December 22, 2010.

###### C. National Environmental Policy Act of 1969

DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. This rule at most amends an existing rule without changing its environmental effect, and, therefore, is covered by the Categorical Exclusion A5 found in appendix A to subpart D, 10 CFR part 1021. Accordingly, neither an environmental assessment nor an environmental impact statement is required. Moreover, a State's promulgation of a regulation concerning water use or water efficiency for a particular type or class of showerhead, faucet, water closet or urinal is not a Federal action subject to NEPA.

###### D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that must be proposed for public comment, unless the agency certifies that the rule will have no 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

<sup>1</sup> For editorial reasons, upon codification in the U.S. Code, Part B was re-designated Part A.

rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's Web site at <http://www.gc.doe.gov>. Because a notice of proposed rulemaking is not required under the Administrative Procedure Act or other applicable law, the Regulatory Flexibility Act does not require certification or the conduct of a regulatory flexibility analysis for this rule.

#### *E. Paperwork Reduction Act*

This rulemaking imposes no new information or recordkeeping requirements. Accordingly, OMB clearance is not required under the Paperwork Reduction Act. (44 U.S.C. 3501 *et seq.*)

#### *F. 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 proposed regulatory actions likely to result in a rule that may cause expenditures by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish estimates of the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (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." UMRA also requires an agency plan for giving notice and opportunity for timely input to small governments that may be affected before establishing a requirement that might significantly or uniquely affect them. 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>). Today's 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 do not apply.

#### *G. Treasury and General Government Appropriations Act, 1999*

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105-277) requires Federal agencies to issue a Family

Policymaking Assessment for any rule that may affect family well-being. Today's rule would have no impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is unnecessary to prepare a Family Policymaking Assessment.

#### *H. Executive Order 13132*

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. DOE has examined this final rule and determined that it would not preempt State law; in fact, this rule waives preemption of State law and has no negative impact on any State. Executive Order 13132 requires no further action.

#### *I. Executive Order 12988*

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, (3) provide a clear legal standard for affected conduct rather than a general standard, and (4) promote simplification and burden reduction. Regarding the review required by section 3(a), 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 sections 3(a) and 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.

#### *J. Treasury and General Government Appropriations Act, 2001*

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 notice under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

#### *K. Executive Order 13211*

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 OMB a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgates 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. Today's regulatory action is not a significant regulatory action under Executive Order 12866 or any successor order; would not have a significant adverse effect on the supply, distribution, or use of energy; and has not been designated by the Administrator of OIRA as a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

#### *L. Executive Order 12630*

Pursuant to Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights," 53 FR 8859 (March 15, 1988), DOE has determined that this rule would not result in any takings that might require compensation under the

Fifth Amendment to the U.S. Constitution.

*M. Section 32 of the Federal Energy Administration Act of 1974*

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91), the Department of Energy must comply with section 32 of the Federal Energy Administration Act of 1974 (Pub. L. 93–275), as amended by the Federal Energy Administration Authorization Act of 1977 (Pub. L. 95–70). (15 U.S.C. 788) Section 32 provides that where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Department of Justice and the Federal Trade Commission concerning the impact of the commercial or industry standards on competition. This final rule to waive the provisions of 42 U.S.C. 6297(c) in certain circumstances is not a proposed rule and does not authorize or require the use of any commercial standards. Therefore, no consultation with either DOJ or FTC is required.

*N. Congressional Notification*

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of today's rule. 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).

**III. Approval of the Office of the Secretary**

The Secretary of Energy has approved publication of this final rule.

Issued in Washington, DC, on December 15, 2010.

**Cathy Zoi,**

*Assistant Secretary, Energy Efficiency and Renewable Energy.*

[FR Doc. 2010–32116 Filed 12–21–10; 8:45 am]

**BILLING CODE 6450–01–P**

**DEPARTMENT OF ENERGY**

**10 CFR Part 431**

[Docket Number EERE–2008–BT–TP–0008]

RIN 1904–AB71

**Energy Conservation Program: Energy Conservation Standards for Electric Motors**

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

**ACTION:** Final rule; technical correction.

**SUMMARY:** The U.S. Department of Energy (DOE) published a final rule on March 23, 2009, promulgating energy conservation standards for certain electric motors as prescribed in the Energy Policy and Conservation Act, as amended by the Energy Independence and Security Act. This document is being issued to correct the energy efficiency levels that DOE promulgated for NEMA Design B general purpose electric motors that, due to a drafting error, are not consistent with statutory requirements.

**DATES:** This technical correction is effective as of December 22, 2010.

**FOR FURTHER INFORMATION CONTACT:** Mr. James Raba, 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. Telephone: (202) 586–8654. E-mail: [Jim.Raba@ee.doe.gov](mailto:Jim.Raba@ee.doe.gov).

In the Office of the General Counsel, contact Ms. Ami Grace-Tardy, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue, SW., Washington, DC 20585. Telephone: (202) 586–5709. E-mail: [Ami.Grace-Tardy@hq.doe.gov](mailto:Ami.Grace-Tardy@hq.doe.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The Energy Policy and Conservation Act (EPCA), as amended by section 313(b)(1)(B) of the Energy Independence and Security Act (EISA 2007), requires each National Electrical Manufacturers Association (NEMA) Design B, general purpose electric motor with a power rating of more than 200 horsepower, but not greater than 500 horsepower, manufactured (alone or as a component of another piece of equipment) after December 19, 2010, to have a nominal full load efficiency that is not less than the values in NEMA Standard MG–1 (2006) Table 12–11. (42 U.S.C. 6313(b)(2)(D)) DOE codified this requirement at 10 CFR 431.25(f). 74 FR 12058 (March 23, 2009)

It was recently discovered that the efficiency levels under 10 CFR 431.25(f), for NEMA Design B, six-pole open motors rated 250, 300, and 350 horsepower are not consistent with the EISA 2007 levels as prescribed. Today's final rule conforms these efficiency levels with EPCA, as amended by EISA

2007, by replacing the nominal full load efficiency of "94.5" with "95.4."

**II. Need for Correction**

As published, the nominal full load efficiency table at 10 CFR 431.25(f) contains three values that deviate from the requirements established by EPCA, as amended by EISA 2007. To correct this error, DOE is amending 10 CFR 431.25(f) to replace the current table with a corrected table of values. In light of the statutory requirement, the change addressed by today's document is technical in nature. In addition, because DOE does not have the discretion to deviate from these statutorily-prescribed requirements, DOE finds that there is good cause under 5 U.S.C. 553(b)(B) to not issue a separate notice to solicit public comment on the changes contained in this document. Issuing a separate notice to solicit public comments would be impractical, unnecessary, and contrary to the public interest.

**List of Subjects in 10 CFR part 431**

Administrative practice and procedure, Energy conservation, Reporting and recordkeeping requirements.

Issued in Washington, DC, on December 15, 2010.

**Cathy Zoi,**

*Assistant Secretary, Energy Efficiency and Renewable Energy.*

■ For the reasons stated in the preamble, DOE amends 10 CFR Part 431 as set forth below.

**PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT**

■ 1. The authority citation for part 431 continues to read as follows:

**Authority:** 42 U.S.C. 6291–6317.

■ 2. Section 431.25 is amended by revising paragraph (f) to read as follows:

**§ 431.25 Energy conservation standards and effective dates.**

\* \* \* \* \*

(f) Each NEMA Design B general purpose electric motor with a power rating of more than 200 horsepower, but not greater than 500 horsepower, manufactured (alone or as a component of another piece of equipment), on or after December 19, 2010, shall have a nominal full load efficiency that is not less than the following: