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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents.

## OFFICE OF THE FEDERAL REGISTER

### 5 CFR Chapter XL

#### Interstate Commerce Commission Regulations; Removal of Chapter

**Editorial Note:** Under section 101 of Public Law 104–88, the Interstate Commerce Commission was abolished on Dec. 29, 1995, effective January 1, 1996.

The Director of the Office of the Federal Register, pursuant to his authority to maintain an orderly system of codification under 44 U.S.C. 1510 and 1 CFR 8.2, hereby removes from the Code of Federal Regulations, Chapter XL of Title 5, consisting of Parts 5000 to 5099, containing supplemental standards of ethical conduct for the employees of the Interstate Commerce Commission.

■ Accordingly, Chapter XL of Title 5 of the Code of Federal Regulations is hereby removed as of December 26, 2024.

[FR Doc. 2024–31079 Filed 12–23–24; 8:45 am]

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## DEPARTMENT OF ENERGY

### 10 CFR Part 431

[EERE–2024–BT–DET–0012]

RIN 1904–AE57

#### Energy Conservation Program: Commercial Warm Air Furnaces; Notification of Tentative Determination and Request for Comment

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

**ACTION:** Notification of tentative determination and request for comment.

**SUMMARY:** On June 2, 2023, the U.S. Department of Energy (“DOE” or the “Department”) published a test procedure final rule which established test procedures for commercial warm air

furnaces (“CWAFFs”). The Air-Conditioning, Heating, and Refrigeration Institute (“AHRI”) filed a petition for review of the final rule in the United States Court of Appeals for the Fourth Circuit on August 1, 2023. In a February 6, 2024, order, the Fourth Circuit granted a voluntary remand of the final rule to the Department of Energy (“DOE”) to determine whether establishment of the test procedure for the thermal efficiency two (“TE2”) metric is supported by the specific provisions applicable to CWAFFs under the Energy Policy and Conservation Act (“EPCA”). More specifically, DOE agreed in this voluntary remand to only establish the TE2 test procedure if the Department makes a determination that the TE2 test procedure is consistent with the amended industry test procedure, or a determination, supported by clear and convincing evidence, that the amended industry test procedure fails to satisfy the statutory requirements. This document provides DOE’s tentative determination that the amended industry test procedure fails to satisfy EPCA’s statutory requirements and requests comment on this topic.

**DATES:** DOE will accept comments, data, and information regarding this document no later than January 8, 2025. See section V, “Public Participation,” for details.

**ADDRESSES:** Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) under docket number EERE–2024–BT–DET–0012. Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE–2024–BT–DET–0012, by any of the following methods:

(1) *Email:*

[FurnacesDet2024DET0012@ee.doe.gov](mailto:FurnacesDet2024DET0012@ee.doe.gov). Include the docket number EERE–2024–BT–DET–0012 in the subject line of the message.

(2) *Postal Mail and Hand Delivery/Courier:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 287–1445. If possible, please submit all items on a compact disc (“CD”), in which case it is not necessary to include printed copies.

No telefacsimiles (“faxes”) will be accepted. For detailed instructions on submitting comments and additional information on this process, see section V of this document.

**Docket:** The docket for this activity, which includes **Federal Register** notices, public meeting attendee lists and transcripts (if a public meeting is held), comments, and other supporting documents/materials, is available for review at [www.regulations.gov](http://www.regulations.gov). All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

The docket web page can be found at [www.regulations.gov/docket/EERE-2024-BT-DET-0012](http://www.regulations.gov/docket/EERE-2024-BT-DET-0012). The docket web page contains instructions on how to access all documents, including public comments, in the docket. See section V for information on how to submit comments through [www.regulations.gov](http://www.regulations.gov).

**FOR FURTHER INFORMATION CONTACT:** Ms. Julia Hegarty, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (240) 597–6737. Email: [ApplianceStandardsQuestions@ee.doe.gov](mailto:ApplianceStandardsQuestions@ee.doe.gov).

Mr. Pete Cochran, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (240) 961–1189. Email: [Peter.Cochran@hq.doe.gov](mailto:Peter.Cochran@hq.doe.gov).

For further information on how to submit a comment or review other public comments and the docket, contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: [ApplianceStandardsQuestions@ee.doe.gov](mailto:ApplianceStandardsQuestions@ee.doe.gov).

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## I. Introduction

### A. Authority

The Energy Policy and Conservation Act, Public Law 94–163, as amended (“EPCA”),<sup>1</sup> authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317, as codified) Title III, Part C of EPCA, added by Public Law 95–619, title IV, sec. 441(a), established the Energy Conservation Program for Certain Industrial Equipment, which sets forth a variety of provisions designed to improve energy efficiency. This equipment includes CWAFFs, the subject of this document. (42 U.S.C. 6311(1)(J))

The energy conservation program under EPCA consists essentially of four parts: (1) testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA include definitions (42 U.S.C. 6311), test procedures (42 U.S.C. 6314), labeling provisions (42 U.S.C. 6315), energy conservation standards (42 U.S.C. 6313), and the authority to require information and reports from manufacturers (42 U.S.C. 6316; 42 U.S.C. 6296).

The Federal testing requirements consist of test procedures that manufacturers of covered equipment must use as the basis for: (1) certifying to DOE that their equipment complies with the applicable energy conservation standards adopted pursuant to EPCA (42 U.S.C. 6316(b); 42 U.S.C. 6296), and (2) making other representations about the efficiency of that equipment (42 U.S.C. 6314(d)). Similarly, DOE uses these test procedures to determine whether the equipment complies with relevant standards promulgated under EPCA. DOE’s test procedures for CWAFFs are currently prescribed at subpart D of part 431 of title 10 of the Code of Federal Regulations (“CFR”).

Federal energy efficiency requirements for covered equipment established under EPCA generally supersede state laws and regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6316(a) and 42 U.S.C. 6316(b); 42 U.S.C.

6297) DOE may, however, grant waivers of Federal preemption for particular state laws or regulations, in accordance with the procedures and other provisions of EPCA. (42 U.S.C. 6316(b)(2)(D))

Under 42 U.S.C. 6314, EPCA sets forth the criteria and procedures DOE must follow when prescribing or amending test procedures for covered equipment. EPCA requires that any test procedures prescribed or amended under this section must be reasonably designed to produce test results that reflect energy efficiency, energy use, or estimated annual operating cost of a given type of covered equipment during a representative average use cycle (as determined by DOE) and requires that test procedures not be unduly burdensome to conduct. (42 U.S.C. 6314(a)(2))

EPCA generally requires that, at least once every seven years, DOE evaluate test procedures for each type of covered equipment, including CWAFFs, to determine whether amended test procedures would more accurately or fully comply with the requirements for the test procedures to not be unduly burdensome to conduct and be reasonably designed to produce test results that reflect energy efficiency, energy use, and estimated operating costs during a representative average use cycle. (42 U.S.C. 6314(a)(1)–(3)) DOE refers to these provisions as the “lookback” provisions and rulemakings conducted under these provisions as “lookback” rulemakings.

Specific to certain commercial equipment, including CWAFFs, EPCA required that the initial test procedures for this equipment be those generally accepted industry testing procedures or rating procedures developed or recognized by AHRI or ASHRAE, as referenced in ASHRAE Standard 90.1, “Energy Standard for Buildings Except Low-Rise Residential Buildings” (“ASHRAE Standard 90.1”), that were in effect on June 30, 1992. (42 U.S.C. 6314(a)(4)(A)) Further, if such an industry test procedure is amended, DOE must update its test procedure to be consistent with the amended industry test procedure unless DOE determines, by rule published in the **Federal Register** and supported by clear and convincing evidence, that the amended test procedure would not meet the requirements in 42 U.S.C. 6314(a)(2) and (3), in which case DOE may establish an amended test procedure that does satisfy those statutory provisions. (42 U.S.C. 6314(a)(4)(B) and (C)) DOE refers to these provisions as the “ASHRAE trigger” provisions and rulemakings conducted under these

provisions as “ASHRAE trigger” rulemakings.

Whether pursuant to the lookback provision or the trigger provision, if DOE determines that a test procedure amendment is warranted, EPCA requires that the Department publish proposed test procedures in the **Federal Register** and afford interested persons an opportunity (of not less than 45 days duration) to present oral and written data, views, and arguments on the proposed test procedures. (42 U.S.C. 6314(b))

### B. Energy Conservation Standards Rulemaking Process Under EPCA

The purpose of energy conservation standards issued under EPCA is to reduce energy use by improving the energy efficiency of covered products and equipment. (See 42 U.S.C. 6312(a)) The first step in establishing new or amended energy conservation standards for any covered product or equipment is to determine what energy use by a covered product or equipment will be within the scope of the energy conservation standard, *i.e.*, what is the representative average use cycle for the covered product or equipment. For example, prior to the Energy Independence and Security Act of 2007 (“EISA 2007”), the representative average use cycle for many covered products only included active mode energy use, *i.e.*, energy used while the product was performing its main function. As such, the representative use cycle did not include any energy used while the product was in a standby or off mode. Thus, manufacturers had little incentive to reduce standby or off mode energy use as it had no effect on whether a covered product complied with the applicable energy conservation standards. But in EISA 2007, Congress required DOE to include standby and off mode energy use as part of the representative average use cycle for any energy conservation standard adopted after July 1, 2010. (42 U.S.C. 6295(gg)(3)).

Representative average use cycles for covered products and equipment can also change over time as DOE’s understanding of how the product or equipment is used in the field improves, consumer habits change, or technologies improve. For example, DOE recently issued an amended test procedure for air-cooled commercial package air conditioners and heat pumps that reflects how the representative average use cycle for this equipment has changed over time. 89 FR 43986 (May 20, 2024). DOE adopted this new test procedure for air-cooled commercial air conditioners and heat pumps with the

<sup>1</sup> All references to EPCA in this document refer to the statute as amended through the Energy Act of 2020, Public Law 116–260 (Dec. 27, 2020), which reflect the last statutory amendments that impact Parts A and A–1 of EPCA.

support of a cross-section of stakeholders, including the heating and cooling industry, who recommended the details of the new test procedure to DOE as part of a negotiated consensus recommendation. *Id.* at 89 FR 43991. The consensus recommendation recognized that the introduction of innovative technologies in the market, such as the ability for compressors to run at part-load values in response to different operating conditions in the field, has contributed to changes in the representative average use cycle for air-cooled commercial air conditioners and heat pumps. The consensus recommendation also recognized that air-cooled commercial air conditioners and heat pumps operate in additional heating and cooling modes not encompassed by the current representative average use cycle. As a result, the representative use cycle for air-cooled commercial air conditioners and heat pumps was updated to include, among other things, part-load operation at a variety of outdoor temperature points and additional modes of operation, *e.g.*, integrated mechanical and economizer cooling, economizer-only cooling, cooling season ventilation, and unoccupied no-load hours. *Id.* at 89 FR 43997–43998.

Having determined a representative average use cycle for a covered product or equipment, the next step in EPCA's energy conservation standards rulemaking process is to prescribe a test procedure that is reasonably designed to produce test results that measure energy use of the covered product or equipment for that representative average use cycle and that is not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3); 42 U.S.C. 6314(a)(2)) For example, when Congress required DOE to include standby and off mode energy use in standards for covered products, it first directed DOE to amend test procedures for all covered products to include provisions for measuring standby and off mode energy use. (42 U.S.C. 6295(gg)(2)(A)) Congress then directed DOE to use these amended test procedures when prescribing new or amended standards that incorporate standby and off mode energy use. (42 U.S.C. 6295(gg)(3)(A)) As the new standards would be based on a different representative use cycle, *i.e.*, one that includes active mode, standby mode, and off mode, Congress clarified that the amended test procedures "shall not be used to determine compliance with product standards established prior to the adoption of the amended test procedures." (42 U.S.C. 6295(gg)(2)(C)) It would have made little sense for Congress to require manufacturers to

use test procedures that measure active, standby, and off mode energy when determining compliance with an energy conservation standard that is only based on active mode energy use. DOE takes the same approach when prescribing an amended test procedure for use in evaluating new or amended energy conservation standards that are based on an updated representative average use cycle. Use of the amended test procedure is only required upon the compliance date of the new or amended energy conservation standards. *See* sec. 8(f) of appendix A to subpart C of 10 CFR part 430.

### C. Background

Under EPCA's lookback provision, DOE initiated a test procedure rulemaking for CWAFFs by publishing a request for information ("RFI") in the **Federal Register** on May 5, 2020 ("May 2020 RFI"). 85 FR 26626. The current energy conservation standards for CWAFFs are based on a representative average use cycle that assumes CWAFFs always operate at 100% capacity in the field and that the only energy losses are from flue exhaust gases. The May 2020 RFI solicited public comments, data, and information on aspects of the existing DOE test procedure for CWAFFs at 10 CFR part 431, subpart D, appendix A ("appendix A"), which measures Thermal Efficiency ("TE") and is used for determining compliance with the current energy conservation standards for CWAFFs, including whether there were any issues with the existing test procedure at that time and whether it was in need of updates or revisions. *Id.*

DOE subsequently published a notice of proposed rulemaking ("NOPR") for the CWAFFs test procedure in the **Federal Register** on February 25, 2022, which proposed amendments to the existing test procedure for TE as well as a new test procedure based on DOE's tentative determination that the representative average use cycle for CWAFFs should include jacket losses and part-load operation. 87 FR 10726 ("February 2022 NOPR"). DOE noted that CWAFFs are typically installed outdoors and, as a result, jacket losses can be a significant source of energy loss. 87 FR 10726, 10735. DOE also noted that many CWAFFs now have multiple heating stages and performance for these CWAFFs can vary at different heating loads. *id.* As a result, DOE proposed that any new or amended energy conservation standards for CWAFFs should be based on a representative average use cycle that includes jacket losses and part-load operation, *i.e.*, the TE2 metric. DOE proposed a new test procedure in 10

CFR part 431, subpart D, appendix B ("appendix B"), to measure energy efficiency under the TE2 metric. DOE tentatively determined that the appendix B test procedure met the statutory criteria in 42 U.S.C. 6314(a)(2) and (3). 87 FR 10726, 10737–10738.

The February 2022 NOPR had a 60-day comment period and DOE held a webinar public meeting on March 29, 2022. As directed by the remand order from the Fourth Circuit, this document considers whether the amended industry test procedure fails to satisfy the applicable statutory requirements. In this document, DOE focuses on two discrete issues related to whether the amended industry test procedure is reasonably designed to product test results that reflect energy use during a representative average use cycle: the lack of jacket loss and part-load testing provisions in the amended industry test procedure. DOE believes the comment period provided for in the **DATES** section is more than sufficient for interested parties to provide comments on these two issues and notes that DOE already satisfied the comment period required in 42 U.S.C. 6314(b) for prescribing the appendix A and appendix B test procedures with the 60-day comment period provided for in the February 2022 NOPR.

Following publication of the February 2022 NOPR, the latest update to ASHRAE Standard 90.1 was released in January 2023 ("ASHRAE Standard 90.1–2022"). ASHRAE Standard 90.1–2022 references CSA/ANSI Z21.47–2021, *Gas-fired central furnaces* ("ANSI Z21.47–2021"), as the test method for gas-fired CWAFFs and Underwriters Laboratories ("UL") standard UL 727–2018, "Standard for Safety Oil-Fired Central Furnaces" ("UL 727–2018"), as the test method for oil-fired CWAFFs.

On June 2, 2023, DOE published a test procedure final rule for CWAFFs. 88 FR 36217 ("June 2023 Final Rule"). In the June 2023 Final Rule, DOE amended the current test procedure for TE in appendix A and incorporated by reference the latest industry test procedures referenced in ASHRAE Standard 90.1–2022. The amendments to the industry test procedure were relatively minor and not based on any updates to the representative average use cycle for CWAFFs. Rather, they were clarifications to the existing test procedure intended to improve clarity and help with the execution of the current test procedure. DOE also finalized the proposed appendix B test procedure that is based on an updated representative average use cycle that includes jacket losses and part-load operation. Similar to other rulemakings

where DOE has determined that the representative average use cycle should be updated, e.g., air-cooled commercial air conditioners and heat pumps, the June 2023 Final Rule states that use of the appendix B test procedure would not be required until such time as compliance is required with amended energy conservation standards based on the new metric, should DOE adopt such standards.

Following publication of the June 2023 Final Rule, the Air-Conditioning, Heating, and Refrigeration Institute (“AHRI”) filed a petition for review of the final rule in the United States Court of Appeals for the Fourth Circuit on August 1, 2023. In its opening brief, AHRI argued that DOE failed to provide notice and an opportunity for comment after being triggered by the ASHRAE Standard 90.1–2022 publication prior to publishing the June 2023 Final Rule; DOE did not undertake the required analysis under 42 U.S.C. 6314(a)(4)(B); and that if DOE had conducted the correct analysis under 42 U.S.C. 6314(a)(4)(B), it would necessarily have concluded that it lacked clear and convincing evidence that the industry test procedure did not meet the statutory requirements. See *Air-Conditioning, Heating, and Refrigeration Institute v. United States Department of Energy*, No. 23–1793 (4th Cir. Oct. 23, 2023), 15–1.

On February 6, 2024, the Fourth Circuit granted the Department’s motion for voluntary remand. In its order, the Court granted DOE’s motion for voluntary remand to clarify that, in this particular circumstance, where ASHRAE published an amended industry test procedure during the pendency of a rulemaking under the 7-year lookback provision, the Department will solicit public comment prior to making: (1) a final determination that the test procedure in appendix B for the TE2 metric is consistent with the amended industry test procedure; or (2) a final determination, supported by clear and convincing evidence, that the industry test procedure fails to satisfy the statutory requirements. See *Air-Conditioning, Heating, and Refrigeration Institute v. United States Department of Energy*, No. 23–1793 (4th Cir. Feb. 6, 2024), 22–1. The remand order did not vacate the June 2023 Final Rule, nor did it require DOE to revisit its determination that the appendix B test procedure meets the statutory requirements at 42 U.S.C. 6314(a)(2) and (3).

DOE is publishing this document in accordance with the order from the Fourth Circuit. Specifically, DOE is presenting its tentative determination,

supported by clear and convincing evidence, that the industry test procedure is not reasonably designed to produce test results that reflect energy efficiency during a representative average use cycle that, as determined by DOE, includes jacket losses and part-load operation. DOE requests public comment on this tentative determination.

## II. Discussion

### A. ASHRAE Trigger

As discussed, EPCA requires that if the industry test procedure for CWAFFs is amended, DOE must update its test procedure to be consistent with the amended industry test procedure unless DOE determines, by rule published in the **Federal Register** and supported by clear and convincing evidence, that the amended test procedure would not meet the requirements in 42 U.S.C. 6314(a)(2) and (3), in which case DOE may establish an amended test procedure that does satisfy those statutory provisions. (42 U.S.C. 6314(a)(4)(B) and (C)) The publication of ASHRAE Standard 90.1–2022 represented an ASHRAE trigger for CWAFFs. The test procedure established in appendix A for the TE metric references the industry test standards from the most recent version of ASHRAE Standard 90.1 (2022), which satisfies DOE’s obligations under the ASHRAE trigger provision with respect to the appendix A test procedure for the TE metric. See 42 U.S.C. 6314(a)(4)(B). In this document, DOE is applying the ASHRAE trigger provision to the appendix B test procedure for the TE2 metric. In the following section, DOE discusses its tentative determination, supported by clear and convincing evidence,<sup>2</sup> that the industry test procedure is not reasonably designed to produce test results that reflect energy efficiency during a representative average use cycle that, as determined by DOE, includes jacket losses and part-load operation.

### B. Appendix B Test Procedure for TE2

In the June 2023 Final Rule, DOE considered that the existing test procedure and standards were based on a representative average use cycle that did not include consideration of jacket losses or part-load performance. 88 FR 36217, 36223–36227. CWAFFs lose energy to the environment through

jacket losses and are capable of and do operate differently under part-load conditions. As a result, DOE determined in the June 2023 Final Rule that jacket losses and part-load performance can contribute significantly to overall equipment energy use and should be part of the representative average use cycle for CWAFFs. *Id.* As such, DOE established a new test procedure (appendix B) based on a representative average use cycle that includes jacket losses and part-load operation. The June 2023 Final Rule includes an extensive discussion supporting DOE’s determination that the appendix B test procedure is reasonably designed to produce test results that reflect energy efficiency during a representative average use cycle that, as determined by DOE, includes jacket losses and part-load operation, and is not unduly burdensome to conduct. *Id.* In that discussion, DOE acknowledged that accounting for jacket losses and part-load operation would increase test burden. *Id.* at 88 FR 36224. But after a thorough analysis of the increased test costs, DOE concluded that the additional costs are not unduly burdensome and the inclusion of jacket losses and part-load operation provides for a more representative average use cycle. *Id.* at 88 FR 36230.

### C. Industry Test Procedure (Appendix A Test Procedure for TE)

As discussed previously, the industry test procedure, which is referenced in appendix A and is used for determining compliance with the current energy conservation standards, is based on a representative average use cycle that assumes CWAFFs only operate at 100 percent capacity and that energy is only lost through flue exhaust gases. As discussed previously, these assumptions are an over-simplification of how CWAFFs operate in the field. In this document, DOE evaluates the industry test procedure in the context of the ASHRAE trigger provisions and presents DOE’s tentative determination, supported by clear and convincing evidence, that the industry test procedure does not satisfy all of the criteria in 42 U.S.C. 6314(a)(2) and (3). Specifically, DOE has tentatively determined that the industry test procedure is not reasonably designed to produce test results which reflect energy efficiency during a representative average use cycle that, as determined by DOE, includes jacket losses and part-load operation. As such, DOE’s adoption of the appendix B test procedure, which DOE determined met the applicable statutory criteria in the June 2023 Final Rule, is consistent with the ASHRAE

<sup>2</sup> “[C]lear and convincing evidence requires a factfinder . . . to have an ‘abiding conviction’ that her findings . . . are ‘highly probable’ to be true.” *Am. Pub. Gas Ass’n v. United States Dep’t of Energy*, 22 F.4th 1018, 1025 (D.C. Cir. 2022) (quoting *Colorado v. New Mexico*, 467 U.S. 310, 316 (1984)).

trigger provisions in 42 U.S.C. 6314(a)(4)(B) and (C).

As explained in more detail in the following sections, DOE estimates that the test procedure for TE2 could produce a result that is between 3.5 percent lower (in a model with high jacket loss and poor part-load performance) to 1 percent higher (in a model with negligible jacket loss and good part-load performance) than the industry test procedure because the TE2 metric includes jacket loss and part-load performance. This variation in efficiency is significant. For example, when DOE last amended the standards for gas-fired CWFAs, the minimum required efficiency went from 80 to 81 percent, which DOE determined would result in significant additional conservation of energy. 81 FR 2420, 2430. Further, the average life-cycle cost savings to a consumer from that 1 percent increase in efficiency was \$284. *Id.* at 81 FR 2423. Those already significant impacts are only magnified when larger differences in measured efficiency are considered. Therefore, DOE has tentatively determined, supported by clear and convincing evidence, that the industry test procedures referenced in ASHRAE Standard 90.1–2022 are not reasonably designed to produce test results which reflect energy efficiency during a representative average use cycle that, as determined by DOE, includes jacket losses and part-load operation. The following sections discuss the significance of jacket loss and part-load performance to overall energy use and efficiency during a representative average use cycle in more detail.

#### 1. Jacket Loss

As discussed, the current energy efficiency metric for CWFAs is TE. 10 CFR 431.77. TE for a CWF is defined in 10 CFR 431.72 as 100 percent minus the percent flue loss and is determined using the test procedure in appendix A. Appendix A and the industry test procedure produce results that are essentially a measure of combustion efficiency. However, the energy efficiency of CWFAs in the field is influenced by factors in addition to combustion efficiency (*e.g.*, jacket loss). Jacket losses are losses from the commercial warm air furnace to the ambient environment that occur because heat is lost through the jacket, *i.e.*, the cabinet surrounding the heating section, of the CWF during operation. Jacket loss contributes to the overall energy use of a CWF and is, therefore, one of the parameters that determines a CWF's overall efficiency. In fact, table 6.8.1–5 of ASHRAE Standard 90.1–2022

includes performance requirements for CWFAs and specifies that units must have jacket losses not exceeding 0.75 percent of the input rating, indicating that jacket loss is an important aspect of CWF operation. Additionally, the test methods for similar products, such as consumer furnaces, account for jacket loss further demonstrating that jacket losses are an important factor in determining a furnace's efficiency. Heat loss through the cabinet (*i.e.*, jacket loss) is generally proportional to the thickness of the insulation and/or insulative material used in the cabinet. CWFAs with the same TE, as determined under the current appendix A test procedure, could have different performance in the field if, for example, one unit has different insulation than the other (resulting in different levels of jacket loss). DOE also notes that the vast majority of CWFAs are installed within commercial unitary air conditioners (“CUACs”) located on rooftops,<sup>3</sup> and that these outdoor installations will result in greater jacket loss than CWFAs installed indoors because of the colder ambient air. As such, DOE has tentatively determined that energy use of a CWF will vary depending on installation location because of different levels of jacket loss. Differences in energy use based on differences in jacket loss are not captured by the industry test procedure. Incorporating jacket loss into the representative average use cycle and corresponding new metric, TE2, allows consumers to get a more accurate picture of CWF energy use in the field by capturing differences in CWF performance due to different levels of jacket loss (which as previously described could be caused by different levels of insulation, for example).

While manufacturers currently complying with the ASHRAE Standard 90.1 requirements would have to limit jacket losses so as not to exceed 0.75 percent of the input rating, DOE notes that because the jacket loss percentage would be multiplied by the jacket loss factor for weatherized CWFAs designed to be installed outdoors (which represent the majority of CWFAs on the market and which have a jacket loss factor of 3.3), a jacket loss of 0.75 percent could result in a difference of nearly 2.5 percent as compared to a unit with negligible jacket losses. As

discussed previously, even a 1 percent difference in efficiency is significant both in terms of the national benefits of energy conservation standards and benefits to individual consumers.

#### 2. Part-Load Performance

DOE has reviewed the current CWF market and found that the vast majority of CWFAs have two or more stages of heating. DOE notes that CWFAs with two or more stages can operate at reduced firing rates to meet the building load. Part-load performance refers to the efficiency of the CWF when operating at a reduced firing rate (as opposed to full-load performance which reflects the efficiency when operating at the maximum firing rate).

Under the appendix A test procedure, TE reflects the efficiency of the CWF when firing at the maximum input rate (*i.e.*, at full load). When a CWF burner operates at a reduced input rate (*i.e.*, part load), the ratio of heat exchanger surface area to burner input rate is increased (in comparison to operation at the maximum input rate), which could increase the efficiency of the CWF compared to operating at full load, if other aspects of operation are consistent. However, depending on the air-fuel ratio or other factors impacting combustion efficiency, the combustion efficiency could instead decrease when operating at a reduced firing rate, especially if the air-fuel ratio is not maintained at an optimal level. The change in performance, including whether efficiency is improved or reduced at part-load, would vary from model to model depending on the design and control strategies employed when operating at input rates below the maximum input rate. Therefore, CWF part-load performance has the potential to be substantively different from full-load performance and including part-load performance in the measurement of CWF efficiency would allow the efficiency metric to account for this potential.

In previous testing of similar products, DOE has observed that the efficiency when operating at the reduced input rate can be as much as 2 percent higher or lower than the efficiency when operating at the maximum input rate.<sup>4</sup> In a CWF that exhibits similar performance differences, the resulting difference in

<sup>3</sup> On January 15, 2016, DOE published a direct final rule amending energy conservation standards for various types of commercial air conditioning equipment and CWFAs. 81 FR 2420. As discussed in appendix 8D of the Direct Final Rule Technical Support Document, DOE found that 95% of gas-fired CWFAs are installed outdoors and packaged with a CUAC.

<sup>4</sup> In 2019, DOE conducted testing of consumer furnaces, which included 2-stage, non-condensing furnaces. The consumer furnace test method requires testing at both the maximum and minimum input rates for 2-stage models, so DOE was able to compare the steady-state efficiency at each input rate to determine the difference in performance when operating at a reduced input rate.

TE2 would be 1 percent higher or lower than the TE of that unit (depending on whether part load operation is more or less efficient than at full load) when accounting for the weighting of 50 percent of time operating at the reduced input rate. As discussed previously, such a difference in efficiency is significant both in terms of the national benefits of energy conservation standards and benefits to individual consumers.

### III. Conclusion

The potential difference in CWF efficiency measured under the industry test procedure and the appendix B test procedure is an excellent example of why Congress updated representative use cycles for covered products to include standby and off mode energy use in new or amended energy conservation standards and why stakeholders, including manufacturers, asked DOE to update the representative average use cycle for air-cooled commercial air conditioners and heat pumps—consumers and manufacturers are both better off when DOE test procedures and energy conservation standards capture more energy use in the field. For example, as discussed previously, a CWF with a TE of 81 percent as measured by the industry test procedure could, depending on jacket losses and part-load operation, have an actual range of efficiencies from 77.5 to 82 percent using the appendix B test procedure for TE2. That is a significant difference in efficiency and corresponds to a significant difference in fuel costs over the lifetime of the CWF, which is important information for consumers. The industry test procedure also does not allow manufacturers to fully differentiate their products in the market. For example, under the industry test procedure, a manufacturer with a line of CWF models with well-insulated jackets has no way to advertise their improved efficiency in the market. Under the industry test procedure, these models will have the same advertised efficiency as similar models that lack insulation and have higher jacket losses.

Having determined that any future, amended standards for CWFs should be based on a representative average use cycle that includes jacket losses and part-load operation, DOE adopted the appendix B test procedure in the June 2023 Final Rule. The appendix B test procedure contains specific provisions for measuring jacket losses and energy use during part-load operation and will be used by DOE to evaluate potential amended standards for CWFs. Use of the appendix B test procedure by

manufacturers would not be required until such time as compliance is required with amended energy conservation standards based on the new representative average use cycle, should DOE adopt such standards.

In this document, DOE evaluated whether the industry test procedure is reasonably designed to produce test results which reflect energy use during a representative average use cycle that, as determined by DOE, includes jacket losses and part-load operation. Unlike the appendix B test procedure, the industry test procedure does not have provisions for calculating jacket losses and changes in energy efficiency due to part-load operation. As discussed previously, this results in the industry test procedure producing test results that do not account for significant variations in energy use across different CWF models. As a result, DOE has tentatively determined, supported by clear and convincing evidence, that the industry test procedure is not reasonably designed to produce test results which reflect energy efficiency during a representative average use cycle. DOE requests comment on this tentative determination.

### III. Procedural Issues and Regulatory Review

DOE has concluded that the determinations made pursuant to the various procedural requirements applicable to the June 2023 Final Rule remain unchanged for this notification of tentative determination. These determinations are set forth in the June 2023 Final Rule. 88 FR 36217, 36230–36233. DOE is publishing this document to present its tentative determination, supported by clear and convincing evidence, that the industry test procedure would not provide test results that are representative of an average use cycle for the TE2 metric, and to seek comment from interested parties.

### IV. Public Participation

DOE will accept comments, data, and information regarding this document no later than the date provided in the **DATES** section at the beginning of this document. Interested parties may submit comments, data, and other information using any of the methods described in the **ADDRESSES** section at the beginning of this document.

*Submitting comments via www.regulations.gov.* The *www.regulations.gov* web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your

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Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via postal mail or hand delivery/courier, please provide all items on a CD, if feasible, in which case it is not necessary to submit printed copies. No telefacsimiles (“faxes”) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, written in English, and that are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

*Campaign form letters.* Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters’ names compiled into one or more PDFs. This reduces comment processing and posting time.

*Confidential Business Information.* Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email two well-marked copies: one copy of the document marked “confidential” including all the information believed to be confidential, and one copy of the document marked “non-confidential” with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

It is DOE’s policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

#### V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notification of tentative determination and request for comment.

#### Signing Authority

This document of the Department of Energy was signed on December 13, 2024, by Jeffrey Marootian, Principal Deputy Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is

maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on December 16, 2024.

**Treena V. Garrett,**

*Federal Register Liaison Officer, U.S. Department of Energy.*

[FR Doc. 2024–30274 Filed 12–23–24; 8:45 am]

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## NATIONAL CREDIT UNION ADMINISTRATION

### 12 CFR Parts 701 and 741

**RIN 3133–AF42**

#### Succession Planning

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Final rule.

**SUMMARY:** The NCUA Board (Board) is issuing this final rule to further strengthen succession planning efforts for all consumer federally insured credit unions (FICUs). This final rule requires that a FICU board of directors establish a written succession plan that addresses specified positions and contains certain information. In addition, the board of directors is required to regularly review the succession plan. The final rule also requires that newly appointed members of the board of directors have a working familiarity with the succession plan no later than six months after appointment. The final rule follows publication of a July 25, 2024, proposed rule and takes into consideration the public comments received on the proposed rule. In response to comments, the Board has amended the proposal to provide that a credit union board must review its succession plan no less than every 24 months, as opposed to the annual review that would have been required under the proposed rule. The Board has also revised the proposed rule by removing loan officers, credit committee members, and supervisory committee members from the list of FICU officials that must be covered by the succession plans. In addition, non-substantive changes have been made to the wording used in the list of covered officials for purposes of clarity. The final rule also

streamlines the required contents of the succession plans and no longer requires that deviations from approved succession plans be documented in the FICU board’s meeting minutes. Further, to help ensure that FICUs have the necessary time to develop their succession plans, the Board is delaying the effective date of the final rule until January 1, 2026.

**DATES:** This final rule is effective on January 1, 2026.

#### FOR FURTHER INFORMATION CONTACT:

*Office of Examination and Insurance:* John Berry, Policy Officer, at (703) 664–3909 or at 1775 Duke Street, Alexandria, VA 22314. *Office of General Counsel:* Ariel Pereira, Senior Attorney, Office of General Counsel, at (703) 548–2778 or at the above address.

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#### I. Background

At its July 18, 2024, meeting, the Board approved a proposed rule to address succession planning at FICUs. The proposed rule was published in the **Federal Register** on July 25, 2024, and provided for a 60-day public comment period.<sup>1</sup> The proposal followed publication of the Board’s earlier 2022 proposed rule on the same topic.<sup>2</sup> The July 25, 2024, proposed rule was based on that earlier proposed rule but included several changes that the Board believed would further strengthen succession planning efforts for both consumer federal credit unions (FCUs) and consumer federally insured, state-

<sup>1</sup> 89 FR 60329 (July 25, 2024).

<sup>2</sup> 87 FR 6078 (Feb. 3, 2022).