

(iii) Upon request of the employee, provide a printed confirmation of the transaction to the person providing the signature.

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Janet Napolitano,
Secretary.

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DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket No. EERE-2010-BT-TP-0022]

RIN: 1904-AC25

Energy Conservation Program for Consumer Products: Test Procedure for Microwave Ovens; Repeal of Active Mode Test Procedure Provisions

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

ACTION: Final rule.

SUMMARY: The U.S. Department of Energy (DOE) repeals the regulatory provisions establishing the cooking efficiency test procedure for microwave ovens under the Energy Policy and Conservation Act (EPCA). DOE has determined that the microwave oven test procedure to measure the cooking efficiency does not produce accurate and repeatable test results and is unaware of any test procedures that have been developed that address the concerns with the DOE microwave oven cooking efficiency test procedure.

DATES: *Effective date:* This rule is effective on July 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.

FOR FURTHER INFORMATION CONTACT: Mr. Wes Anderson, U.S. Department of Energy, Energy Efficiency and Renewable Energy, Building Technologies Program, EE-2J, 1000 Independence Avenue, SW., Washington, DC 20585-0121. Tel.: (202) 586-7335. E-mail: Wes.Anderson@ee.doe.gov.

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I. Legal Authority and Background

Legal Authority

Title III of the Energy Policy and Conservation Act (42 U.S.C. 6291 *et seq.*; EPCA or the Act) sets forth a variety of provisions designed to improve energy efficiency. Part A of Title III (42 U.S.C. 6291-6309) establishes the "Energy Conservation Program for Consumer Products Other Than Automobiles" for consumer products, including microwave ovens. (42 U.S.C. 6291(1)-(2) and 6292(a)(10)) Under the Act, this program consists essentially of three parts: testing, labeling, and establishing Federal energy conservation standards.

Manufacturers of covered products must use DOE test procedures to certify that their products comply with energy conservation standards adopted under EPCA and to represent the efficiency of their products. (42 U.S.C. 6295(s); 42 U.S.C. 6293(c)) DOE must also use DOE test procedures in any action to determine whether covered products comply with EPCA standards. (42 U.S.C. 6295(s)) Criteria and procedures for DOE's adoption and amendment of such test procedures, as set forth in EPCA, require that test procedures be reasonably designed to produce test results which measure energy efficiency, energy use, or estimated annual operating cost of a covered product during a representative average use cycle or period of use. Test procedures must also not be unduly

burdensome to conduct. (42 U.S.C. 6293(b)(3))

EPCA also specifies that State law providing for the disclosure of information with respect to any measure of energy consumption is superseded to the extent that such law requires testing or the use of any measure of energy consumption or energy descriptor in any manner other than provided under section 323 of EPCA. (42 U.S.C. 6297(a)(1)(A); 42 U.S.C. 6297(f)(3)(G)) Therefore, in the absence of a Federal test procedure or accompanying conservation standard, States may prescribe their own test procedures and standards pursuant to applicable State law. *Id.*

Background—Active Mode Test Procedure

DOE's test procedure for microwave ovens is codified at appendix I to subpart B of Title 10 of the Code of Federal Regulations (CFR). That test procedure was part of an October 3, 1997, final rule that also revised the test procedures for other cooking products to measure their efficiency and energy use more accurately. 62 FR 51976. The microwave oven test procedure incorporates portions of the International Electrotechnical Commission (IEC) Standard 705-1998 and Amendment 2-1993, "Methods for Measuring the Performance of Microwave Ovens for Households and Similar Purposes," (IEC Standard 705) and measures microwave oven cooking efficiency and energy factor (EF). *Id.*

Background—Active Mode Standards

The National Appliance Energy Conservation Act of 1987 (NAECA; Pub. L. 100-12), which amended EPCA, established prescriptive standards for kitchen ranges and ovens, but no standards were established for microwave ovens. (42 U.S.C. 6295(h)) The NAECA amendments also required DOE to conduct two cycles of rulemakings to determine whether to revise the standard. DOE undertook the first cycle of these rulemakings and issued a final rule on September 8, 1998 (63 FR 48038), in which DOE found that no amended standards were justified for electric cooking products, including microwave ovens. In a final rule published on April 8, 2009 (74 FR 16040) (hereafter referred to as the appliance standards rulemaking), DOE established amended standards for gas cooking products, but again found that no active mode cooking efficiency standards were justified for electric cooking products, including microwave ovens. This rulemaking completed the second cycle of rulemakings required by

the NAECA amendments to EPCA. (42 U.S.C. 6295(h)(2))

II. Discussion

The regulatory definition of “microwave oven” is set forth at 10 CFR 430.2. “Microwave oven” is defined as “a class of kitchen ranges and ovens which is a household cooking appliance consisting of a compartment designed to cook or heat food by means of microwave energy.” The existing test procedure to measure energy efficiency of microwave ovens is codified at 10 CFR 430.23(i) and 10 CFR part 430, subpart B, appendix I, and the sampling plan, that is, the specific requirements for the number of units to be tested, is set forth at 10 CFR 430.24(i).

The current DOE microwave oven test procedure incorporates portions of IEC Standard 705 for measuring the cooking performance of microwave ovens. The testing methods measure the amount of energy required to raise the temperature of 1 kilogram of water by 10 degrees Celsius (°C) under controlled conditions. The ratio of usable output power over input power describes the EF, which is also a measure of the cooking efficiency.

As part of the appliance standards rulemaking, DOE tested 32 microwave ovens, and the Association of Home Appliance Manufacturers (AHAM) independently tested 21 additional units, for a total of 53 microwave ovens, according to the current DOE microwave oven test procedure.¹ The data from cooking tests on these units show a cooking efficiency range from 55

percent to 62 percent. Reverse engineering conducted by DOE as part of the appliance standards rulemaking attempted to identify design options associated with this variation in cooking efficiency. Although design options among various microwave ovens were found to be highly standardized, DOE was unable to correlate specific design options or other features such as cavity size or output power with cooking efficiency.

DOE also observed significant variability in the cooking efficiency measurements obtained using the DOE microwave oven test procedure for the 53 units tested by DOE and AHAM. The data show test-to-test variability of several EF percentage points (0 to 2.5) for a given microwave oven (*i.e.*, where a given combination of design options could be assigned to a number of trial standard levels (TSLs), depending upon the test results). DOE was also unable to ascertain why similarly designed, equipped, and constructed microwave ovens showed varying EFs and, hence, annual energy consumption. DOE further notes that manufacturers stated during interviews that the water used in the test procedure is not representative of an actual food load. One manufacturer stated, for example, that this could result in different microwave ovens being rated at the same energy efficiency even though true cooking performance is different.² DOE understands that IEC, AHAM, manufacturers, and others are exploring whether a test procedure can be developed that addresses the high-

variability concerns with its current cooking efficiency measure. DOE stated in an October 2008 notice of proposed rulemaking (hereinafter referred to as the October 2008 TP NOPR) that it would evaluate such test procedures to determine whether they address the concerns discussed above, thereby making them suitable candidates for use in amending the DOE test procedure. 73 FR 62134, 62139 (Oct. 17, 2008).

DOE also noted that IEC Standard 705 has been declared obsolete by IEC and the current IEC test procedure is IEC Standard 60705–2006, “Household microwave ovens—Methods of measuring performance” (IEC Standard 60705). In order to evaluate the key differences between these two IEC test procedures, DOE conducted a series of tests as part of the appliance standards rulemaking on a sub-sample of its microwave ovens (12 units total) to compare the efficiency measurements using both IEC test procedures. The general methodology for each test procedure is largely the same, and consists of heating 1 kg of water from about 10 °C below room temperature to room temperature, using the maximum power setting on the microwave oven. The input power over the duration of the test, and thus energy consumed during the test, are compared to the energy absorbed by the test load to obtain the efficiency measurement. Table II.1 below summarizes key differences noted between the test procedures that can potentially impact the final energy efficiency calculation.

TABLE II.1—KEY DIFFERENCES BETWEEN IEC STANDARD 705 AND IEC STANDARD 60705

IEC Standard 705–1988 and Amendment 2–1993	IEC Standard 60705–2006
Ambient Temp., $T_0 = 20 \pm 2 \text{ }^{\circ}\text{C}$	Ambient Temp., $T_0 = 20 \pm 5 \text{ }^{\circ}\text{C}$.
Starting Water Temp., $T_1 = T_0 - (10 \pm 1 \text{ }^{\circ}\text{C})$	Starting Water Temp., $T_1 = 10 \pm 1 \text{ }^{\circ}\text{C}$.
Final Water Temp., $T_2 = T_0 \pm 1 \text{ }^{\circ}\text{C}$	Final Water Temp., $T_2 = 20 \pm 2 \text{ }^{\circ}\text{C}$.
Electrical Input Energy neglects the magnetron filament heat-up time, the measurement starting when the input current reaches 90 percent of its final value.	Measurement of Electrical Input Energy includes the energy consumed during the magnetron filament heat-up time.
No mention of rounding off efficiency or output power calculations	Efficiency is rounded off to the nearest whole number, while output power is rounded off to the nearest 50 W.
Temperature measurement accurate within 0.25 °C and linearity better than 1 percent. Time measurement accurate within 0.25 seconds.	No specifications for accuracy of temperature and time measurements.

As part of this testing to compare the two IEC test procedures, DOE conducted tests to evaluate the variation of test-to-test efficiency results for an individual microwave oven. DOE test results,

shown below in Table II.2, showed that the test-to-test variation using IEC Standard 60705 ranged from 0 to 5 percent of the average value, which was much greater than the comparable

variation for IEC Standard 705, whose test-to-test variation in efficiency results ranged from 0 to 1.5 percent for the same sub-sample of microwave ovens. This larger range associated with IEC

¹ Both DOE's and AHAM's microwave oven samples contained units with manufacturer-rated output powers ranging from 700 to 1,300 W.

² For more details of the cooking efficiency testing conducted as part of the appliance standards rulemaking, see the 2009 *Technical Support Document for Residential Dishwashers, Dehumidifiers, and Cooking Products and*

Commercial Clothes Washers. Available online at http://www1.eere.energy.gov/buildings/appliance_standards/residential/cooking_products.html.

Standard 60705 is believed to be attributable to the effects of the procedure's requirement to round the power output to the nearest 50 W and the efficiency to the nearest whole number after each individual test, prior to averaging. DOE also evaluated the non-rounded data from the tests using IEC Standard 60705, which still showed more test-to-test variation for a given

unit (0 to 2.1 percent) than the variations test-to-test during the IEC Standard 705 testing. This remaining increment in test-to-test variation was likely due to the more lenient tolerances on the prescribed ambient and final test load temperatures (presented in Table II.2). Based on observations and analysis of test results, DOE believes that IEC Standard 60705 is likely to produce

even less consistent or repeatable test results than IEC Standard 705 because the measurement requirements in IEC Standard 705 are more stringent. Therefore, DOE did not propose amendments in the October 2008 TP NOPR to the microwave oven test procedure to reference IEC Standard 60705.

TABLE II.2—IEC STANDARD 705 VERSUS IEC STANDARD 60705 TEST RESULTS TEST-TO-TEST VARIATION

Test unit	Test-to-test EF range (%)		
	IEC Standard 705	IEC Standard 60705 (rounded)	IEC Standard 60705 (non-rounded)
1	1.46	3.57	0.56
2	0.06	3.45	0.96
3	0.40	3.33	0.70
4	0.48	5.00	1.66
5	0.71	3.57	0.50
6	0.47	3.45	0.20
7	0.77	3.39	0.53
8	0.21	1.67	0.76
9	1.07	1.67	1.05
10	0.96	0.00	0.87
11	0.67	1.79	0.82
12	1.24	5.17	2.14

In response to the October 2008 TP NOPR, DOE received comments from interested parties regarding the accuracy and repeatability of the existing DOE microwave oven test procedure for measuring cooking efficiency. The Appliance Standards Awareness Project (ASAP) cited substantial problems with the test procedure for measuring cooking efficiency that have not yet been addressed, including a lack of repeatable and consistent results and the possibility that the challenge of dealing with cooking efficiency is being compounded by rating the cooking efficiency of combination ovens in their various cooking modes. (ASAP, Public Meeting Transcript, No. 7 at p. 25) Pacific Gas & Electric (PG&E) noted that heat transfer in a microwave oven depends on the specific resistivity of the load, and that pure water has relatively low specific resistivity, and items that might be cooked in a microwave oven would have more salt and thus absorb microwave energy more efficiently than pure water. PG&E noted that, while water is easily obtainable for testing, using it probably results in lower cooking efficiency measurements than would be expected from using actual food products. (PG&E, Public Meeting Transcript, No. 7 at pp. 44–45)

DOE is unaware of any test procedures that have been developed that address the concerns with the DOE microwave oven cooking efficiency test

procedure discussed above. DOE is also unaware of any research or data on consumer usage indicating what a representative food load would be, or any data showing how changes to the representative test load would affect the measured EF or repeatability of test results.

Because there are currently no existing test procedures that produce representative and repeatable cooking efficiency measurements for microwave ovens, and because of the issues with using the existing DOE microwave oven test procedure, as discussed above, including the large test-to-test variation in cooking efficiency measurements, DOE is repealing the provisions in the existing microwave oven test procedure relating to the measurement of cooking efficiency and EF, and the regulatory provision specifying requirements for the number of units to be tested pursuant to the test procedure (*i.e.*, the sampling plan).

DOE will maintain the regulatory definition of microwave oven because kitchen ranges and ovens are listed as covered products in EPCA (42 U.S.C. 6292(10)) and because DOE is currently considering amendments to the microwave oven test procedure to measure standby and off mode energy use. DOE plans to initiate a separate rulemaking process to consider new provisions for measuring microwave oven energy efficiency in active

(cooking) mode and has published a notice of public meeting to discuss active mode test procedures elsewhere in today's **Federal Register**.

III. Procedural Requirements

A. Review Under 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 (Oct. 4, 1993). Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB).

B. Administrative Procedure Act

The Department of Energy finds good cause to waive notice and comment on these regulations pursuant to 5 U.S.C. 533(b)(B), and the 30-day delay in effective date pursuant to 5 U.S.C. 553(d). Notice and comment are unnecessary and contrary to the public interest because this final rule is repealing a test procedure that DOE has determined to not be able to produce accurate and repeatable test results. Interested parties were provided with an opportunity to comment on the active mode test procedure in the October 2008 TP NOPR and responded in support of DOE's determination. In addition, DOE previously determined that standards for microwave ovens

were not warranted. (74 FR 16040, April 8, 2009). As a result, there is currently no energy conservation standard in place for microwave ovens for which a test procedure would be necessary to measure energy efficiency or energy use. A delay in effective date is unnecessary and contrary to the public interest for these same reasons. Therefore, these regulations are being published as final regulations and are effective July 22, 2010.

C. Review Under the 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 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. DOE's procedures and policies may be viewed on the Office of the General Counsel's Web site (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.

C. Review Under the Paperwork Reduction Act of 1995

Today's final rule contains no new record-keeping requirements. Therefore, today's final rule would not impose any new reporting requirements requiring clearance by OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

D. Review Under the 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 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, this rule amends an existing rule without changing its environmental effect, and, therefore, is covered by the Categorical Exclusion in paragraph A6 to Appendix A to subpart D, 10 CFR part 1021, which applies because this rule would revise existing

test procedures such that the amount, quality, or distribution of energy usage will not be affected, and, therefore, not result in any environmental impacts.³ Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, "Federalism," imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. 64 FR 43255 (August 4, 1999). 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 that it will follow in developing such regulations. 65 FR 13735. DOE examined this final rule and determined that it would not preempt State law and would 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. Executive Order 13132 requires no further action.

F. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (Feb. 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. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the

³ Categorical Exclusion A6 provides, "Rulemakings that are strictly procedural, such as rulemaking (under 48 CFR part 9) establishing procedures for technical and pricing proposals and establishing contract clauses and contracting practices for the purchase of goods and services, and rulemaking (under 10 CFR part 600) establishing application and review procedures for, and administration, audit, and closeout of, grants and cooperative agreements."

regulation specifies the following: (1) The preemptive effect, if any; (2) any effect on existing Federal law or regulation; (3) a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) the retroactive effect, if any; (5) definitions of key terms; and (6) 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 final 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 estimates of the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) 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 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 such governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. (The policy is also available at www.gc.doe.gov). Today's final rule contains neither an intergovernmental mandate nor a mandate that may result in an expenditure of \$100 million or more in any year, so these requirements do not apply.

H. Review Under the 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 final rule would have no 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

DOE has determined, under Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights," 53 FR 8859 (March 18, 1988), that this final rule would not result in any takings that might require compensation under the Fifth Amendment to the U.S. 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 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed today's final rule and concluded that it is consistent with applicable policies in the OMB and DOE guidelines.

K. Review Under 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 OIRA a Statement of Energy Effects for any proposed significant energy action. The definition of a "significant energy action" is 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 if the proposal were to be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Today's final rule is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of OIRA also did not designate the final rule as a significant energy action. Therefore, it is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the DOE Organization Act (Pub. L. 95–91), DOE 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 (FEAA; Pub. L. 95–70) (15 U.S.C. 788). Section 32 essentially provides that, where a proposed rule authorizes or requires use of commercial standards, the rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (FTC) concerning the impact of the commercial or industry standards on competition. This final rule to repeal the test procedure for determining the energy efficiency of microwave ovens does not authorize or require the use of any commercial standards. Therefore, no consultation with either DOJ or FTC is required.

M. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of today's rule before 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. 801(2).

VI. Approval of the Office of the Assistant Secretary

The Assistant Secretary of DOE's Office of Energy Efficiency and Renewable Energy has approved publication of today's final rule.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Energy conservation, Household appliances.

Issued in Washington, DC, on July 9, 2010.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

■ For the reasons stated in the preamble, part 430 of chapter II of title 10, Code of Federal Regulations, is amended as set forth below:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

§ 430.3 [Amended]

■ 2. Section 430.3 is amended by removing paragraphs (l)(1) and (l)(2).

■ 3. Section 430.23 is amended by revising paragraphs (i)(1), (i)(2), (i)(4), and (i)(12) to read as follows:

§ 430.23 Test procedures for the measurement of energy and water consumption.

* * * * *

(i) *Kitchen ranges and ovens.* (1) The estimated annual operating cost for conventional ranges, conventional cooking tops, and conventional ovens shall be the sum of the following products: (i) The total annual electrical energy consumption for any electrical energy usage, in kilowatt-hours (kWh's) per year, times the representative average unit cost for electricity, in dollars per kWh, as provided pursuant to section 323(b)(2) of the Act; plus (ii) the total annual gas energy consumption for any natural gas usage, in British thermal units (Btu's) per year, times the representative average unit cost for natural gas, in dollars per Btu, as provided pursuant to section 323(b)(2) of the Act; plus (iii) the total annual gas energy consumption for any propane usage, in Btu's per year, times the representative average unit cost for propane, in dollars per Btu, as provided pursuant to section 323(b)(2) of the Act. The total annual energy consumption for conventional ranges, conventional cooking tops, and conventional ovens shall be as determined according to 4.3, 4.2.2, and 4.1.2, respectively, of appendix I to this subpart. The estimated annual operating cost shall be rounded off to the nearest dollar per year.

(2) The cooking efficiency for conventional cooking tops and conventional ovens shall be the ratio of the cooking energy output for the test to the cooking energy input for the test, as determined according to 4.2.1 and 4.1.3, respectively, of appendix I to this

subpart. The final cooking efficiency values shall be rounded off to three significant digits.

* * * * *

(4) The energy factor for conventional ranges, conventional cooking tops, and conventional ovens shall be the ratio of the annual useful cooking energy output to the total annual energy input, as determined according to 4.3, 4.2.3, 4.1.4, respectively, of Appendix I to this subpart. The final energy factor values shall be rounded off to three significant digits.

* * * * *

(12) Other useful measures of energy consumption for conventional ranges, conventional cooking tops, and conventional ovens shall be those measures of energy consumption which the Secretary determines are likely to assist consumers in making purchasing decisions and which are derived from the application of appendix I to this subpart.

* * * * *

■ 4. Section 430.24 is amended by revising paragraph (i)(1) to read as follows:

§ 430.24 Units to be tested.

* * * * *

(i)(1) Except as provided in paragraph (i)(2) of this section, for each basic model of conventional cooking tops, and conventional ovens a sample of sufficient size shall be tested to insure that—

(i) Any represented value of estimated annual operating cost, energy consumption or other measure of energy consumption of a basic model for which consumers would favor lower values shall be no less than the higher of:

(A) the mean of the sample or

(B) the upper 97½ percent confidence limit of the true mean divided by 1.05, and

(ii) Any represented value of the energy factor or other measure of energy consumption of a basic model for which consumers would favor higher values shall be no greater than the lower of:

(A) the mean of the sample or

(B) the lower 97½ percent confidence limit of the true mean divided by .95.

* * * * *

■ 5. Appendix I to Subpart B of Part 430 is amended:

■ a. In section 1. *Definitions*, by:

■ 1. Removing section 1.5; and

■ 2. Redesignating sections 1.6 through 1.11 as 1.5 through 1.10;

■ b. In section 2. *Test Conditions*, by:

■ 1. Removing section 2.1.3;

■ 2. Revising sections 2.2.1, 2.5, and 2.6;

■ 3. Removing and reserving section 2.8, consisting of sections 2.8.1, 2.8.2, and 2.8.2.1;

■ 4. Removing section 2.9.3.4;

■ 5. Redesignating section 2.9.3.5 as 2.9.3.4; and

■ 6. Revising sections 2.9.1.1, 2.9.1.2, 2.9.3.1, and 2.9.5;

■ c. In section 3. *Test Methods and Measurements*, by:

■ 1. Revising sections 3.1.1 introductory text, 3.1.1.1, and 3.1.2;

■ 2. Removing section 3.1.3, consisting of section 3.1.3.1;

■ 3. Removing 3.2.3, and 3.3.13;

■ d. In section 4. *Calculation of Derived Results From Test Measurements*, by:

■ 1. Revising sections 4.3; and

■ 2. Removing section 4.4, consisting of sections 4.4.1, 4.4.2, 4.4.3, 4.4.4 and 4.4.5;

The revisions read as follows:

Appendix I to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Conventional Ranges, Conventional Cooking Tops, Conventional Ovens, and Microwave Ovens

* * * * *

2. Test Conditions

* * * * *

2.2.1 *Electrical supply.* Maintain the electrical supply to the conventional range, conventional cooking top, and conventional oven being tested at 240/120 volts except that basic models rated only at 208/120 volts shall be tested at that rating. Maintain the voltage within 2 percent of the above specified voltages.

* * * * *

2.5 Ambient room air temperature.

During the test, maintain an ambient room air temperature, T_R , of $77^\circ \pm 9^\circ \text{F}$ ($25^\circ \pm 5^\circ \text{C}$) for conventional ovens and cooking tops, as measured at least 5 feet (1.5 m) and not more than 8 feet (2.4 m) from the nearest surface of the unit under test and approximately 3 feet (0.9 m) above the floor. The temperature shall be measured with a thermometer or temperature indicating system with an accuracy as specified in Section 2.9.3.1.

2.6 Normal nonoperating temperature.

All areas of the appliance to be tested shall attain the normal nonoperating temperature, as defined in Section 1.5, before any testing begins. The equipment for measuring the applicable normal nonoperating temperature shall be as described in Sections 2.9.3.1, 2.9.3.2, 2.9.3.3, and 2.9.3.4, as applicable.

* * * * *

2.8 [Reserved]

* * * * *

2.9.1.1 *Watt-hour meter.* The watt-hour meter for measuring the electrical energy consumption of conventional ovens and cooking tops shall have a resolution of 1 watt-hour (3.6 kJ) or less and a maximum error no greater than 1.5 percent of the measured value for any demand greater than 100 watts.

2.9.1.2 *Watt meter.* The watt meter used to measure the conventional oven, conventional range, or range clock power shall have a resolution of 0.2 watt (0.2 J/s)

or less and a maximum error no greater than 5 percent of the measured value.

* * * * *

2.9.3.1 *Room temperature indicating system.* The room temperature indicating system shall be as specified in Section 2.9.3.4 for ranges, ovens and cooktops.

* * * * *

2.9.5 *Scale.* The scale used for weighing the test blocks shall have a maximum error no greater than 1 ounce (28.4 g).

* * * * *

3. Test Methods and Measurements

3.1 Test methods.

3.1.1 *Conventional oven.* Perform a test by establishing the testing conditions set forth in Section 2, “TEST CONDITIONS,” of this Appendix, and adjust any pilot lights of a conventional gas oven in accordance with the manufacturer’s instructions and turn off the gas flow to the conventional cooking top, if so equipped. Before beginning the test, the conventional oven shall be at its normal nonoperating temperature as defined in Section 1.5 and described in Section 2.6. Set the conventional oven test block W_1 approximately in the center of the usable baking space. If there is a selector switch for selecting the mode of operation of the oven, set it for normal baking. If an oven permits baking by either forced convection by using a fan, or without forced convection, the oven is to be tested in each of those two modes. The oven shall remain on for at least one complete thermostat “cut-off/cut-on” of the electrical resistance heaters or gas burners after the test block temperature has increased 234°F (130°C) above its initial temperature.

3.1.1.1 *Self-cleaning operation of a conventional oven.* Establish the test conditions set forth in Section 2, “TEST CONDITIONS,” of this Appendix. Adjust any pilot lights of a conventional gas oven in accordance with the manufacturer’s instructions and turn off the gas flow to the conventional cooking top. The temperature of the conventional oven shall be its normal nonoperating temperature as defined in Section 1.5 and described in Section 2.6. Then set the conventional oven’s self-cleaning process in accordance with the manufacturer’s instructions. If the self-cleaning process is adjustable, use the average time recommended by the manufacturer for a moderately soiled oven.

* * * * *

3.1.2 *Conventional cooking top.* Establish the test conditions set forth in Section 2, “TEST CONDITIONS,” of this Appendix.

Adjust any pilot lights of a conventional gas cooking top in accordance with the manufacturer’s instructions and turn off the gas flow to the conventional oven(s), if so equipped. The temperature of the conventional cooking top shall be its normal nonoperating temperature as defined in Section 1.5 and described in Section 2.6. Set the test block in the center of the surface unit under test. The small test block, W_2 , shall be used on electric surface units of 7 inches (178 mm) or less in diameter. The large test block, W_3 , shall be used on electric surface units over 7 inches (177.8 mm) in diameter and on all gas surface units. Turn on the surface unit under test and set its energy input rate to the

maximum setting. When the test block reaches 144 °F (80 °C) above its initial test block temperature, immediately reduce the energy input rate to 25 ± 5 percent of the maximum energy input rate. After 15 ± 0.1 minutes at the reduced energy setting, turn off the surface unit under test.

* * * * *

4. Calculation of Derived Results From Test Measurements

* * * * *

4.3 *Combined components.* The annual energy consumption of a kitchen range, e.g. a cooktop and oven combined, shall be the sum of the annual energy consumption of each of its components. The annual energy consumption for other combinations of ovens and cooktops will also be treated as the sum of the annual energy consumption of each of its components. The energy factor of a combined component is the sum of the annual useful cooking energy output of each component divided by the sum of the total annual energy consumption of each component.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2010-0174; Directorate Identifier 2009-NM-186-AD; Amendment 39-16359; AD 2010-14-14]

RIN 2120-AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model ERJ 170 and ERJ 190 Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are superseding an existing airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI for EMBRAER Model ERJ 170 airplanes describes the unsafe condition as:

It has been found the occurrence of an engine in-flight shutdown caused by the LPCV [low pressure check valves] failing to close due to excessive wear, which leads to the concern that such fault may be present in both engines of a given aircraft.

* * * * *

The MCAI for EMBRAER Model ERJ 190 airplanes describes the unsafe condition as: An occurrence of an uncommanded engine in-flight shutdown (IFSD) was reported

* * * which was caused by an ERJ 170 defective LPCV * * *. The valve failed to close due to excessive wear. Despite there were no IFSD related to LPCV * * * failure, some ERJ 190 valves * * * were inspected and presented cracks due to low cycle fatigue. Since this failure mode also might lead to an engine in-flight shutdown and since both engines of the airplane have the same valves, there is a possibility of an occurrence of a dual engine IFSD due to LPCV failure.

* * * * *

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective August 26, 2010.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of August 26, 2010.

ADDRESSES: You may examine the AD docket on the Internet at <http://www.regulations.gov> or in person at the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Kenny Kaulia, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-2848; fax (425) 227-1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on March 4, 2010 (75 FR 9816), and proposed to supersede AD 2007-16-09, Amendment 39-15148 (72 FR 44734, August 9, 2007). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI for EMBRAER Model ERJ 170 airplanes states:

It has been found the occurrence of an engine in-flight shutdown caused by the LPCV [low pressure check valves] failing to close due to excessive wear, which leads to the concern that such fault may be present in both engines of a given aircraft.

* * * * *

The MCAI for EMBRAER Model ERJ 190 airplanes states:

An occurrence of an uncommanded engine in-flight shutdown (IFSD) was reported on 20 Sep. 2005, which was caused by an ERJ 170 defective LPCV [part number] P/N 1001447-3 logging 3900 Flight Hours (FH). The valve failed to close due to excessive wear. Despite there were no IFSD related to LPCV P/N

1001447-4 failure, some ERJ 190 valves P/N 1001447-4 logging around 2472 FH were inspected and presented cracks due to low cycle fatigue. Since this failure mode also might lead to an engine in-flight shutdown and since both engines of the airplane have the same valves, there is a possibility of an occurrence of a dual engine IFSD due to LPCV failure.

* * * * *

The required actions include repetitive replacements of the low-stage check valves and associated seals of the left-hand and right-hand engine bleed system with new or serviceable valves, depending on the model. For certain airplanes, this AD also includes an optional terminating action for the repetitive replacements. This AD also requires, if the terminating action is done, revising the approved maintenance plan to include repetitive functional tests of the low-stage check valve. For certain other airplanes, this AD requires replacing a certain low-stage check valve with an improved low-stage check valve. You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comment received. The Air Line Pilots Association, International (ALPA), supports the NPRM.

Explanation of Change Made to This AD

Since we issued the NPRM, we have received Revision 6, of EMBRAER 170 Maintenance Review Board Report (MRBR), MRB-1621, dated January 14, 2010. We have updated the final rule to reference EMBRAER 170 Maintenance Review Board Report (MRBR), MRB-1621, Revision 6, dated January 14, 2010. We have added paragraph (j)(14) to this final rule to give credit for revising the maintenance program to include maintenance Task 36-11-02-002 (Low Stage Bleed Check Valve) specified in Section 1 of the EMBRAER 170 Maintenance Review Board Report (MRBR), MRB-1621, Revision 5, dated November 5, 2008.

We also revised paragraph (j)(13) of this AD to clarify that doing a replacement before the effective date of this AD is acceptable for compliance with a replacement specified in paragraph (j)(1) of this AD.

Conclusion

We reviewed the available data, including the comment received, and determined that air safety and the public interest require adopting the AD with the changes described previously.