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May 14, 2021

Catherine O'Hagan Wolfe
Clerk, U.S. Court of Appeals for the Second Circuit
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, NY 10007

Re: *State of California, et al. v. U.S. Department of Energy, et al.*, No. 21-108 (and consolidated cases)

Dear Ms. Wolfe:

The Alliance for Water Efficiency ("Petitioner") submits this notice, pursuant to Federal Rule of Appellate Procedure 28(j), to inform the Court about a rule that respondent Department of Energy ("DOE") published on May 7, 2021, pertaining to the rule under review. Ex. A.

The principal rule (the "Washer-Dryer Rule"), published on December 16, 2020, established new classes of residential washers and dryers that are exempt from energy and water conservation standards if they have average cycle times under 45 or 30 minutes (respectively). Petitioner is a petitioner in *Alliance for Water Efficiency v. Department of Energy*, No. 21-428, consolidated with the above-cited case. On February 23, 2021, Petitioners in the consolidated case moved the Court to stay the Washer-Dryer Rule, because any short-cycle products sold while the rule is in force will remain in place, consuming excessive water and energy, for their usable lives. In opposition, DOE contended (among other things) that companies would be "unlikely to

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incur the expense” of marketing such products because “DOE has publicly announced that it is reconsidering the rule.” Doc. 48, at 13.

The recent publication is a “correction” to the Washer-Dryer Rule. 86 Fed. Reg. 24,484 (May 7, 2021). DOE revised the text of the regulation, as adopted in the Washer-Dryer Rule, to state that for dryers qualifying in the exempt class, the cycle time must be under 30 minutes “when tested according to appendix D2 in subpart B.” *Id.* at 24,485. DOE asserted that this addition to the regulation was reflected in the original proposal for the Washer-Dryer Rule “and is supported by the discussion in the preamble” of the Rule. *Id.* DOE stated there is good cause not to do additional notice and comment for the additional text, and it made the addition effective immediately. *Id.* As the Court evaluates DOE’s argument that companies will not bother selling short-cycle products because DOE might repeal the Rule, it may be relevant to know about DOE’s effort to clarify the operation of the Washer-Dryer Rule, and thus to ensure that industry understands how a dryer qualifies for the short-cycle exemption.

Sincerely,

Squire Patton Boggs (US) LLP



Keith Bradley

EXHIBIT "A"

contrary to the public interest. Neither the errors nor the corrections in this document affect the substance of the March 2021 final rule or any of the conclusions reached in support of the final rule. Providing prior notice and an opportunity for public comment on correcting objective, typographical errors and omissions that do not change the substance of the test procedure serves no useful purpose. As such, this rule is not subject to the 30-day delay in effective date requirement of 5 U.S.C. 553(d) otherwise applicable to rules that make substantive changes.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Small businesses.

Signing Authority

This document of the Department of Energy was signed on May 2, 2021, by Kelly Speakes-Backman, Principal Deputy Assistant Secretary and Acting 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 May 4, 2021.

Treena V. Garrett,

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

For the reasons stated in the preamble, DOE corrects part 430 of chapter II, subchapter D, of title 10 of the Code of Federal Regulations by making the following correcting amendments:

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.

■ 2. Appendix F to subpart B of part 430 is amended by revising sections 2.12 and 5.1 to read as follows:

Appendix F to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Room Air Conditioners

* * * * *

2. * * *
2.12 “Full compressor speed (full)” means the compressor speed at which the unit operates at full load test conditions, when using user settings with a unit thermostat setpoint of 75 °F to achieve maximum cooling capacity, according to the instructions in ANSI/ASHRAE Standard 16–2016.

* * * * *

5. * * *
5.1 *Annual energy consumption in inactive mode and off mode.* Calculate the annual energy consumption in inactive mode and off mode, $AEC_{ia/om}$, expressed in kilowatt-hours per year (kWh/year).

$AEC_{ia/om} = (P_{ia} \times t_{ia} + P_{om} \times t_{om})$

Where:

$AEC_{ia/om}$ = annual energy consumption in inactive mode and off mode, in kWh/year.

P_{ia} = average power in inactive mode, in watts, determined in section 4.2 of this appendix.

P_{om} = average power in off mode, in watts, determined in section 4.2 of this appendix.

t_{ia} = annual operating hours in inactive mode and multiplied by a 0.001 kWh/Wh conversion factor from watt-hours to kilowatt-hours. This value is 5.115 kWh/W if the unit has inactive mode and no off mode, 2.5575 kWh/W if the unit has both inactive and off mode, and 0 kWh/W if the unit does not have inactive mode.

t_{om} = annual operating hours in off mode and multiplied by a 0.001 kWh/Wh conversion factor from watt-hours to kilowatt-hours. This value is 5.115 kWh/W if the unit has off mode and no inactive mode, 2.5575 kWh/W if the unit has both inactive and off mode, and 0 kWh/W if the unit does not have off mode.

* * * * *

[FR Doc. 2021–09705 Filed 5–6–21; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

10 CFR Part 430

[EERE–2020–BT–STD–0001]

RIN 1904–AE86

Energy Conservation Program: Establishment of New Product Classes for Residential Clothes Washers and Consumer Clothes Dryers; Correction

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

ACTION: Final rule; correction.

SUMMARY: On December 16, 2020, the U.S. Department of Energy (“DOE”) published a final rule adopting separate product classes for top-loading consumer (residential) clothes washers and consumer clothes dryers that offer cycle times for a normal cycle of less than 30 minutes, and for front-loading residential clothes washers that offer cycle times for a normal cycle of less than 45 minutes (“December 2020 final rule”). This document corrects an omission in the amended regulatory text as it appeared in the December 2020 final rule. Neither the error nor the correction in this document affect the substance of the rulemaking or any conclusions reached in support of the final rule.

DATES: Effective May 7, 2021.

FOR FURTHER INFORMATION CONTACT:

Mr. Bryan Berringer, 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. Email: *ApplianceStandardsQuestions@ee.doe.gov*.

Ms. Kathryn McIntosh, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–2002. Email: *Kathryn.McIntosh@hq.doe.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

DOE published a final rule in the **Federal Register** on December 16, 2020, establishing separate product classes for top-loading consumer (residential) clothes washers and consumer clothes dryers that offer cycle times for a normal cycle of less than 30 minutes, and for front-loading residential clothes washers that offer cycle times for a normal cycle of less than 45 minutes. 85 FR 81359. In a review of the December 2020 final rule, DOE identified an omission in the amended regulatory text for consumer clothes dryers.

Specifically, the regulatory text that establishes separate product classes for vented electric standard clothes dryers and vented gas clothes dryers with a cycle time of less than 30 minutes omitted the distinction that the 30-minute cycle time is determined when conducting the test procedure at title 10 of the Code of Federal Regulations (“CFR”), part 430, subpart B, appendix D2 (“appendix D2”). This distinction was provided in the regulatory text of the notice of proposed rulemaking published on August 13, 2020 (85 FR

49297, 49311) and is supported by the discussion in the preamble of the December 2020 final rule.¹

DOE published a correction notice on January 19, 2021 (“January 2021 correction notice”) responding to specific comments submitted by the Pacific Gas and Electric Company, San Diego Gas and Electric, and Southern California Edison in response to DOE’s notice of proposed rulemaking published on August 13, 2020, which were inadvertently omitted from the December 2020 final rule. 86 FR 4883. DOE considered these comments and determined that in most instances, these comments raised issues substantially similar to those raised by other commenters that DOE had considered and addressed in the December 2020 final rule. To the extent that these comments raised issues not explicitly addressed in the December 2020 final rule, DOE determined that the comments did not alter any of the conclusions reached in support of the final rule and would not have resulted in an outcome different than as set forth in the final rule. *Id.* This omission in the amended regulatory text also appeared in the January 2021 correction.

The substance of this final rule correction is distinct from the substance of the January 2021 correction notice.

II. Need for Correction

As published, the regulatory text in the December 2020 final rule may result in confusion as to the required test procedure for determining cycle time due to the omission of the distinction that the 30-minute cycle time for clothes dryers is determined when conducting the test procedure at appendix D2. Because this final rule would simply correct errors in the text without making substantive changes in the December 2020 final rule, the changes addressed in this document are technical in nature.

¹ The separate product classes for clothes dryers were based, in part, on data generated from testing in accordance with appendix D2. 85 FR 81359, 81360. Additionally, as explained in the December 2020 final rule, the clothes dryer test procedure at 10 CFR part 430, subpart B, appendix D1 does not provide data that can be used to determine a “cycle time” because the drying cycle is artificially terminated. As explained in the final rule, the artificially-terminated cycle has a field use factor applied to calculate representative energy consumption. 85 FR 81359, 81360 (footnote 2). DOE relied on appendix D2 as the basis for defining the 30-minute cycle time distinction because appendix D2 provides representative energy use and a corresponding cycle time, as the cycle is run from start to completion without being artificially terminated. *Id.*

III. Procedural Issues and Regulatory Review

DOE has concluded that the determinations made pursuant to the various procedural requirements applicable to the December 2020 final rule remain unchanged for this final rule technical correction. These determinations are set forth in the December 2020 final rule. 85 FR 81359, 81373.

Pursuant to the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B), DOE finds that there is good cause to not issue a separate notice to solicit public comment on the changes contained in this document. Issuing a separate notice to solicit public comment would be impracticable, unnecessary, and contrary to the public interest. Neither the errors nor the corrections in this document affect the substance of the December 2020 final rule or any of the conclusions reached in support of the final rule. Providing prior notice and an opportunity for public comment on correcting objective, typographical errors that do not change the substance of the test procedure serves no useful purpose.

Further, this rule correcting a regulatory text omission makes non-substantive changes to the test procedure. As such, this rule is not subject to the 30-day delay in effective date requirement of 5 U.S.C. 553(d) otherwise applicable to rules that make substantive changes.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Small businesses.

Signing Authority

This document of the Department of Energy was signed on May 3, 2021, by Kelly Speakes-Backman, Principal Deputy Assistant Secretary and Acting 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 May 4, 2021.

Treena V. Garrett,

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

For the reasons stated in the preamble, DOE corrects part 430 of chapter II, subchapter D, of title 10 of the Code of Federal Regulations by making the following correcting amendments:

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.

■ 2. Section 430.32 is amended by revising paragraph (h)(3)(ii) to read as follows:

§ 430.32 Energy and water conservation standards and their compliance dates.

* * * * *

(h) * * *

(3) * * *

(ii) Vented, electric standard clothes dryers and vented gas clothes dryers with a cycle time of less than 30 minutes, when tested according to appendix D2 in subpart B of this part, are not currently subject to energy conservation standards.

* * * * *

[FR Doc. 2021–09696 Filed 5–6–21; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–25084; Project Identifier 2005–SW–38–AD; Amendment 39–21541; AD 2021–10–08]

RIN 2120–AA64

Airworthiness Directives; Bell Textron Canada Limited (Type Certificate Previously Held by Bell Helicopter Textron Canada Limited) Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Bell Textron Canada Limited (type certificate previously held by Bell Helicopter Textron Canada Limited) Model 206L series helicopters. This AD

CERTIFICATE OF COMPLIANCE

I certify that the foregoing notice complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 27(d)(1)(E) because it has been prepared in 14-point Vollkorn, a proportionally spaced font. I further certify that this notice complies with the type-volume limitation of Federal Rule of Appellate Procedure 35(j) because the body of the letter contains 347 words according to the count of Microsoft Word.

/s/ Keith Bradley

Keith Bradley

CERTIFICATE OF SERVICE

I certify that on May 14, 2021, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Second Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/ Keith Bradley _____

Keith Bradley