

provided (e.g., whether the billing health professional is a licensed practitioner authorized by State law or other qualified health professional) must be verified, if questionable. Only out-of-pocket expenses can be deducted. Expenses reimbursed to the household by an insurer are not deductible. The eligibility of the household to qualify for the deduction (i.e., the household includes a member who is elderly or disabled) must be verified, if questionable.

(D) *Standard shelter/utility deduction.* A household must incur, on a monthly basis, at least one allowable shelter/utility expense in accordance with 7 CFR 253.6(e)(5)(i) to qualify for the standard shelter/utility deduction. The State agency must verify that the household incurs the expense.

\* \* \* \* \*

(c) \* \* \*

(1) The State agency must develop procedures for how changes in household circumstances are reported. Changes reported over the telephone or in person must be acted on in the same manner as those reported in writing. Participating households are required to report the following changes within 10 calendar days after the change becomes known to the household:

- (i) A change in household composition;
- (ii) An increase in gross monthly income of more than \$100;
- (iii) A change in residence;
- (iv) When the household no longer incurs a shelter and utility expense; or
- (v) A change in the legal obligation to pay child support.

\* \* \* \* \*

Dated: December 29, 2011.

**Janey Thornton,**

*Acting Under Secretary, Food, Nutrition, and Consumer Services.*

[FR Doc. 2012-391 Filed 1-10-12; 8:45 am]

**BILLING CODE 3410-30-P**

## DEPARTMENT OF ENERGY

### 10 CFR Part 430

[Docket No. EERE-2011-BT-DET-0079]

RIN 1904-AC69

#### **Energy Conservation Program for Consumer Products and Certain Commercial and Industrial Equipment: Proposed Determination of Residential Central Air Conditioner Split-System Condensing Units and Residential Heat Pump Split-System Outdoor Units as a Covered Consumer Product**

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

**ACTION:** Proposed determination.

**SUMMARY:** The U.S. Department of Energy (DOE) proposes to determine that Residential Central Air Conditioner Split-System Condensing Units (hereafter referred to as "Condensing Units") and Residential Heat Pump Split-System Outdoor Units (hereafter referred to as "Outdoor Units") qualify as a covered product under Part A of Title III of the Energy Policy and Conservation Act (EPCA), as amended. DOE has determined that Condensing Units and Outdoor Units meet the criteria for covered products because: (1) Classifying products of such type as covered products is necessary or appropriate to carry out the purposes of EPCA, and (2) the average U.S. household energy use for Condensing Units and Outdoor Units are likely to exceed 100 kilowatt-hours (kWh) per year.

**DATES:** DOE will accept written comments, data, and information on this notice, but no later than February 10, 2012.

**ADDRESSES:** Interested persons may submit comments, identified by docket number EERE-2011-BT-DET-0079, by any of the following methods:

- *Federal eRulemaking Portal:* [www.regulations.gov](http://www.regulations.gov) Follow the instructions for submitting comments.
- *Email:* [Brenda.Edwards@ee.doe.gov](mailto:Brenda.Edwards@ee.doe.gov). Include EERE-2011-BT-DET-0079 and/or RIN 1904-AC69 in the subject line of the message.
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE-2J, EERE-2011-BT-DET-0079 and/or RIN 1904-AC69, 1000 Independence Avenue SW., Washington, DC 20585-0121. *Phone:* (202) 586-2945. Please submit one signed paper original.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy,

Building Technologies Program, 6th Floor, 950 L'Enfant Plaza SW., Washington, DC 20024. *Phone:* (202) 586-2945. Please submit one signed paper original.

*Instructions:* All submissions received must include the agency name and docket number or RIN for this notice.

*Docket:* For access to the docket to read background documents, a copy of the transcript of the public meeting, or comments received, go to the U.S. Department of Energy, 6th Floor, 950 L'Enfant Plaza SW., Washington, DC 20024, (202) 586-2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards at (202) 586-2945 for additional information regarding visiting the Resource Room.

**FOR FURTHER INFORMATION CONTACT:** Ms. Ashley Armstrong, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE-2J, 1000 Independence Avenue SW., Washington, DC 20585-0121. Telephone: (202) 586-17335. Email: [Ashley.Armstrong@ee.doe.gov](mailto:Ashley.Armstrong@ee.doe.gov).

In the Office of General Counsel, contact Ms. Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, GC-71, 1000 Independence Avenue SW., Washington, DC 20585. Telephone: (202) 586-7796. Email: [Elizabeth.Kohl@hq.doe.gov](mailto:Elizabeth.Kohl@hq.doe.gov).

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## I. Statutory Authority

Title III of the Energy Policy and Conservation Act (EPCA), as amended (42 U.S.C. 6291 *et seq.*), sets forth various provisions designed to improve energy efficiency. Part A of Title III of EPCA (42 U.S.C. 6291–6309) established the “Energy Conservation Program for Consumer Products Other Than Automobiles,” which covers consumer products and certain commercial products (hereafter referred to as “covered products”).<sup>1</sup> In addition to specifying a list of covered residential and commercial products, EPCA contains provisions that enable the Secretary of Energy to classify additional types of consumer products as covered products. For a given product to be classified as a covered product, the Secretary must determine that:

(1) Classifying the product as a covered product is necessary or appropriate to carry out the purposes of EPCA;<sup>2</sup> and

(2) The average annual per-household energy use by products of such type is likely to exceed 100 kWh per year. (42 U.S.C. 6292(b)(1)).

For the Secretary to prescribe an energy conservation standard pursuant to 42 U.S.C. 6295(o) and (p) for covered products added pursuant to 42 U.S.C. 6292(b)(1), he must also determine that:

(1) The average household energy use of the products has exceeded 150 kilowatt-hours per household for a 12-month period,

(2) The aggregate 12-month energy use of the products has exceeded 4.2 TWh,

(3) Substantial improvement in energy efficiency is technologically feasible, and

(4) Application of a labeling rule under section 42 U.S.C. 6294 is unlikely to be sufficient to induce manufacturers to produce, and consumers and other persons to purchase, covered products of such type (or class) that achieve the maximum energy efficiency that is technologically feasible and economically justified. (42 U.S.C. 6295(l)(1)).

If DOE issues a final determination that condensing units and outdoor units are covered products, DOE will consider test procedures and energy efficiency standards for these products. DOE will determine if standards for condensing units and outdoor units satisfy the provisions of 42 U.S.C. 6295(l)(1) during

the course of any energy conservation standards rulemaking.

## II. Current Rulemaking Process

DOE has not previously conducted an energy conservation standard rulemaking specifically for condensing units and outdoor units. DOE has, however, previously conducted two energy conservation standard rulemakings for Residential Central Air Conditioners and Heat Pumps of which the Condensing Units and Outdoor Units, respectively, are a component. If after public comment, DOE issues a final determination of coverage for condensing units and outdoor units, DOE will consider both a test procedure and an energy conservation standard for this product.

With respect to test procedures, DOE will consider a proposed test procedure for measuring the energy efficiency, energy use or estimated annual operating cost of condensing units and outdoor units during a representative average use cycle or period of use that is not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)). In a test procedure rulemaking, DOE initially prepares a notice of proposed rulemaking (NOPR) and allows interested parties to present oral and written data, views, and arguments with respect to such procedures. In prescribing new test procedures, DOE takes into account relevant information including technological developments relating to energy use or energy efficiency of condensing units and outdoor units.

With respect to energy conservation standards, DOE typically prepares initially an Energy Conservation Standards Rulemaking Framework Document (the framework document). The framework document explains the issues, analyses, and process that it is considering for the development of energy conservation standards for condensing units and outdoor units. After DOE receives comments on the framework document, DOE typically prepares an Energy Conservation Standards Rulemaking Preliminary Analysis and Technical Support Document (the preliminary analysis). The preliminary analysis typically provides initial draft analyses of potential energy conservation standards on consumers, manufacturers, and the nation. Neither of these steps is legally required.

DOE is required to publish a notice of proposed rulemaking (NOPR). The NOPR provides DOE's proposal for potential energy conservation standards and a summary of the results of DOE's supporting technical analysis.

The details of DOE's energy conservation standards analysis are provided in a technical support document (TSD) that describes the details of DOE's analysis of both the burdens and benefits of potential standards, pursuant to 42 U.S.C. 6295(o). Because condensing units and outdoor units would be a product that is newly covered under 42 U.S.C. 6292(b)(1), DOE would also consider as part of any energy conservation standard NOPR whether condensing units and outdoor units satisfy the requirements of 42 U.S.C. 6295(l)(1). After the publication of the NOPR, DOE affords interested persons an opportunity during a period of not less than 60 days to provide oral and written comment. After receiving and considering the comments on the NOPR and not less than 90 days after the publication of the NOPR, DOE would issue the final rule prescribing any new energy conservation standards for condensing units and outdoor units.

## III. Proposed Definition(s)

Section 430.2 in the Code of Federal Regulations defines a “Condensing Unit” as a component of a central air conditioner which is designed to remove the heat absorbed by the refrigerant and to transfer it to the outside environment, and which consists of an outdoor coil, compressor(s), and air moving device.

DOE proposes to revise the above definition for “Condensing Unit” by adding the term “split-system” as a component of a split-system central air conditioner which is designed to remove the heat absorbed by the refrigerant and to transfer it to the outside environment, and which consists of an outdoor coil, compressor(s), and air moving device.

Section 430.2 in the Code of Federal Regulations also defines an “Outdoor Unit” as a component of a split-system central air conditioner or heat pump that is designed to transfer heat between the refrigerant and the outdoor air, and which consists of an outdoor coil, compressor(s), an air moving device, and in addition for heat pumps, a heating mode expansion device, reversing valve, and defrost controls.

DOE does not propose to revise the above definition for “Outdoor Unit.”

DOE seeks feedback from interested parties on its definitions of condensing units and outdoor units.

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

<sup>2</sup> Specifically, the purposes of chapter 77 of title 42 of the United States Code, as set forth later in this proposed coverage determination.

#### IV. Evaluation of Condensing Units and Outdoor Units as a Covered Product Subject to Energy Conservation Standards

The following sections describe DOE's evaluation of whether condensing units and outdoor units fulfill the criteria for being added as a covered product pursuant to 42 U.S.C. 6292(b)(1). As stated previously, DOE may classify a consumer product as a covered product if (1) classifying products of such type as covered products is necessary and appropriate to carry out the purposes of EPCA; and (2) the average annual per-household energy use by products of such type is likely to exceed 100 kilowatt-hours (or its Btu equivalent) per year.

##### A. Coverage Appropriate To Carry Out Purposes of EPCA

Coverage of set condensing units and outdoor units is necessary or appropriate to carry out the purposes of EPCA, which include: (1) To conserve energy supplies through energy conservation programs, and, where necessary, the regulation of certain energy uses; and (2) to provide for improved energy efficiency of motor vehicles, major appliances, and certain other consumer products. (42 U.S.C. 6201). The household national energy use of Residential Central Air Conditioner Split-Systems and Residential Heat Pump Split-Systems for the year 2011 is estimated to be 133.1 billion kilowatt-hours and 58.6 billion kilowatt-hours, respectively.<sup>3</sup> Condensing Units, which are a component of Residential Central Air Conditioner Split-Systems, represent approximately 87 percent of total system energy use. Outdoor Units, which are a component of Residential Heat Pump Split-Systems, also represent 87 percent of total system energy use.<sup>4</sup> Therefore, the national energy use of condensing units and outdoor units for the year 2011 is estimated to be 115.8 billion kilowatt-hours and 51.0 billion kilowatt-hours, respectively. Because

there is significant variation in the annual energy consumption of different models currently available, technologies exist to reduce the energy consumption of condensing units and outdoor units.

##### B. Average Household Energy Use

DOE calculated average household energy use for condensing units and outdoor units, in households that used the product, based on data from DOE's June 2011 Technical Support Document (TSD) for Residential Central Air Conditioners, Heat Pumps, and Furnaces.<sup>3</sup> The TSD provides annual energy use for Residential Central Air Conditioner Split-Systems and Residential Heat Pump Split-Systems, and the total number of systems in operation in the U.S. The average U.S. per-household annual energy use for the stock of Residential Central Air Conditioner Split-Systems and Residential Heat Pump Split-Systems is 2851 kilowatt-hours and 4264 kilowatt-hours, respectively. As noted above, condensing units and outdoor units comprise approximately 87 percent of total system energy use. As a result, the estimated average U.S. per-household annual energy use for the stock of condensing units and outdoor units is 2480 kilowatt-hours and 3710 kilowatt-hours, respectively. Therefore, the average annual per household energy use for condensing units and outdoor units is likely to exceed 100 kWh.

#### V. Procedural Issues and Regulatory Review

DOE has reviewed its proposed determination of condensing units and outdoor units under the following executive orders and acts.

##### A. Review Under Executive Order 12866

The Office of Management and Budget has determined that coverage determination rulemakings do not constitute "significant regulatory actions" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993). Accordingly, this proposed 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. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996) 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 proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. A regulatory flexibility analysis examines the impact of the rule on small entities and considers alternative ways of reducing negative effects. Also, as required by E.O. 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 impact of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990 (February 19, 2003). DOE makes its procedures and policies available on the Office of the General Counsel's Web site at [www.gc.doe.gov](http://www.gc.doe.gov).

DOE reviewed today's proposed determination under the provisions of the Regulatory Flexibility Act and the policies and procedures published on February 19, 2003. If adopted, today's proposed determination would set no standards; they would only positively determine that future standards may be warranted and should be explored in an energy conservation standards and test procedure rulemaking. Economic impacts on small entities would be considered in the context of such rulemakings. On the basis of the foregoing, DOE certifies that the proposed determination, if adopted, would have no significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this proposed determination. DOE will transmit this certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

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

This proposed determination, which proposes to determine that condensing units and outdoor units meets the criteria for a covered product for which the Secretary may prescribe an energy conservation standard pursuant to 42 U.S.C. 6295(o) and (p), will impose no new information or record-keeping requirements. Accordingly, the Office of Management and Budget (OMB) clearance is not required under the Paperwork Reduction Act. (44 U.S.C. 3501 *et seq.*).

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

In this notice, DOE proposes to positively determine that future standards may be warranted and that environmental impacts should be

<sup>3</sup> See National Impacts Analysis (NIA) spreadsheet for Furnaces, Central Air Conditioners, and Heat Pumps developed for DOE's June 27, 2011 Direct Final Rule for Energy Conservation Standards for Residential Furnaces and Residential Central Air Conditioners and Heat Pumps. (76 FR 37408). The NIA spreadsheet is available at: [http://www1.eere.energy.gov/buildings/appliance\\_standards/residential/residential\\_furnaces\\_ac\\_hp\\_direct\\_final\\_rule\\_tools.html](http://www1.eere.energy.gov/buildings/appliance_standards/residential/residential_furnaces_ac_hp_direct_final_rule_tools.html).

<sup>4</sup> U.S. Department of Energy. "Technical Support Document: Energy Efficiency Program for Consumer Products: Residential Central Air Conditioners, Heat Pumps, and Furnaces." June 2011. Chapter 7. Available at: [http://www1.eere.energy.gov/buildings/appliance\\_standards/residential/residential\\_furnaces\\_central\\_ac\\_hp\\_direct\\_final\\_rule\\_tsd.html](http://www1.eere.energy.gov/buildings/appliance_standards/residential/residential_furnaces_central_ac_hp_direct_final_rule_tsd.html).

explored in an energy conservation standards rulemaking. DOE has determined that review under the National Environmental Policy Act of 1969 (NEPA), Public Law 91–190, codified at 42 U.S.C. 4321 *et seq.* is not required at this time. NEPA review can only be initiated “as soon as environmental impacts can be meaningfully evaluated” (10 CFR 1021.213(b)). This proposed determination would only determine that future standards may be warranted, but would not itself propose to set any specific standard. DOE has, therefore, determined that there are no environmental impacts to be evaluated at this time. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

#### *E. Review Under Executive Order 13132*

Executive Order (E.O.) 13132, “Federalism” 64 FR 43255 (August 10, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to assess carefully 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 developing 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 (March 14, 2000). DOE has examined today’s proposed determination and concludes that it would not preempt State law or have substantial direct effects on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the product that is the subject of today’s proposed determination. States can petition DOE for exemption from such preemption to the extent permitted, and based on criteria, set forth in EPCA. (42 U.S.C. 6297). No further action is required by E.O. 13132.

#### *F. Review Under Executive Order 12988*

With respect to the review of existing regulations and the promulgation of

new regulations, section 3(a) of E.O. 12988, “Civil Justice Reform” 61 FR 4729 (February 7, 1996), imposes on Federal agencies the duty to: (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 E.O. 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the 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 E.O. 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether these standards are met, or whether it is unreasonable to meet one or more of them. DOE completed the required review and determined that, to the extent permitted by law, this proposed determination meets the relevant standards of E.O. 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, codified at 2 U.S.C. 1501 *et seq.*) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and tribal governments and the private sector. For regulatory actions likely to result in a rule that may cause expenditures by State, local, and Tribal governments, in the aggregate, or by the private sector of \$100 million or more in any 1 year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a) and (b)) UMRA requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and tribal governments on a proposed “significant intergovernmental mandate.” UMRA also requires an agency plan for giving notice and opportunity for timely input to small governments that may be potentially affected before establishing any requirement that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of

policy on its process for intergovernmental consultation under UMRA. 62 FR 12820 (March 18, 1997). (This policy also is available at [www.gc.doe.gov](http://www.gc.doe.gov)). DOE reviewed today’s proposed determination pursuant to these existing authorities and its policy statement and determined that the proposed determination contains neither an intergovernmental mandate nor a mandate that may result in the expenditure of \$100 million or more in any year, so the UMRA requirements do not apply.

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

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

#### *I. Review Under Executive Order 12630*

Pursuant to E.O. 12630, “Governmental Actions and Interference with Constitutionally Protected Property Rights” 53 FR 8859 (March 15, 1988), DOE determined that this proposed determination 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 of 2001*

The Treasury and General Government Appropriation Act of 2001 (44 U.S.C. 3516, note) requires agencies to review most disseminations of information they make to the public under guidelines established by each agency pursuant to general guidelines issued by the Office of Management and Budget (OMB). The OMB’s guidelines were published at 67 FR 8452 (February 22, 2002), and DOE’s guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today’s proposed determination under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

#### *K. Review Under Executive Order 13211*

E.O. 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,” 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit

to OMB a Statement of Energy Effects for any proposed significant energy action. A “significant energy action” is defined as any action by an agency that promulgates a final rule or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under E.O. 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 the Office of Information and Regulatory Affairs (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 is implemented, and of reasonable alternatives to the proposed action and their expected benefits on energy supply, distribution, and use.

DOE has concluded that today’s regulatory action proposing to determine that condensing units and outdoor units meets the criteria for a covered product for which the Secretary may prescribe an energy conservation standard pursuant to 42 U.S.C. 6295(o) and (p) would not have a significant adverse effect on the supply, distribution, or use of energy. This action is also not a significant regulatory action for purposes of E.O. 12866, and the OIRA Administrator has not designated this proposed determination as a significant energy action under E.O. 12866 or any successor order. Therefore, this proposed determination is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects for this proposed determination.

#### *L. Review Under the Information Quality Bulletin for Peer Review*

On December 16, 2004, OMB, in consultation with the Office of Science and Technology Policy (OSTP), issued its Final Information Quality Bulletin for Peer Review (the Bulletin). 70 FR 2664 (January 14, 2005). The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal government, including influential scientific information related to agency regulatory actions. The purpose of the Bulletin is to enhance the quality and credibility of the Government’s scientific information. Under the Bulletin, the energy conservation standards rulemaking analyses are “influential scientific information,” which the Bulletin defines as “scientific information the agency reasonably can determine will have or does have a clear and substantial impact on important

public policies or private sector decisions.” 70 FR 2667 (January 14, 2005).

In response to OMB’s Bulletin, DOE conducted formal in-progress peer reviews of the energy conservation standards development process and analyses and has prepared a Peer Review Report pertaining to the energy conservation standards rulemaking analyses. Generation of this report involved a rigorous, formal, and documented evaluation using objective criteria and qualified and independent reviewers to make a judgment as to the technical/scientific/business merit, the actual or anticipated results, and the productivity and management effectiveness of programs and/or projects. The “Energy Conservation Standards Rulemaking Peer Review Report” dated February 2007 has been disseminated and is available at the following Web site: [http://www1.eere.energy.gov/buildings/appliance\\_standards/peer\\_review.html](http://www1.eere.energy.gov/buildings/appliance_standards/peer_review.html).

## **VI. Public Participation**

### *A. Submission of Comments*

DOE will accept comments, data, and information regarding this notice of proposed determination no later than the date provided at the beginning of this notice. After the close of the comment period, DOE will review the comments received and determine whether condensing units and outdoor units is a covered product under EPCA.

Comments, data, and information submitted to DOE’s email address for this proposed determination should be provided in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format. Submissions should avoid the use of special characters or any form of encryption, and wherever possible comments should include the electronic signature of the author. No telefacsimiles (faxes) will be accepted.

According 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 two copies: one copy of the document should have all the information believed to be confidential deleted. DOE will make its own determination as to the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include (1) a description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known or available from

public sources; (4) whether the information has previously been made available to others without obligations concerning its confidentiality; (5) an explanation of the competitive injury to the submitting persons which would result from public disclosure; (6) a date after which such information might no longer be considered confidential; and (7) why disclosure of the information would be contrary to the public interest.

### *B. Issues on Which DOE Seeks Comments*

DOE welcomes comments on all aspects of this proposed determination. DOE is particularly interested in receiving comments from interested parties on the following issues related to the proposed determination for condensing units and outdoor units:

- Definition(s) of condensing units and outdoor units;
- Whether classifying condensing units and outdoor units as a covered product is necessary or appropriate to carry out the purposes of EPCA;
- Calculations and values for household and national energy consumption; and
- Availability of technologies for improving energy efficiency of condensing units and outdoor units.

The Department is interested in receiving views concerning other relevant issues that participants believe would affect DOE’s ability to establish test procedures and energy conservation standards for condensing units and outdoor units. The Department invites all interested parties to submit in writing by February 10, 2012, comments and information on matters addressed in this notice and on other matters relevant to consideration of a determination for condensing units and outdoor units.

After the expiration of the period for submitting written statements, the Department will consider all comments and additional information that is obtained from interested parties or through further analyses, and it will prepare a final determination. If DOE determines that condensing units and outdoor units qualifies as a covered product, DOE will consider a test procedure and energy conservation standards for condensing units and outdoor units. Members of the public will be given an opportunity to submit written and oral comments on any proposed test procedure and standards.

### **List of Subjects in 10 CFR part 430**

Administrative practice and procedure, Confidential business information, Energy conservation, Reporting and recordkeeping requirements.

Issued in Washington, DC, on December 23, 2011.

**Kathleen B. Hogan,**

*Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.*

[FR Doc. 2012-328 Filed 1-10-12; 8:45 am]

**BILLING CODE 6450-01-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2011-1453; Directorate Identifier 2009-SW-46-AD]

RIN 2120-AA64

#### Airworthiness Directives; Agusta S.p.A. Helicopters

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for all Agusta S.p.A. (Agusta) Model A109, A109A, A109A II, A109C, A109K2, A109E, A109S, and A119 helicopters. This proposed AD is prompted by a mandatory continuing airworthiness information (MCAI) AD issued by the European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community. The MCAI AD states that a Model A109E helicopter has experienced a failure of the tail rotor pitch control link assembly caused by a production defect. The proposed actions are intended to prevent failure of a tail rotor pitch control link and subsequent loss of control of the helicopter.

**DATES:** We must receive comments on this proposed AD by March 12, 2012.

**ADDRESSES:** You may send comments by any of the following methods:

- *Federal eRulemaking Docket:* Go to <http://www.regulations.gov>. Follow the online instructions for sending your comments electronically.

- *Fax:* (202) 493-2251.

- *Mail:* Send comments to the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590-0001.

- *Hand Delivery:* Deliver to the "Mail" address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Examining the AD Docket:* You may examine the AD docket on the Internet at <http://www.regulations.gov> or in

person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the economic evaluation, any comments received, and other information. The street address for the Docket Operations Office (telephone (800) 647-5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

For service information identified in this proposed AD, contact Agusta Westland, Customer Support & Services, Via Per Tornavento 15, 21019 Somma Lombardo (VA) Italy, ATTN: Giovanni Cecchelli; telephone 39 (0331) 711133; fax 39 (0331) 711180; or at <http://www.agustawestland.com/technical-bulletins>. You may review copies of the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

**FOR FURTHER INFORMATION CONTACT:** Gary Roach, Aerospace Engineer, Rotorcraft Directorate, Regulations and Policy Group, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222-5110; email [gary.b.roach@faa.gov](mailto:gary.b.roach@faa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

We invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

#### Discussion

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2006-0228-E, dated July 27, 2006, to correct an unsafe condition for Agusta Model A109A, A109A II, A109C, A109K2, A109E, A109S, A109LUH and A119 helicopters. The MCAI AD states that an Agusta Model A109E helicopter has experienced a failure of the tail rotor pitch control link assembly, part number 109-0130-05-117, with 10 flight hours. This proposed AD would require actions that are intended to prevent failure of a tail rotor pitch control link and subsequent loss of control of the helicopter. You may obtain further information by examining the MCAI AD and any related service information in the AD Docket.

#### FAA's Determination

These products have been approved by the aviation authority of Italy and are approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, the EASA, their technology agents have notified us of the unsafe condition described in the MCAI AD and service information. We are proposing this AD because we evaluated all information provided by the EASA and determined the unsafe condition exists and is likely to exist or develop on other products of these same type designs.

#### Related Service Information

Agusta has issued Alert Bollettino Tecnico (ABT) No. 109S-5, dated July 26, 2006, for Model A109S helicopters; ABT No. 109EP-70, dated July 27, 2006, for Model A109E helicopters; ABT No. 109K-47, dated July 27, 2006, for Model A109K2 helicopters; ABT No. 109-122, dated July 27, 2006, for Model A109A, A109A II, and A109C helicopters; and ABT No. 119-15, dated July 27, 2006, for Model A119 helicopters. These ABTs specify performing a one-time inspection of the subject link assembly for excessive friction of the spherical bearing of the bearing ball and for a crack. The EASA classified these ABTs as mandatory and issued EASA AD 2006-0228-E, to ensure the continued airworthiness of these helicopters.

#### Proposed AD Requirements

This proposed AD would require compliance with specified portions of the manufacturer's service bulletin including:

- Before further flight, inspect the affected link assembly for freedom of movement of the links while it is installed on the helicopter. If a rotation