

## Consumer/Commercial Distinction under EPCA<sup>1</sup>

December 2, 2010

Pursuant to the Energy Policy and Conservation Act, as amended, (EPCA or the Act) the U.S. Department of Energy (DOE or the Department) regulates a range of consumer products and commercial and industrial equipment. In some cases, DOE regulates both the consumer and commercial/industrial types of the same appliance, such as residential refrigerators and commercial refrigeration equipment and residential and commercial clothes washers.

The Department understands that, in the past, some manufacturers may have mistakenly believed that a particular product model is not a “consumer product”—and thus need not comply with applicable consumer product standards and regulations—because the product has been distributed only or primarily to commercial or industrial users. In this FAQ, the Department emphasizes that under EPCA and relevant regulations, the distinction between consumer products and industrial equipment *does not turn* on whether an appliance has been distributed only or primarily to industrial users. Rather, the distinction turns on several factors identified below.

Q: How does DOE distinguish between industrial/commercial and residential/consumer appliances for purposes of its energy and water conservation standards regulations?

A: To distinguish between residential/consumer and industrial/commercial products, the Department looks to the definitions of “consumer product” and “industrial equipment” provided in EPCA and DOE regulations. The Act defines “consumer product” as any article “of a type” that “to any significant extent, is distributed in commerce for personal use or consumption by individuals [ ] *without regard to whether such article of such type is in fact distributed in commerce for personal use or consumption by an individual.* 42 U.S.C. 6291(1) (emphasis added); *accord* 10 C.F.R. 430.2.

The Act defines “industrial equipment” as any article of equipment<sup>2</sup> “of a type” that “to any significant extent, is distributed in commerce for industrial or commercial use” and “is not a covered [consumer] product [ ] *without regard to whether such article is in fact distributed in commerce for industrial or commercial use.*” 42 U.S.C. 6311(2)(A).

Based on these definitions, consumer products and industrial equipment are mutually exclusive categories. An appliance model can only be considered commercial under the Act if it does not fit the definition of “consumer product.” By statute, all models of certain types of products—fluorescent lamp

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<sup>1</sup> This is a repost of a document issued December 2, 2010. It has been modified to add a title and the date.

<sup>2</sup> The types of equipment are “(in addition to electric motors and pumps, commercial package air conditioning and heating equipment, commercial refrigerators, freezers, and refrigerator-freezers, automatic commercial ice makers, commercial clothes washers, packaged terminal air-conditioners, packaged terminal heat pumps, warm air furnaces, packaged boilers, storage water heaters, instantaneous water heaters, and unfired hot water storage tanks) as follows: (i) compressors; (ii) fans; (iii) blowers; (iv) refrigeration equipment; (v) electric lights; (vi) electrolytic equipment; (vii) electric arc equipment; (viii) steam boilers; (ix) ovens; (x) kilns; (xi) evaporators; and (xii) dryers.” 42 U.S.C. 6311(2)(B).

ballasts, general service fluorescent lamps, incandescent reflector lamps, showerheads, faucets, water closets, and urinals – are consumer products.<sup>3</sup>

For other product types, such as refrigerators, the Department must make a determination as to whether a product is consumer or commercial, “without regard” to how the model is “in fact” distributed. For instance, the fact that a model is marketed and sold only or primarily to commercial/industrial customers *does not* necessarily make it a commercial/industrial product for purposes of applying DOE’s energy and water conservation standards. Rather, the Department must look to whether it is the “type” of product which is sold for personal use or consumption of individuals.

Q: How does DOE determine if a product is “of a type” that makes it a consumer product?

A: To determine whether a particular appliance model is “of a type” that is distributed for personal use or individual consumption, the Department looks to a number of factors, including:

- Whether the model has distinguishing design features or characteristics from models of the same product type that are sold for personal use or consumption.
- Whether the model operates in a manner that is significantly different from models of the same product types that are sold for personal use or consumption (*e.g.*, the energy use or energy-efficiency characteristics are significantly different).
- The extent to which the product type can be used in a residential application.
- The distribution of shipments of the product type and the basic model.

In making this determination, DOE is also mindful of the purpose underlying EPCA and the Department’s energy and water conservation standards regulations – to conserve energy and water supplies and increase energy and cost savings for American businesses and consumers. Allowing a model of a product type that is otherwise sold for personal use to evade DOE’s energy and water conservation standards and regulations for consumer products simply because it is distributed primarily to commercial or industrial users would undermine this purpose. Furthermore, if a particular appliance model can be distinguished from the type of appliance sold for consumer use, we note that it must be capable of meeting any and all applicable energy conservation standards and rules for commercial/industrial equipment.

The following example illustrates DOE’s case by case factual analysis:

- A compact refrigerator sold to hotels for use as a “minibar” in individual hotel guest rooms that cannot be distinguished from compact refrigerators sold to individuals, such as college students, for personal use will be considered a residential refrigerator.

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<sup>3</sup> 42 U.S.C. 6291(1).

- In contrast, a “reach-in” refrigerator designed with capacity features for storing industrial baking sheets or commercial rolling racks, unlike those found in refrigerators sold for personal use in individuals’ homes, will be considered commercial refrigeration equipment.

In sum, appliances that DOE determines to be “of a type” that are consumer products based on the case by case factual analysis outlined and illustrated above are subject to DOE’s regulations and standards for consumer products, *regardless of whether they have only or primarily been sold to commercial customers*. Such products must comply with all applicable DOE regulations—including certification requirements—and must satisfy the applicable conservation standards for consumer products.

Q: What if I am a manufacturer who did not previously understand DOE’s position on these regulations? Am I in violation now?

A: DOE understands that some may have mistakenly believed that a particular model was not a covered consumer product because it has only (or principally) been distributed to commercial or industrial customers. To ensure a smooth transition for such models, the Department will allow a 120day grace period, beginning December 2, 2010, before requiring that these basic models be certified as meeting the applicable energy conservation standard for the relevant consumer product. This 120-day grace period will also apply to the sale of previously manufactured units. Accordingly, if a manufacturer now realizes that it should have certified a certain basic model as a consumer product, it must do so within 120 days of the date of issuing this guidance. This grace period is limited to basic models that were not certified previously because of a mistaken belief that they were commercial/industrial, rather than consumer products.