

[6450 01-P]

**DEPARTMENT OF ENERGY**

**10 CFR Part 429**

**[Docket Number: EERE-2012-BT-CE-0048]**

**RIN 1904-AC90**

**Energy Conservation Program: Certification of Commercial and Industrial HVAC,  
Refrigeration and Water Heating Equipment**

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

**ACTION:** Notice of Proposed Rule.

**SUMMARY:** The U.S. Department of Energy (DOE or the “Department”) proposes to amend the compliance dates for revisions to its certification regulations for certain commercial and industrial equipment covered under the Energy Policy and Conservation Act of 1975, as amended (EPCA or the “Act”). Specifically, DOE is proposing a 12-month extension to the compliance date for the certification provisions of commercial refrigeration equipment; commercial heating, ventilating, air-conditioning (HVAC) equipment; and commercial water heating equipment. DOE is proposing to retain a December 31, 2012 certification date for automatic commercial ice makers. Lastly, DOE is proposing a correction in the packaged terminal equipment standards table, which

would impact standard-size packaged terminal air conditioners and packaged terminal heat pumps with a cooling capacity of 15,000 Btu/h.

**DATES:** DOE will accept comments, data, and information regarding the notice of proposed rulemaking (NPR) postmarked no later than **[INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov). Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE-2012-BT-CE-0048, by any of the following methods:

- E-mail: to [CCENOPR2012CE0048@ee.doe.gov](mailto:CCENOPR2012CE0048@ee.doe.gov). Include EERE-2012-BT-CE-0048 in the subject line of the message.
- Mail: Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE-2J, Revisions to Energy Efficiency Enforcement Regulations, EERE-2012-BT-CE-0048, 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 rulemaking.

Docket: For access to the docket to read background documents, or comments received, go to the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov).

**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: 202-586-6590. E-mail:

[Ashley.Armstrong@ee.doe.gov](mailto:Ashley.Armstrong@ee.doe.gov); and Ms. Laura Barhydt, U.S. Department of Energy, Office of the General Counsel, Forrestal Building, GC-32, 1000 Independence Avenue, SW, Washington, DC 20585. Telephone: (202) 287-5772. E-mail:

[Laura.Barhydt@hq.doe.gov](mailto:Laura.Barhydt@hq.doe.gov).

**SUPPLEMENTARY INFORMATION:** On March 7, 2011, DOE published a final rule in the Federal Register that, among other things, modified the requirements regarding manufacturer submission of compliance statements and certification reports to DOE (hereafter referred to as the March 2011 Final Rule). 76 FR 12421. These certification provisions are central to the Department's regulatory framework for ensuring that covered products and equipment sold in the United States comply with existing Federal energy conservation standards and associated regulations.

The March 2011 Final Rule imposed new reporting requirements, including a requirement that manufacturers submit annual reports to the Department certifying compliance of their basic models with applicable standards. It also revised the types of information manufacturers must provide in that submission. The Department emphasized that manufacturers could use their discretion in grouping individual models as a certified “basic model” such that the certified rating for the basic model matched the represented rating for all included models. See 76 FR 12428-12429 for more information. This reflected a basic requirement of the Department’s longstanding self-certification compliance regime – that efficiency certifications and representations must be supported by either testing or an approved alternative method of estimating efficiency.

The March 2011 Final Rule provided for the revised certification provisions to be effective on July 5, 2011. Certain manufacturers of particular types of commercial and industrial equipment<sup>1</sup> stated that, for a variety of reasons, they would be unable to meet that deadline. As a result, the Department extended the compliance date for certification of commercial refrigeration equipment; commercial HVAC equipment; commercial WH equipment; and walk-in coolers and freezers. *See* 76 FR 38287 (hereafter referred to as the June 30 Final Rule). DOE also acknowledged in the June 30 Final Rule that numerous manufacturers for certain types of commercial equipment appear to have been

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<sup>1</sup> These products included commercial warm air furnaces, commercial packaged boilers, and commercial air conditioners and heat pumps (collectively referred to as commercial HVAC equipment); commercial refrigeration equipment; commercial water heaters, commercial hot water supply boilers, and unfired hot water storage tanks (collectively referred to as commercial WH equipment); walk-in coolers; walk-in freezers; and automatic commercial ice makers.

making representations of efficiency and determining compliance with the applicable energy conservation standards without testing products in accordance with all of the provisions of the DOE test procedures, which include sampling plans and certification testing tolerances.

In the June 30 Final Rule, DOE stated that it believed 18 months would be sufficient to provide manufacturers with the time necessary to develop the data and supporting documentation needed to populate the certification reports and certify compliance with DOE's regulations, including the existing testing and sampling procedures. DOE also emphasized that all covered equipment must meet the applicable energy conservation standard and that all testing procedures and sampling provisions were unaffected by the final rule.

On May 24, 2012, DOE issued a proposed rule to revise and expand its regulations regarding alternative efficiency determination methods (AEDMs). AEDMs reduce testing burdens by allowing manufacturers to use computer simulations, mathematical models, and other alternative methods to determine the amount of energy used or efficiency by a particular basic model. AEDM provisions for commercial HVAC equipment and commercial WH equipment already exist, but DOE has proposed to revise those regulations and to allow manufacturers of commercial refrigeration equipment to use AEDMs. DOE has not yet finalized the AEDM rulemaking.

In an October 2012, letter to the Secretary of Energy, the Air Conditioning, Heating and Refrigeration Institute (AHRI) requested another certification compliance date extension. AHRI wrote, the “AEDM is a critical element of the DOE certification process as it will help manufacturers comply with the regulations without having to test every basic model they offer.” (AHRI, No. 1 at pp. 1-2) As a result, in its letter AHRI requested that the compliance date for certification be extended a minimum of 18 months from the date of publication of the AEDM final rule.

The Department agrees that it may address some of the concerns raised by manufacturers’ by completing the AEDM rulemaking. The Department is also reviewing the recommendations of the Convenor regarding the feasibility of a negotiated rulemaking to revise the certification requirements for commercial HVAC equipment and commercial refrigeration equipment.<sup>2</sup>

As such, the Department agrees with AHRI that further extension of the December 31, 2012 compliance date may be warranted for commercial refrigeration equipment; commercial HVAC equipment; and commercial WH equipment. However, as all manufacturers should have at least some valid test data upon which to develop a substantiated AEDM, DOE does not believe that an extension for the length of time after finalization of an AEDM rule requested by AHRI would be necessary. Further, the potential for issues raised by manufacturers to be addressed through a negotiated

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<sup>2</sup> The U.S. Department of Energy Convening Report on the Feasibility of a Negotiated Rulemaking to Revise the Certification Program for Commercial Heating, Ventilating, Air Conditioning, and Commercial Refrigeration Equipment can be found at [http://www.eere.energy.gov/buildings/appliance\\_standards/pdfs/convening\\_report\\_hvac\\_cre.pdf](http://www.eere.energy.gov/buildings/appliance_standards/pdfs/convening_report_hvac_cre.pdf).

rulemaking also suggests that the time requested by AHRI may be longer than necessary. Accordingly, the Department is proposing a 12-month delay in the compliance date for submission of a certification report for commercial refrigeration equipment, commercial HVAC equipment, and commercial WH equipment. However, DOE is requesting comment on its assumption regarding the existence of test data. We also seek comment on whether a longer or shorter period of time would be more appropriate.

If the Department adopts in a final rule a delayed compliance date for submission of certification reports, DOE will also implement an enforcement policy to encourage voluntary certifications. Specifically, during the interim period, DOE would not perform random assessment tests (as defined at 10 C.F.R. § 429.104) of basic models of commercial HVAC, refrigeration, or WH equipment that are voluntarily certified in accordance with DOE's regulations set forth in 10 CFR Parts 429 and 431. This approach would acknowledge the efforts of manufacturers that have been working toward completing the necessary testing to develop certified ratings in accordance with the December 31, 2012 deadline. Even under this approach, DOE would continue to conduct enforcement testing of any basic model pursuant to 10 CFR § 429.110 when it has a reason to believe a given basic model may be non-compliant with the applicable Federal standard.

The preamble to the June 30 Final Rule stated that the compliance date for submitting a certification report for automatic commercial ice makers (ACIM) was also extended; however, the regulatory text did not extend the compliance date for that

product. 76 FR 38287. DOE has not enforced the certification requirements for ACIM. Information available to DOE does not suggest any issues with the compliance date for ACIMs; therefore, DOE is proposing to modify the regulatory text to require submission of a certification report for each basic model of ACIM by December 31, 2012, as contemplated by the June 30 Final Rule. DOE requests comment, however, regarding whether the compliance date for ACIM certification should also be extended.

The compliance dates for certification requirements for walk-in coolers and freezers, distribution transformers, and metal halide lamp ballasts have passed, and manufacturers of those products are now submitting certification reports. The proposed regulatory text would reflect that these products are now required to be certified by removing the delayed compliance dates.

Lastly, the Department is proposing to correct a technical drafting error for packaged terminal air conditioners and heat pumps that was implemented in the reprinting of Table 5 in 10 CFR § 431.97 in a final rule published on May 16, 2012. 77 FR 28994. More specifically, DOE adopted changes to the applicable energy conservation standards for standard size and non-standard size packaged terminal air conditioners and heat pumps with a cooling capacity of 15,000 Btu/h. DOE is proposing to correct this error in today's proposed rule and adopt the original standards for standard size and non-standard size packaged terminal air conditioners and heat pumps with a cooling capacity of 15,000 Btu/h as presented in a final rule evaluating and originally



adopting the amended energy conservation for this equipment published on April 7, 2008.  
73 FR 18915.

#### Further Information on Submitting Comments

Under 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 including all the information believed to be confidential, and one copy of the document with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

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 by or available from other sources, (4) whether the information has previously been made available to others without obligation concerning its confidentiality, (5) an explanation of the competitive injury to the submitting person which would result from public disclosure, (6) when such information might lose its confidential character due to the passage of time, and (7) why disclosure of the information would be contrary to the public interest.

### **I. Procedural Issues and Regulatory Review**

#### A. Review Under Executive Order 12866

This proposed rule has been determined not to be a “significant regulatory action” under section 3(f) of Executive Order 12866. 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. 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 (IFRA) 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 DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel’s website: <http://www.energy.gov/gc>.

DOE reviewed this proposed rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. This proposed rule would merely extend the compliance date of a rulemaking already promulgated. To the extent such action has any economic impact it would be positive in that it would allow regulated parties additional time to come into compliance. DOE did undertake a full regulatory flexibility analysis of the original CCE rulemaking. That analysis considered the impacts of that rulemaking on small entities. As a result, DOE

certifies that, if adopted, this proposed rule would not have a significant economic impact on a substantial number of small entities.

### C. Review Under the National Environmental Policy Act

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 10 CFR part 1021, subpart D, paragraph A5. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

## **II. Approval of the Office of the Secretary**

The Secretary of Energy has approved publication of today's NOPR.

### **10 CFR Parts 429 and 431**

Administrative practice and procedure, Energy conservation, Commercial equipment,  
Reporting and recordkeeping requirements.

Issued in Washington, DC, on November 28, 2012.

A handwritten signature in black ink, appearing to read 'KBH', written over a horizontal line.

Kathleen B. Hogan  
Deputy Assistant Secretary for Energy Efficiency  
Energy Efficiency and Renewable Energy

For the reasons stated in the preamble, DOE is proposing to amend chapter II, subchapter D, of title 10 of the Code of Federal Regulations, to read as set forth below:

**PART 429--CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT**

1. The authority citation for part 429 continues to read as follows:

**Authority:** 42 U.S.C. 6291–6317.

2. Revise §429.12 paragraph (i) to read as follows:

**§ 429.12 General requirements applicable to certification reports.**

\* \* \* \* \*

(i) *Compliance dates.* For any product subject to an applicable energy conservation standard for which the compliance date has not yet occurred, a certification report must be submitted not later than the compliance date for the applicable energy conservation standard. The covered products are subject to the stated compliance dates for certification as follows:

- (1) Automatic commercial ice makers, December 31, 2012;
- (2) Commercial refrigeration equipment, December 31, 2013;
- (3) Commercial heating, ventilating, and air-conditioning equipment, December 31, 2013; and
- (4) Commercial water heating equipment, December 31, 2013.

**PART 431 -- ENERGY EFFICIENCY PROGRAM FOR CERTAIN  
COMMERCIAL AND INDUSTRIAL EQUIPMENT**

3. The authority citation for part 431 continues to read as follows:

**Authority:** 42 U.S.C. 6291-6317.

4. Revise §431.97 paragraph (c) Table 5 to read as follows:

**§ 431.97 Energy efficiency standards and their compliance dates.**

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(c) \* \* \*

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**Table 5 to §431.97 Updated Minimum Efficiency Standards for PTAC and PTHP**

<b>Equipment Type</b>	<b>Cooling Capacity</b>	<b>Sub-Category</b>	<b>Efficiency Level</b>	<b>Compliance Date: Products Manufactured on and after...</b>
PTAC	Standard Size	<7,000 Btu/h	EER = 11.7	October 8, 2012
		≥7,000 Btu/h and ≤15,000 Btu/h	EER = 13.8 – (0.3 x Cap <sup>1</sup> )	October 8, 2012
		>15,000 Btu/h	EER = 9.3	October 8, 2012
	Non-Standard Size	<7,000 Btu/h	EER = 9.4	October 7, 2010
		≥7,000 Btu/h and ≤15,000 Btu/h	EER = 10.9 – (0.213 x Cap <sup>1</sup> )	October 7, 2010
		>15,000 Btu/h	EER = 7.7	October 7, 2010
PTHP	Standard Size	<7,000 Btu/h	EER = 11.9 COP = 3.3	October 8, 2012
		≥7,000 Btu/h and ≤15,000 Btu/h	EER = 14.0 – (0.3 x Cap <sup>1</sup> ) COP = 3.7 – (0.052 x Cap <sup>1</sup> )	October 8, 2012
		>15,000 Btu/h	EER = 9.5 COP = 2.9	October 8, 2012
	Non-Standard Size	<7,000 Btu/h	EER = 9.3 COP = 2.7	October 7, 2010

		$\geq 7,000$ Btu/h and $\leq 15,000$ Btu/h	EER = $10.8 - (0.213 \times$ Cap <sup>1</sup> ) COP = $2.9 - (0.026 \times$ Cap <sup>1</sup> )	October 7, 2010
		$> 15,000$ Btu/h	EER = 7.6 COP = 2.5	October 7, 2010

1. "Cap" means cooling capacity in thousand Btu/h at 95 °F outdoor dry-bulb temperature.

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