

[6450 01-P]

DEPARTMENT OF ENERGY

10 CFR Part 429

[Docket Number: EERE– 2010–BT–CE–0014]

RIN 1904–AC23

**Energy Conservation Program: Certification, Compliance, and Enforcement for
Consumer Products and Commercial and Industrial Equipment**

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

ACTION: Proposed rule.

SUMMARY: The U.S. Department of Energy (DOE or the “Department”) proposes to amend the compliance dates for revisions to its certification, compliance, and enforcement 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 tentatively proposing an 18-month extension to the compliance date for the certification provisions for commercial refrigeration equipment; commercial heating, ventilating, air-conditioning (HVAC) equipment; commercial water heating equipment; walk-in coolers; walk-in freezers; and automatic commercial ice makers.

DOE is also considering extending the compliance date for the certification provisions for other commercial equipment based on comments.

DATES: DOE will accept comments, data, and information regarding the notice of proposed rulemaking (NPR) postmarked no later than **[INSERT 30 DAYS AFTER DATE OF PUBLICATION]**.

ADDRESSES: Any comments submitted must reference the Energy Conservation Program: Certification, Compliance, and Enforcement for Consumer Products and Commercial and Industrial Equipment, and provide docket number EERE-2010-BT-CE-0014 and/or RIN number 1904-AC23. Comments may be submitted using any of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.
- **E-mail:** CCE-2010-BT-CE-0014@ee.doe.gov. Include docket number EERE-2010-BT-CE-0014 and/or RIN 1904-AC23 in the subject line of the message. Submit electronic comments in WordPerfect, Microsoft Word, PDF, or ASCII file format and avoid the use of special characters or any form of encryption.
- **Postal Mail:** Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE-2J, 1000 Independence Avenue, SW, Washington, DC 20585-0121. Telephone: (202) 586-2945. Please submit one signed original paper copy.

- Hand Delivery/Courier: Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza, SW, 6th Floor, Washington, DC 20024. Please submit one signed original paper copy.

Docket: For access to the docket to read background documents or comments received, visit the U.S. Department of Energy, Resource Room of the Building Technologies Program, 950 L'Enfant Plaza, SW, 6th Floor, Washington, DC, 20024, (202) 586-2945, between 9:00 a.m. and 4:00 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. Please note: DOE's Freedom of Information Reading Room (Room 1E-190 at the Forrestal Building) no longer houses rulemaking materials.

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; 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.

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 (March 2011 Final Rule). 76 FR 12421. The March 2011 Final Rule will provide DOE more comprehensive information about the energy and water use characteristics of products sold in the United States. Furthermore, the 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 was largely procedural in nature; it did not amend pre-existing sampling provisions, test procedures, or conservation standard levels for any EPCA products or equipment. It did, however, impose 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. Finally, 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 provides for the revised certification provisions to be effective on July 5, 2011. Since the publication of the Final Rule, certain manufacturers of particular types of commercial and industrial equipment have stated that they would be unable to meet that deadline. In particular, manufacturers of commercial refrigeration equipment; commercial heating, ventilating, air-conditioning (HVAC) equipment; commercial water heating equipment; walk-in coolers; walk-in freezers; and automatic commercial ice makers (as defined in 10 CFR part 431) contend that certifying supported basic model ratings under the revised provisions would require a cost-prohibitive amount of additional testing and take far longer than the time allowed.

The Department did not intend to change, let alone increase, testing burdens through the certification reporting provisions of the March 2011 Final Rule. However, the new information provided suggests that, for certain commercial manufacturers, the interplay between the reporting requirements, current industry practices, and preexisting regulations may mean that such manufacturers may need additional time to comply with the regulations. In particular, the Department has become aware of concerns related to its revised regulations for alternative efficiency determination methods (AEDMs), which are intended to reduce testing burdens by allowing manufacturers to use computer simulations, mathematical models, and other alternative methods to determine the amount of energy used by a particular basic model. For example, some commercial manufacturers have suggested that the AEDM provisions are too restrictive, overly burdensome, and unavailable for some products that would benefit from them and, as a result, do not permit the viable alternative to testing intended by the Department.

Responding in part to these concerns, on April 8, 2011, the Department issued a request for information (RFI) (available at http://www1.eere.energy.gov/buildings/appliance_standards/pdfs/arm_aedms_rfi.pdf) seeking comment on, among other things, the use of such alternative methods for determining the efficiency of commercial and industrial equipment. As the RFI explained, the Department intends to use this information to propose revisions to improve the existing AEDM provisions in a future rulemaking. For commercial manufacturers, the Department understands that addressing some of the concerns with the AEDM provisions may alleviate some of the burden reported by these manufacturers of complying with DOE's existing regulations and the March 2011 Final Rule certification reporting provisions. Given the testing burdens reported by certain commercial manufacturers and the Department's recent RFI on alternative ways to estimate efficiency in lieu of testing, DOE tentatively proposes an 18-month delay in the compliance date for filing complete certification reports for manufacturers of commercial refrigeration equipment; commercial heating, ventilating, HVAC equipment; commercial water heating equipment; walk-in coolers; walk-in freezers; and automatic commercial ice makers.

The Department seeks comment on this proposed delay for these specified manufacturers. We also seek comment on whether a longer or shorter period of time would be more appropriate. In addition, the Department seeks comment on whether manufacturers of other types of commercial or industrial equipment face similar circumstances with respect to unintended testing burdens or AEDM concerns that would require additional

time to comply with the certification reporting requirements in the March 2011 Final Rule.

The Department seeks comment on what, if any, limited reporting requirement should be required of manufacturers of these types of commercial equipment during the interim period. For example, DOE seeks comment on whether it should require these manufacturers to register with the Department's electronic CCMS system in the meantime.

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.gc.doe.gov>.

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.

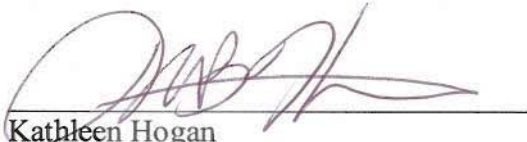
II. Approval of the Office of the Secretary

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

List of Subjects in 10 CFR Part 429

Confidential business information, Energy conservation, Household appliances, Imports, Reporting and recordkeeping requirements.

Issued in Washington, DC, on April 12, 2011.

A handwritten signature in dark ink, appearing to read 'K. Hogan', is written over a horizontal line.

Kathleen Hogan
Deputy Assistant Secretary for Energy Efficiency
Office of Technology Development
Energy Efficiency and Renewable Energy

For the reasons stated in the preamble, DOE is proposing to amend part 429 of title 10 of the Code of Federal Regulations, 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. Add in §429.12 a new paragraph (i) to read as follows:

§ 429.12 General requirements applicable to certification reports.

* * * * *

(i) *Certain commercial equipment.* Manufacturers of commercial refrigeration equipment; commercial heating, ventilating, air-conditioning (HVAC) equipment; commercial water heating equipment; walk-in coolers; walk-in freezers; and automatic commercial ice makers are not required to comply with paragraphs (a) through (f) of this section until [*insert date 18 months following publication of final rule*].