DEPARTMENT OF ENERGY

10 CFR Parts 429, 430 and 431

[Docket No. 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: Notice of proposed rulemaking and public meeting.

SUMMARY: The U.S. Department of Energy (DOE or the "Department") is proposing to revise and expand its existing certification, compliance, and enforcement regulations for certain consumer products and commercial and industrial equipment covered under the Energy Policy and Conservation Act of 1975, as amended (EPCA or the "Act"). These regulations provide for sampling plans used in determining compliance with existing standards, manufacturer submission of compliance statements and certification reports to DOE, maintenance of compliance records by manufacturers, and the availability of enforcement actions for improper certification or noncompliance with an applicable standard. Ultimately, these proposals will allow DOE to systematically enforce applicable energy and water conservation standards for covered products and covered equipment and provide for more accurate, comprehensive information about the energy and water use characteristics of products sold in the United States. Additionally, today's notice announces a public meeting on the proposed amendments.

DATES: DOE will hold a public meeting on Thursday, September 23, 2010, from 9 a.m. to 4 p.m., in Washington, DC. DOE must receive requests to speak at the public meeting before 4 p.m., Thursday, September 23, 2010. Additionally, DOE plans to conduct the public meeting via webinar. To participate via webinar, DOE must be notified by no later than Thursday, September 16, 2010. Participants seeking to present statements in person during the meeting must submit to DOE a signed original and an electronic copy of statements to be given at the public meeting before 4 p.m., Thursday, September 23, 2010.

DOE will accept comments, data, and information regarding this notice of proposed rulemaking (NOPR) before and after the public meeting but no later than October 18, 2010. *See* section V, "Public Participation," of this NOPR for details.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *http://www.regulations.gov.* Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE–2010–BT–CE–0014, by any of the following methods:

- *E-mail: CCE–2010–BT–CE–0014@ee.doe.gov*. Include EERE–2010–BT–CE–0014 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–2010–BT–CE–0014, 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. Note that all comments received will be posted without change, including any personal information provided.

Docket: For access to the docket to read background documents, or comments received, go to the *Federal eRulemaking Portal* at *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;* and Ms. Celia Sher, U.S. Department of Energy, Office of the General Counsel, Forrestal Building, GC–71, 1000 Independence Avenue, SW., Washington, DC 20585. Telephone: 202–287–6122. E-mail: *Celia.Sher@hq.doe.gov.*

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I. Authority and Background

Title III of the Energy Policy and Conservation Act of 1975, as amended ("EPCA" or, in context, "the Act") sets forth a variety of provisions designed to improve energy efficiency. Part A of Title III (42 U.S.C. 6291–6309) provides for the Energy Conservation Program for Consumer Products Other Than Automobiles. The National Energy Conservation Policy Act (NECPA), Public Law 95–619, amended EPCA to add Part A–1 of Title III, which established an energy conservation program for certain industrial equipment. (42 U.S.C. 6311–6317) [1]

Under the Act, the regulatory program consists of three parts: Labeling, testing, and Federal conservation standards, which include energy conservation, water conservation and design standards. The Federal Trade Commission (FTC) is primarily responsible for labeling consumer products, and DOE implements the remainder of the program. The testing requirements consist of test procedures prescribed under the authority of EPCA, which are used to aid in the development of standards for covered products or covered equipment, to make representations about equipment efficiency, and to determine whether covered products or covered equipment comply with standards promulgated under EPCA.

[1] For editorial reasons, Parts B (consumer products) and C (commercial equipment) of Title III of EPCA were re-designated as parts A and A–1, respectively, in the United States Code.

Sections 6299–6305, and 6316 of EPCA authorize DOE to enforce compliance with the energy and water conservation standards (all non-product specific references herein referring to energy use and consumption include water use and consumption; all references to energy efficiency include water efficiency) established for certain consumer products and commercial equipment. (42 U.S.C. 6299–6305 (consumer products), 6316 (commercial equipment)) To ensure that all covered products and covered equipment distributed in the United States comply with DOE's conservation standards, DOE has promulgated enforcement regulations that include specific certification and compliance requirements. See 10 CFR part 430, subpart F; 10 CFR 430.23–25; 10 CFR part 431, subparts B, J, K, S, T, U, and V.

On May 7, 2010, the Department published in the **Federal Register** a Request for Information (RFI) regarding Revisions to Energy Efficiency Enforcement Regulations. 75 FR 25121. The RFI requested suggestions, comments, and information relating to the Department's intent to expand and revise its existing energy efficiency enforcement regulations for consumer products and commercial and industrial equipment covered under EPCA. The comment period for written submissions closed on June 7, 2010.

The record of the RFI reflects that the consideration of many of the procedural changes to DOE's certification requirements and enforcement process are relatively straightforward, while other changes under consideration, such as the creation of a verification testing requirement, raise more complicated and nuanced issues. Even relatively simple changes, however, can greatly advance the effective enforcement of DOE's conservation standards and regulations. Therefore, today's NOPR focuses on promptly advancing two aspects of the DOE's enforcement regime: Certification requirements and enforcement procedures. In addition, this notice proposes consolidating and standardizing, where possible, all of the certification, compliance, and enforcement requirements for both consumer products and commercial equipment into a new 10 CFR Part 429. In all cases, the Department's goals are to establish a uniform, systematic, and fair approach to certification, compliance, and enforcement that will allow the Department to effectively enforce its standards and ensure a level playing field in the marketplace without unduly burdening regulated entities.

While not addressed here, DOE anticipates addressing the remaining topics outlined in the RFI and additional issues regarding certification, compliance, and enforcement, including verification testing requirements, in a subsequent rulemaking. To that end, today's NOPR seeks comment on a variety of issues, which will be more fully addressed in a second certification, compliance, and enforcement rulemaking, including: Revisions to sampling plans for certification and enforcement testing, consideration of compliance requirements for other features affecting the energy and water efficiency of a product, additional provisions for imports, voluntary industry certification programs (VICP), verification testing requirements, laboratory accreditation, and rounding. DOE continues to seek views from all interested parties on these issues and how they can be best developed to ensure effective enforcement.

II. Summary of the Proposal

In today's notice, DOE proposes to revise its certification and enforcement regulations to encourage compliance, achieve energy savings, and prevent those manufacturers that do not adhere to the rules from having a competitive advantage over those that do. As summarized below, the notice proposes revisions to existing certification, compliance, enforcement, and adjudication procedures applicable to both consumer products and commercial and industrial equipment.

A. Reorganization of DOE's Existing Certification, Compliance, and Enforcement Regulations

With the exception of electric motors, DOE is proposing to move all of the existing certification, compliance, and enforcement regulations currently scattered throughout parts 430 and 431 to a new part 429. DOE has consolidated similar provisions for both consumer products and commercial and industrial equipment into one section. As an example, all of the submission of data requirements that are currently found in 10 CFR 430.62, 431.327, and 431.371 will be found in 10 CFR 429.19 for consumer products and commercial and industrial equipment once DOE's proposals become final. While DOE is not proposing revisions to the requirements for electric motors in today's NOPR, DOE does intend to propose to move and harmonize, where possible, the certification, compliance, and enforcement provisions for electric motors in part 429, as well as add an annual certification requirement, in the second rulemaking.

B. Applying DOE's Existing Certification, Compliance, and Enforcement Regulations to Other Consumer Products and Commercial and Industrial Equipment

DOE intends to apply certification, compliance, and enforcement regulations to all covered products and covered equipment. Thus, the Department also proposes to establish certification and enforcement requirements for the consumer products and commercial and industrial equipment that have been added to DOE's programs by either DOE's completion of energy and water conservation standards rulemakings or the Energy Independence and Security Act of 2007. These products include fluorescent lamp ballasts, general service incandescent lamps, candelabra base incandescent lamps, intermediate base incandescent lamps, certain types of commercial refrigeration equipment, beverage vending machines, and walk-in coolers and freezers.

C. Certification

Existing certification requirements direct manufacturers of covered consumer products and commercial and industrial equipment to certify, by means of a compliance statement and a certification report, that each basic model meets the applicable energy conservation, water conservation, and/or design standard before distributing it in commerce within the United States. *See* 10 CFR 430.62 (consumer products); 10 CFR 431.36, 430.371 (commercial equipment). For consumer products, much of the information required to be reported to DOE must also be reported annually to the FTC. In light of these similarities in reporting, DOE desires to eventually work towards the creation of a single, annual reporting mechanism for DOE and FTC, as appropriate. While today's notice does not yet propose such a shared annual reporting mechanism for DOE and FTC, DOE is proposing to include an annual reporting requirement for all covered products and covered equipment. DOE has aligned its annual reporting schedule with FTC's reporting schedule for consumer products. Such annualized reporting will provide DOE with more accurate and comprehensive information regarding the industries subject to DOE's regulations and a better understanding of the efficiency characteristics of products distributed in commerce.

In harmonizing the certification requirements for consumer products and commercial and industrial equipment, DOE believes it is also appropriate to provide more transparency in the certification report itself. As currently written, the Department's rules for certification reports do not always provide DOE with a complete set of information to verify that a covered product or covered equipment is compliant with DOE's regulations. Thus, DOE is proposing to expand the information submitted by manufacturers, including general requirements applicable to all products and product specific requirements. See section 429.19 of the proposed regulatory text for additional details. DOE is also proposing to make clear that all non-proprietary certification information will be considered public information subject to disclosure. By requiring additional relevant data to be supplied in the certification report, DOE will be able to more effectively enforce compliance with the conservation standards. Additionally, the public would have information to use in evaluating the energy efficiency of a covered product or covered equipment. Overall, the proposed revisions have been crafted to balance any incremental reporting burden on manufacturers against the Department's need for comprehensive, timely, and accurate information about regulated products being sold in the United States.

D. Enforcement Testing and Adjudication

In addition, DOE is proposing regulations to make clear the extent of the Department's enforcement authority under EPCA and the Department's process for exercising that authority. DOE desires to make more transparent the process by which it currently exercises its statutory authority to: (1) Request information, by letter or subpoena, from manufacturers concerning the compliance of a basic model with an applicable conservation standard; (2) test or examine units of a given basic model to determine compliance with an applicable standard; and (3) take appropriate enforcement action as warranted. To that end, DOE proposes to establish a standardized process for seeking injunctive relief, civil penalties, or other remedies for violations of conservation standards and/or certification requirements. This includes developing a standard method for responding to complaints of non-compliance, notifying the allegedly non-compliant manufacturer of the complaint, and collecting any needed data via enforcement testing. Revising the current enforcement and adjudication procedures for consumer products and commercial and industrial equipment will provide certainty and clarity to the regulated industry and will ensure that the Department can initiate investigations promptly, respond to complaints effectively, and enforce its regulations in a fair and timely way.

III. Discussion of Specific Revisions to DOE's Certification, Compliance, and Enforcement Regulations and Comments Received in Response to the RFI

In this section, DOE provides a section by section analysis of its proposed rule. As discussed above, DOE proposes to add a new Part 429 to its regulations to address, in one place, the certification, compliance, and enforcement of conservation standards for both consumer products and commercial and industrial equipment with the exception of electric motors. This new part would set forth the certification, compliance, and enforcement procedures to be followed to determine whether a basic model of a covered product or covered equipment complies with the applicable conservation standard.

DOE received comments from 30 interested parties, including manufacturers, trade associations, and advocacy groups. Specifically, comments were received from: Plumbing Manufacturers Institute, Alsons Corporation, Air-Conditioning, Heating, and Refrigeration Institute, National Resource Defense Council, Appliance Standards Awareness Project, Bosch and Siemens Home Appliances Group, Heat Transfer Products, United CoolAir Corporation, Bob McGarrah, Plumbing Americas, Bose Corporation, Intertek, First Company, National Automatic Merchandising Association, Mestek, Underwriters Laboratories, Trane, Sony Electronics Inc., Earthjustice, Delta Faucet Company, Hansgrohe, Consumers Union, Whirlpool Corporation, Association of Home Appliance Manufacturers, Shane Holt, General Electric, National Electrical Manufacturer's Association, Rheem Manufacturing, Friedrich Air Conditioning Co., and American Standard Brands. These comments are discussed in more detail below. The full set of comments can be found at *http://www.regulations.gov.*

A. Basic Model Provisions

1. Basic Model Certification

Under the DOE's existing energy conservation program, DOE has applied the "basic model" concept to streamline certification and compliance and alleviate burden on manufacturers by reducing the amount of testing they

must do to rate the efficiencies of their products. DOE's intent is that a manufacturer would treat each group of its models that have essentially identical energy consumption or water consumption characteristics as a "basic model," such that the manufacturer would derive the efficiency rating for all models in the group from testing sample units of these models. All of the models in the group would comprise the "basic model," and they would all have the same efficiency rating. For example, a manufacturer can identify as the same basic model black, white, and stainless steel finished dishwasher models with the same features and functions. By contrast, a manufacturer could produce two identical models of air conditioners with essentially the same internal components but which use a different control strategy affecting the energy consumption of the unit as measured by DOE's test procedure. Even though both models have essentially the same physical characteristics, the models have different functional characteristics that affect the energy consumption and efficiency. 10 CFR Part 430.2(11). Thus, these models would be considered by DOE to be two different basic models.

The Department recognizes, however, that additional clarity as to what constitutes "essentially identical" energy or water consumption across different model designs or modifications for purposes of a basic model may be helpful for certain types of products and equipment. To provide additional certainty and improve implementation of the basic model concept, the Department seeks comment on how manufacturers determine that a particular model constitutes a basic model.

Sections 430.62(b) and 431.371(b) presently provide for recertification reporting to DOE if there is a change to a basic model that increases energy consumption or decreases energy efficiency. In the RFI, DOE sought input on implementing a recertification requirement whenever there is a change made to a basic model that increases or decreases energy efficiency or energy consumption. Several commenters in the manufacturing sector were opposed to this proposal. These filers stated that such a requirement would discourage producers from introducing product designs that improve energy efficiency and would increase cost and reporting burdens on manufacturers. Other commenters supported recertification if DOE established a threshold percentage that would trigger recertification, or if the recertification requirement was product specific. DOE has tentatively determined not to impose a separate model modification requirement at this time. However, the Department is retaining its requirement that new basic models—including models that are modified such that they are new basic models—must be certified before distribution in commerce. Accordingly, the Department is seeking comment to clarify what modifications to an existing model make it a new basic model subject to the new model certification requirement.

DOE is interested in information regarding how a manufacturer determines that it has made changes to the features or energy use characteristics of a basic model so as to constitute a new basic model. Specifically, DOE is interested in the types of potential changes manufacturers may make to a given model and the difference in the energy use characteristics a typical change may have on a per product basis. Additionally, DOE seeks comment on whether it should propose a specific regulation that requires a new basic model declaration and filing when a modification to a given basic model impacts the energy characteristics of the product by a given de minimus percentage. If so, should these de minimus percentages be product specific, based on the manufacturing characteristics of the product and the variability experienced in testing? DOE seeks comment on how these de minimus percentages might change for each covered product and covered equipment. In addition, DOE believes characterizing the types of changes that constitute a new basic model will be particularly useful in the context of a verification testing program (addressed in III.C of this NOPR) in order to determine what fraction of basic models will be tested under the program. *See* Issue 1 under "Issues on Which DOE Seeks Comment" in section V of this NOPR.

2. Basic Model Numbers

In conjunction with the certification requirement described above for a basic model, DOE proposes to require that manufacturers change the basic model *number* whenever a new basic model is created. DOE believes this would improve the manner in which basic model numbers are designated so that the number that is provided to DOE for certification is clearly associated with the model number used to identify the unit in the market. This more unified approach to numbering changes would assist the Department and the public in identifying the market-based model number that corresponds with what is certified to DOE.

DOE received comments from three trade associations and three manufacturers in protest of creating a more uniform numbering system. These groups stated that requiring a uniform numbering system across products, manufacturers, and models is not desirable because it would have high implementation costs and create confusion and that DOE should focus on ensuring that test reports match model numbers, rather than requiring companies to change their model numbering systems to meet DOE needs. One advocacy group commented positively on the proposal. To be clear, DOE's proposal does not mandate any particular system or configuration of numbering models. Manufacturers and private labelers remain free to use whatever numbering system they choose. However, DOE continues to believe that requiring that the model numbering system, whatever it is, include a change in model number for each new basic model will allow for more transparency and consumer awareness. Thus, DOE proposes to establish a requirement that a new basic model number must be designated when a new basic model is created.

In the RFI, DOE also sought comment on how a basic model should be identified such that the number provided to DOE for certification is clearly associated with the model number used to identify the unit in the market. Accordingly, DOE is proposing to define manufacturer model number as, essentially, the unique identifier for the product as it is sold. As described above, a basic model can subsume multiple manufacturer model numbers. DOE thus suggests that the manufacturer use one of the manufacturer model numbers as the basic model and identify all the manufacturer model numbers that are covered by that particular basic model. DOE believes this will provide further transparency between the certifications received by DOE and the model numbers a consumer sees in the market.

B. Certification

DOE proposes the following amendments relating to certification requirements. If DOE has obtained OMB clearance for the information collection prior to issuance of the final rule, these amendments would become effective 30 days following publication of the final rule. The compliance date for the annual filing requirements would be the first day of the first month following the effective date.

1. Annual Certification Requirements

Under existing DOE regulations, manufacturers of certain covered products and covered equipment must satisfy a one-time certification requirement for each basic model before the basic model can be distributed in commerce. DOE is proposing an annual certification reporting requirement for each basic model of covered product and covered equipment as discussed in section 429.19 of the proposed regulatory text. In order to reduce the reporting burdens on manufacturers, DOE proposes to consolidate the schedule of reporting requirements with the FTC's schedule for consumer products, where possible. DOE determined the proposed annual filing schedule based generally upon the FTC schedule for similar product types subject to annual reporting under the FTC's Appliance Labeling Rule (see 16 CFR 305.8). For commercial and industrial equipment, DOE is aligning similar equipment types with the FTC schedule for consumer products. For example, a manufacturer of both residential and commercial air-conditioning and heating equipment would be required to submit annually by July 1st under the proposed modifications. DOE believes aligning the reporting schedule for products of similar types will also help reduce the number of times annually a manufacturer has to submit information.

As discussed above, DOE raised the possibility of annual reporting requirements in the RFI, and commenters were fairly equally divided in their responses to this proposal, with approximately half of commenters supporting annual certification and the other half opposed to an annual requirement because it would create additional cost and reporting burdens. DOE finds that the costs for annual filing would be minimal for consumer products, especially since it would be coupled with the manufacturer's FTC submission for the same product. Although DOE acknowledges there could be small incremental costs for additional submissions for certain types of commercial and industrial equipment, these filings are needed to ensure that the Department and the public has accurate and comprehensive efficiency information.

A number of commenters objected to DOE imposing annual testing requirements. For clarification, however, the proposed annual filing requirement is not an annual testing requirement. The proposed revision does not require any new or additional testing to be done. The Department's pre-existing regulations require that basic models be tested to ensure compliance with the applicable standard before the unit is first introduced in commerce. The annual filing does not require retesting, but rather a yearly submission of the results of the testing already done for all models a manufacturer has in distribution in that year. In this way, annual submission of certification information would assure that DOE has the most current and complete picture of efficiency characteristics of covered products and covered equipment currently in the marketplace.

2. Filings Consolidation With FTC

In the RFI, DOE had discussed the possibility of consolidating filings with FTC and other agencies such as EPA. In response to a discussion of certification reporting requirements in the RFI, four commenters supported simplifying the reporting requirements and suggested creating a shared database between DOE and FTC for all products covered by DOE standards and FTC labels. Three commenters objected to the proposal, arguing that such a requirement would add additional burdens to those industries that do not participate in the FTC program.

The Department continues to believe that a single Federal database for efficiency information would be of great value. At this time, however, the Department is consolidating its requirements with FTC's schedule only. DOE will continue to consider consolidating filings with the FTC or other government agencies in a future certification, compliance, and enforcement rulemaking.

3. Revisions to the Reporting Requirements, General

DOE is proposing to expand the information it is collecting for certain covered products and covered equipment to include additional details that will help DOE to better enforce its conservation standards. Specifically, DOE proposes to revise what information must be submitted as a part of a certification filing to ensure that the Department obtains the information it needs to effectively carry out its statutory enforcement obligations without unnecessarily burdening certifying parties. To begin, as a streamlining measure, DOE proposes to include the compliance statement as part of the certification report, rather than a separate filing, to reduce the number of submissions transmitted to DOE. Further, DOE seeks to standardize to the extent possible the basic information required for certification of all covered products and covered equipment, setting out the basic requirements for every certification filing, followed by product-specific information requirements. Along these lines, DOE proposes that the following items be included in certification reports for all basic models of all covered products and covered equipment: the manufacturer name, the private labeler(s)' name (as applicable), the brand name, the basic model number, and the individual model numbers covered by that basic model; the sample size and the total number of tests performed; and the certifying party's U.S. Importer of Record identification numbers assigned by U.S. Customs and Border Protection pursuant to 19 CFR 24.5, if applicable. This information should be readily available to the certifying party and will allow the Department to more effectively monitor compliance, investigate complaints, and take appropriate enforcement action.

Additionally, DOE proposes to require manufacturers to submit information related to waivers, exemptions, and approved alternative rating methodologies along with their certification submissions as appropriate. Manufacturers of covered products and covered equipment that are not covered under an existing test procedure, or that cannot meet a DOE conservation standard, have the option to either seek waivers of the test procedures under existing regulations or seek exception relief from the conservation standard from DOE's Office of Hearings and Appeals (OHA). DOE proposes to require that manufacturers who obtain a waiver of test procedures or a grant of exception-based standards from OHA specify such information on the certification report submitted to the Department. This will serve to eliminate the current lengthy records review process the Department must now undertake to determine what test procedures or conservation standards apply to a certain basic model. It will also allow a manufacturer to tailor the certification to its situation rather than causing a manufacturer to certify that a product was tested in accordance with the DOE test procedure when the product was not, in fact, tested in accordance with the DOE test procedure. Similarly, DOE also proposes to require that any DOE-allowed alternative method of determining energy consumption or efficiency, such as an Alternative Rating Method (ARM) for untested split-system central air conditioners or heat pumps, or other alternative method of rating, such as

alternative efficiency determination methods (AEDMs) for commercial heating, ventilating, air-conditioning and water heating equipment (HVAC and WH) or distribution transformers, be indicated on the certification report to provide a clear picture of the test procedures or exceptions used as a basis for the certification.

4. Product Specific Revisions to the Reporting Requirements

As discussed generally above, DOE is proposing new certification reporting requirements for fluorescent lamp ballasts, general service incandescent lamps, candelabra base incandescent lamps, intermediate base incandescent lamps, certain types of commercial refrigeration equipment, beverage vending machines, and walk-in coolers and freezers. These annual reporting requirements were generally based upon the existing reporting requirements for certain types of consumer products and commercial and industrial equipment, which require the certification of a basic model before it is distributed in commerce.

In addition, DOE proposes additional product-specific information that should be submitted to DOE as a part of the certification filing for a variety of consumer products and commercial equipment. DOE believes the addition of this information on the certification report for these products will provide a more complete set of information on a covered product or covered equipment and assist the Department in verifying that a covered product or covered equipment is compliant with DOE's standards. All of the product specific reporting requirements are presented in 10 CFR 429.19(b)(13).

Lastly, DOE is proposing to revise the certification reporting requirements for existing products, where updates have been made to DOE's conservation standards. For example, DOE is proposing to modify the certification reporting requirements for residential clothes washers to add a water factor reporting requirement starting on January 1, 2011.

5. Certifying Entities

Currently, DOE's certification regulations allow either the manufacturer or private labeler to submit certification reports and compliance statements for each basic model. However, this approach lacks certainty as to who should submit data to DOE for privately labeled products. DOE is interested in removing uncertainty, preventing duplicative filings, and having a more comprehensive set of market data concerning each covered product and covered equipment. Accordingly, it is proposing to require that manufacturers be solely responsible for submitting the certification reports to DOE, which would include data regarding the manufacturer's information, as well as the private labeler's information and/or brand information, where appropriate. By placing the reporting burden on manufacturers, which, by statutory definition, includes importers, DOE would have more certainty that the certification information it receives for a product type is comprehensive. DOE also notes that, as discussed more fully below, a manufacturer would still have the option of electing to have its private labeler act as a third party filer and submit the certification report on the manufacturer's behalf.

6. Third Party Representation

Currently, sections 430.62(e) and 431.371(d) allow a manufacturer or private labeler to elect to use a third party to submit certification reports to DOE. While DOE intends to continue to permit this practice, DOE proposes to make clear in its regulations that it may refuse to accept certification reports from a third party with a poor history of performance (i.e., failure to properly submit reports on behalf of a manufacturer on at least two occasions).

Most commenters were in agreement that third party submission of certification reports should continue to be allowed, with appropriate consequences for poor performance, such as improper certification. In particular, one trade association and one manufacturer asserted that third parties with greater than three failures should be put on probation or completely disallowed to submit reports. Other commenters, including a consumer advocacy group, suggested that manufacturers, and not third parties, should be held accountable for any misfiling by the third party.

The Department agrees there is value in continuing its practice of allowing third party submission of certification reports. However, the Department proposes to make explicit in its regulations that the manufacturer remains ultimately responsible for submission of the certification reports to DOE. And, as mentioned, DOE's proposal reserves the discretion to disallow a third party filing from a filer with a poor history of performance.

7. Submission of Certification Reports

The Department proposes to make electronic submission of certification reports through the Certification Compliance Management System (CCMS) found at *http://www.regulations.doe.gov/ccms* the sole method of submission. The CCMS currently has sample templates for certain covered products and covered equipment available for manufacturers to use when submitting certification data to DOE. DOE plans to have these sample templates for all covered products and covered equipment when it issues the final rule for this rulemaking. DOE believes the availability of electronic filing through the CCMS system should reduce reporting burdens, streamline the process, and provide the Department with needed information in a standardized, more accessible form. This electronic filing system will also ensure that records are recorded in a permanent, systematic way. DOE notes that it is proposing to remove the certified mail and e-mail options for filing certification data that are currently allowed in DOE's regulations.

8. Initial Certification and Notice of Discontinuance

In addition to the annual certification requirement, DOE proposes to retain the requirement in the existing regulations that any new basic model be certified before distribution in commerce. This initial certification requirement applies to newly manufactured and produced basic models as well as models that have been modified in a way that changes the model's energy use characteristics and thus constitutes a new basic model.

In addition, the Department proposes to require that discontinued models be reported to DOE as part of the next annual certification report period from when production of the model has ceased. A discontinued model is a model that is no longer distributed in commerce. EPCA defines "distribute in commerce" as "to sell in commerce, to import, to introduce or deliver for introduction into commerce, or to hold for sale or distribution after introduction into commerce." (42 U.S.C. 6291(16)) Thus, a model has been discontinued when it is no longer being sold, or held out for sale or distribution, by the manufacturer or private labeler.

9. Certification Testing

In-House vs. *Independent Testing*

The regulations currently permit in-house, as well as independent, certification testing for determining compliance with DOE's performance-based conservation standards. In the RFI, the Department requested comments as to whether all covered products and covered equipment should

be required to be independently tested for certification purposes. DOE received comments from ten manufacturers and two trade associations in protest of this suggestion. These commenters urged that independent testing would add no additional benefit to consumers, would increase costs and lower profit margins, cause delays which would stifle innovation and competition, and put small manufacturers out of business. DOE received positive comments from one advocacy group in support of the concept, who noted that such testing would ensure a higher level of confidence in manufacturer certification. In view of the above concerns, DOE recognizes that independent testing for purposes of certification may not be appropriate for all manufacturers and all industries. Therefore, DOE is maintaining the current certification testing procedures of allowing both in-house and independent testing. DOE plans to pursue verification testing in a future rulemaking and continues to seek comment on the attributes DOE should consider as part of its verification testing program. See Issue 2 under "Issues on Which DOE Seeks Comment" in section V of this NOPR. The Department believes that a self-certification approach, coupled with an appropriate verification program and robust enforcement, can facilitate compliance without unduly burdening manufacturers.

Sampling Procedures for Certification Testing

Under existing regulations, the sampling procedures for certain consumer products and certain commercial and industrial equipment to be used for certification testing are set forth in sections 430.24, 431.65, 431.135, 431.174, 431.175, 431.197, 431.205, 431.225, 431.265, 431.295, and 431.328. In the RFI, the Department sought comment regarding any needed changes in the current sampling plan for certification testing and the reasons the changes are warranted for a given product. The majority of comments DOE received on this issue were from manufacturers, who were all in agreement that the current sampling plans for certification is adequate and do not require change. Two trade associations commented similarly. Additionally, one advocacy group stated that the sampling plans for certification and enforcement testing should be similar, but may vary in some details including how the samples are procured, or sample size.

For this rulemaking, DOE is consolidating existing sampling provisions in Part 429 and establishing sampling provisions for the types of consumer products and commercial equipment that do not currently have them. Section 323(b)(3) of EPCA, 42 U.S.C. 6293(b)(3), requires a test procedure be reasonably designed to produce results measuring energy efficiency or energy use and not be unduly burdensome to conduct. DOE is proposing the use of a statistically meaningful sampling procedure for selecting test specimens of consumer products and commercial and industrial equipment to reduce the testing burden on manufacturers, while giving sufficient assurance that the true mean energy efficiency of a basic model meets or exceeds the represented measure of energy efficiency. The represented measure of energy efficiency is determined by the manufacturer based on the application of certification testing and DOE's sampling procedures.

DOE reviewed the existing sampling plans for consumer products and commercial and industrial equipment, which provided guidance on how many and which units to test to determine compliance. After reviewing the existing certification and enforcement sampling plans for consumer products and commercial and industrial equipment, DOE is proposing that the manufacturer select a sample at random from a production line and, after each unit or group of units is tested, either accept the sample or continue sampling and testing additional units until a rating determination can be made. As in the existing regulations, DOE does not propose a specific sample size for each product because the sample size is determined by the validity of the sample and how the mean compares to the standard, factors which cannot be determined in advance. Moreover, DOE believes that testing a randomly selected sample until a determination is reached is a method that arrives at a statistically valid decision on the basis of fewer tests than fixed-number sampling. As with the existing regulations, DOE is continuing to propose that manufacturers randomly select and test a sample of production units of a representative basic model, and then calculate a simple average of the values to determine the actual mean value of the sample. The confidence limits and coefficients are product specific and intended to reasonably reflect variations in materials, the manufacturing process, and testing tolerances. The proposed sampling plans for certification testing can be found in section 10 CFR 429.9 of the regulatory text.

DOE is continuing to consider further changes to the sampling plans for certification testing of all consumer products, including: (1) Changes to the product-specific coefficients and the rationale for such changes; (2) whether DOE should continue using sampling plans for certification testing, which provide manufacturers with the option of using the calculated values resulting from applying the criteria set forth in proposed section 10 CFR 429.9 or another representative value meeting the criteria in proposed section 10 CFR 429.9; (3) whether DOE should continue to have different sampling plans for certification testing and enforcement testing; and (4) whether DOE should expand the submission of data requirements in the certification section to include test data and the details of the sampling procedures used for making representations of and certifying compliance with the energy and water use or efficiency.

In addition, DOE is considering adding sampling plans and tolerances for other features of covered products and covered equipment which impact the water or energy characteristics of a product. For example, DOE could add a sampling provision for the measured storage volume of residential water heaters. The representative value of the measured storage volume could then be used in determining the energy efficiency of the product. DOE is seeking comment on this approach, and the methodologies DOE should consider if it decides to extend the sampling provisions to features other than the regulatory metrics. *See* Issue 3 under "Issues on Which DOE Seeks Comment" in section V of this NOPR.

c. Provisions Specific to Commercial HVAC and WH Equipment, Including the Use of AEDMs and VICPs

Currently, DOE's sampling procedures for certification testing of commercial HVAC and WH are based on provisions allowing the use of an AEDM and whether a manufacturer participates in a VICP. See 10 CFR 431.174–176. DOE is continuing to allow the use of AEDMs for commercial HVAC and WH equipment once the manufacturer has met the criteria in 10 CFR 429.23 of the proposed rule. Currently, DOE has provisions requiring more stringent criteria for testing and the use of AEDMs for those manufacturers opting not to participate in a VICP. Specifically, DOE requires non-VICP manufacturers to conduct independent testing, use DOE-prescribed sampling plans, and obtain DOE approval of its AEDMs (if applicable) before those methods may be used for compliance certification purposes. In addition, DOE requires that non-VICP manufacturers file a

compliance statement and certification report directly to DOE.

In this NOPR, DOE is proposing to simplify the procedures governing sampling plans for certification testing, voluntary programs, and AEDM verification. Specifically, DOE is proposing one set of procedures for all types of commercial HVAC and WH equipment regardless of participation in a VICP. In particular, DOE is proposing that the sampling procedures currently applicable for non-VICP members be used for certification testing of all types of commercial HVAC and WH equipment and verification of the AEDM. DOE is proposing to allow manufacturers to use both in-house testing facilities and independent laboratories at the manufacturer's discretion for certification testing. Lastly, DOE is continuing to allow third-party certification of compliance statements and certification reports regardless of participation in a VICP. DOE believes this approach treats all manufacturers equally and will simplify the provisions applicable to commercial HVAC and WH equipment.

Even though DOE wants to encourage the use of voluntary industry certification programs, DOE is not proposing modifications to DOE's provisions defining VICPs at this time. However, DOE is considering imposing a verification testing requirement for all product and equipment types. Such a requirement may entail changes to the current provisions governing VICPs in the second certification, compliance, and enforcement rulemaking. DOE thus seeks comment regarding the criteria defining VICPs and the use of VICPs in DOE's certification, compliance, and enforcement programs. Specifically, DOE requests comment about the requirements and details for verification testing programs (*e.g.,* the use of an independent testing laboratory, a specific number of samples randomly tested, *etc.*) and the actions taken by the VICP in conjunction with DOE when a unit is found to have failed the verification testing program of the VICP. *See* Issue 4 under "Issues on Which DOE Seeks Comment" in section V of this NOPR.

10. Records

Maintenance of Records

DOE proposes to establish a record retention requirement for certification reports that corresponds to the time period established for retention of test data under sections 430.62(d) and 431.371(d). This would require certification reports, along with the underlying certification test data that is already required to be retained under sections 430.62(d) and 431.371(d), to be retained by the manufacturer as long as the model is being distributed in commerce and, for discontinued models, for two years from the date that production of a basic model has ceased and is no longer being distributed by the manufacturer.

b. Public Records

In response to the RFI, two advocacy groups provided comments in support of making certification data publicly available. To that end, DOE proposes to clarify in its regulations that the following information submitted pursuant to the certification requirements is considered public information: the manufacturer's name, brand name, model number(s), and all of the product-specific information submitted on the certification report.

C. Enforcement Testing and Adjudication

DOE proposes the following amendments relating to its enforcement testing and adjudication requirements.

1. Enforcement Testing

a. Initiation of Enforcement Action

Pursuant to EPCA, DOE has authority to initiate enforcement actions to ensure compliance with its standards. The current regulations provide for enforcement testing upon DOE's receipt of written information that a covered product or covered equipment may be violating a standard. DOE proposes to revise its procedures to make clear that, pursuant to section 6296 of EPCA, the Department retains the discretion to request data, test, or examine the standard compliance of any covered product or covered equipment at any time. DOE may initiate enforcement testing on its own and is not required to rely solely on receipt of written information from another entity.

In response to DOE's questions relating to enforcement testing set forth in the RFI, three commenters asserted that DOE should have broader authority to initiate an enforcement proceeding, while six commenters argued that the standard of proof required to initiate a proceeding should be higher. Four commenters said they would support greater flexibility in enforcement procedures as long as plumbing products are excluded from those changes.

After consideration of these comments, DOE continues to believe that it is essential to align its regulations with its broad statutory authority under EPCA to initiate enforcement investigations and actions to determine if a covered product or covered equipment is compliant. This will ensure that the Department can enforce its regulations in a timely, effective manner as Congress intended. The enforcement program simply cannot be as effective if the Department can only initiate enforcement testing upon the receipt of an external complaint—DOE must be able to monitor compliance and test products at its own discretion. Furthermore, the ability of the Department to request records, test products, or examine design standard compliance, at any time, is crucial to the deterrent effect of the Department's enforcement efforts. Making clear the Department's authority as established by Congress to take these actions—in and of itself—will encourage compliance. Thus, the Department is proposing regulations for all covered products and covered equipment that make plain its authority to monitor compliance by requesting data and testing products, at any time, and to initiate enforcement investigations and actions based on a belief that a covered product or covered equipment is not compliant with an applicable standard.

Test Notice

DOE proposes to change the current requirements relating to the time period by which a manufacturer must ship test units of a basic model to the testing laboratory pursuant to a test notice. DOE proposes to reduce the time period from 5 to 2 days, in order to ensure that the enforcement testing process is not unnecessarily delayed. Because select units are already boxed for shipping in most cases, DOE believes this will not impose additional burden on manufacturers.

Sampling for Enforcement Testing

The sampling procedures to be used for enforcement testing are set forth in Appendix B to Subpart F of Part 430, Appendix B to Subpart K of Part 431, Appendix C to Subpart S of Part 431, and Appendix D to Subpart T of Part 431. Currently, the existing sampling plans for enforcement testing of consumer products require testing an initial sample of four products. Then, depending on the standard deviation of the results of the initial sample, a second sample size of up to 16 additional units may need to be tested to make a determination of compliance or non-compliance. DOE recognizes a sample size of 20 total units may not always be available for basic models that are low-volume and built-to-order. To accommodate these circumstances and reduce burden on manufacturers, DOE proposes to modify the existing

sampling procedures for consumer products to account for low-volume and built-to-order basic models. DOE has modeled these provisions on the existing enforcement sampling provisions for commercial and industrial equipment, where low-volume and built-to-order manufacturing is more common. Further, DOE proposes to retain the discretion to determine whether the basic model qualifies as low-volume or built-to-order. DOE proposes to make such determination by evaluating the number of units of a given basic model available at the manufacturer's site and all distributors.

Test Procedure Guidance and Enforcement Testing

DOE has launched a new online database offering guidance on the Department's test procedures for consumer products and commercial equipment. The new database will provide a publicly accessible forum for anyone with questions about—or needing clarification of—DOE's test procedures. This new online resource will also ensure that all manufacturers and members of the public are equally and immediately aware of the Department's interpretations of its test procedures. The database is available here: *http://www1.eere.energy.gov/guidance/default.aspx?pid=2&spid=1.*

In response to questions submitted, the Department will develop draft interpretive guidance, post it on the public database, and solicit public comment for a period of 30 days. At the end of that comment period, draft guidance documents may be adopted as final, revised, or withdrawn. Guidance marked as final and posted on the database represents the definitive interpretation of the Department on the questions addressed and may be relied upon by industry and members of the public. DOE wishes to make clear that any test procedure guidance that is marked final on DOE's database will be used by DOE when conducting enforcement testing.

e. Test Unit Selection

i. Collection Method

In order to allow for maximum flexibility in obtaining test units for enforcement testing and to discourage units from being chosen that may not be representative of the product that the consumer receives, DOE proposes to revise its test unit selection provisions for enforcement testing to allow DOE to select the units of a basic model to be tested and to provide that, at DOE's discretion, those units could come from the manufacturer, a distributor, or directly from the retailer.

In response to questions in the RFI regarding test unit selection, DOE received several comments from various parties. One advocacy group, one manufacturer, and two trade associations supported test unit selection directly from retail sources. Another trade association and two manufacturers commented that manufacturers should be given the opportunity to determine where the products can be best selected. In the case of low-volume products, commenters suggested that DOE settle for built-to-order products or manufacturer written assurances.

Reliable enforcement testing requires the selection and testing of an unbiased sample that is representative of the units distributed in commerce. DOE believes that providing Departmental flexibility in the test unit selection method will allow for the most reliable testing. Therefore, DOE proposes to provide in its regulations that units of a basic model to be tested for enforcement purposes may come from the distributor or retailer, as well as from the manufacturer. With regard to units that are specifically built-to-order or produced in low volume, the Department will determine the most reliable method of selecting units that are representative of those sold to consumers.

ii. Selection Process

In selecting test units for enforcement testing, existing regulations require a DOE representative to select a batch sample of up to 20 units, and test units from the batch sample. This requirement was intended to ensure that sufficient units were available for testing and to help prevent bias by requiring random sampling and by the quarantine of units at the outset of enforcement testing. DOE has found that this selection process is not always feasible due to varying production volume and distribution mechanisms. The Department proposes to revise this requirement to allow greater flexibility when selecting a sample for testing. Specifically, DOE proposes that DOE need not select a batch sample when it selects units off the retail shelf. In such circumstances, there is less concern about sample bias and no need to quarantine additional units. The proposed approach will minimize the burden on a manufacturer, while still allowing DOE to obtain a valid sample.

DOE also proposes that, for particular products, the size of the sample selected may vary depending on the statistical sampling procedures that apply to the particular product for enforcement purposes. This variability exists for certain commercial equipment in the current regulations and reflects known variations in materials, the manufacturing process, and testing tolerances. To address production environments, such as build-to-order manufacturing or low volume production requirements, DOE is also proposing a new provision that will allow DOE to make a determination of compliance where a statistically valid sample size cannot be obtained.

DOE proposes to increase the maximum sample size to 21 units in order to account for the test sample needed for certain types of consumer lighting products. Additionally, DOE proposes to allow units tested using the applicable DOE test procedure by DOE or another Federal agency, pursuant to other provisions or programs, to count toward units in the test sample, so long as the testing is done in accordance with the DOE test procedures and certification testing provisions. In this way, the Department will not have to duplicate efforts already taken by itself or other agencies to test units for compliance. For example, if a unit was tested under the ENERGY STAR verification program, DOE is proposing to allow these test units and results to count towards the sample for enforcement testing.

iii. Cost Allocation for Unit Selection

In the RFI, the Department solicited comments on whether the cost allocation for test units should be the same regardless of how the units are obtained (e.g. off-the-shelf or manufacturer provided). DOE received two comments on this issue from manufacturers. In particular, one manufacturer asserted that the cost allocation should be the same regardless of how the product is obtained. On the contrary, another manufacturer argued that DOE should pay the cost if units are selected off-the-shelf. Section 6296(b)(3) of EPCA provides DOE with the authority to require a manufacturer to supply at its expense covered products and covered equipment to DOE for testing. Consistent with this statutory directive, DOE proposes to require manufacturers to continue to assume the expense of supplying basic models for enforcement testing, including reimbursing the distributor or retailer for any units DOE has directly acquired from such distributer or retailer, not to exceed twenty-one units.

f. Testing at Manufacturer's Option

In the RFI, DOE requested comments on whether to remove the provision in

section 430.70(a)(6) relating to testing at the manufacturer's option if a basic model is determined to be in noncompliance with the applicable conservation standard at the conclusion of DOE testing. DOE received five comments from manufacturers arguing that manufacturers should be given the opportunity to request a repeat of the tests. The Department wishes to clarify that current regulations do not provide for manufacturers to test the same units that DOE has already tested. On the contrary, sections 430.70(a)(6) and 431.383(f) merely allow manufacturers to increase the testing sample size. Because manufacturers can perform additional testing on their own at any time, the Department proposes to remove existing sections 430.70(a)(6) and 431.383(f). There is no statutory requirement that manufacturers be given additional opportunities to test units found by DOE to be noncompliant, and the Department believes that such additional testing will only serve to delay the enforcement process.

g. Cost Allocation for Testing

In the RFI, DOE solicited comments relating to the distribution of costs for enforcement testing. Currently, enforcement testing is done at the Department's expense. Most commenting manufacturers argued that DOE should be responsible for paying the cost of testing appliances, while one non-profit organization stated that the manufacturers should bear the cost. Three commenters suggested that DOE should pay if the manufacturer was found to be in compliance, and the manufacturer should pay if it was not. Commenters also urged DOE to limit testing where possible and to conduct targeted challenge testing rather than random tests. One commenter suggested that DOE should create an online testing cost calculator.

DOE tentatively concludes that the cost of enforcement testing should remain with the Department and is not proposing a change at this time.

2. Adjudication

a. Improper Certification

DOE proposes to explicitly establish in its rules that a manufacturer's failure to properly certify a covered product or covered equipment and retain records in accordance with DOE regulations may be subject to enforcement action, including the assessment of civil penalties, separate from any determination of whether a covered product or covered equipment does or does not comply with the applicable conservation standard. While existing regulations already provide for enforcement action to be taken for improper certification or upon a determination of noncompliance, to eliminate any uncertainty, the Department proposes to make clear that a failure to certify covered products and covered equipment in accordance with the DOE rules is an independent violation of EPCA and DOE's implementing regulations that may be subject to enforcement action.

b. Failure To Test

The Department proposes to clarify in its regulations that a failure to test any covered product or covered equipment subject to any of the conservation standards would be a violation of the applicable conservation standard.

c. Distribution in Commerce After Notice of Noncompliance Determination

DOE proposes to revise its regulations to make clear that a manufacturer or private labeler's distribution in commerce of a basic model after a notice of noncompliance determination has been issued would constitute a prohibited act subject to enforcement action.

d. Knowing Misrepresentation

DOE proposes to establish enforcement steps to be taken to address those instances where a knowing misrepresentation has occurred. This may arise where a covered product or a covered equipment meets the applicable conservation standard, but not at the efficiency level that has been claimed.

e. Penalties

Existing statutory authority under EPCA allows DOE to assess civil penalties for knowing violations. Under section 6303 of the statute, each unit of a covered product or covered equipment found to be in violation of a prohibited act, such as failure to meet an applicable conservation standard, constitutes a separate violation. For certification requirement violations, per statutory authority and DOE guidance, the Department will calculate penalties based on each day a manufacturer distributes each basic model in commerce in the United States without having submitted a certification report. DOE proposes to revise its regulations to clearly state this penalty procedure. Additionally, DOE proposes to explicitly state in its regulations that, consistent with its guidance, it will consider numerous factors in assessing civil penalties, including: the nature and scope of the violation; the provision violated; the violator's history of compliance or noncompliance; whether the violator is a small business; the violator's ability to pay; the violator's timely self-reporting of the violation; the violator's self-initiated corrected action, if any; and such other matters as justice may require.

f. Imposition of Additional Certification Testing Requirements as Remedy for Non-Compliance

As an additional tool to ensure compliance with the DOE conservation standards and regulations, the Department proposes to revise its regulations to provide that the DOE may require independent, third-party testing for certification of covered products and covered equipment where DOE has determined a manufacturer or private labeler is in noncompliance with the certification requirements or applicable conservation standards.

g. Compromise and Settlement

The Department proposes to outline the steps to be taken by both parties (DOE and respondent) once a compromise or settlement offer has been made.

D. Verification Testing

In the RFI, DOE requested comments relating to a possible new requirement for periodic verification testing by manufacturers that would be applicable to all basic models certified to DOE. This requirement would be used to verify that the units distributed into commerce continue to perform at the certified levels. In particular, DOE solicited comments on whether manufacturers and/or private labelers should be required to perform verification testing according to certain conditions and criteria. DOE received extensive comments and suggestions on this issue, relating to costs, coverage, unit selection, information flow, testing labs and methodology. At this time, DOE has not yet made a determination as to the development of a verification program and instead has focused its initial efforts on revising its certification, enforcement testing and adjudication regulations. An effective verification program must be carefully crafted to balance the benefits of regularized compliance monitoring against the additional testing burdens on manufacturers. Moreover, such a program must be consistent and fair across all regulated product types, while accounting for legitimate differences in the diverse products covered by EPCA. DOE continues to seek comments about how to best balance the competing interests and achieve the Department's overarching objective of ensuring compliance with the Federal

conservation standards. Specifically, DOE requests comment about the requirements and details for verification testing programs (e.g., the use of an independent testing laboratory and a specific number of samples that should be randomly tested for each product).

E. Waivers

DOE also addressed the possibility of establishing a mandatory waiver requirement in the RFI. This would obligate manufacturers to obtain a waiver where the test procedure does not evaluate the energy or water consumption characteristics in a representative manner or where the test procedure yields materially inaccurate comparative data. The majority of comments the Department received in response to this information request agreed that DOE has authority to grant waivers, but were divided on whether the waiver requirement will hold new authority or whether it is just replicating an existing process. One commenter in support of the waiver process pointed out that a waiver can act as a sign that a test procedure is out-of-date. Another commenter urged the DOE to seek advice from relevant trade associations and standards committees before issuing a waiver. A third commenter argued that manufacturers should not be required to obtain a waiver at all if the test procedure does not address a specific product design.

In view of these comments, the Department will continue to monitor the market to ensure that a manufacturer does not receive an unfair advantage due to product characteristics.

F. Additional Product Specific Discussions and Issues for Which DOE Continues To Seek Comment

1. Clarification of Entity Responsible for Compliance for Walk-In Coolers or Freezers

In response to the test procedure notice of proposed rulemaking for walk-in coolers or freezers (WICFs), several interested parties commented on DOE's interpretation of the compliance testing responsibility associated with the role of "manufacturer". 75 FR 186 (January 4, 2010). Consistent with the Department's consolidation of certification and enforcement provisions for all products into one section, we propose to address this issue as a part of today's NOPR.

In the comments on the test procedure notice, Craig cautioned that not holding contractors, end-users, or wholesalers accountable for WICF performance would remove the incentive for these entities to ensure compliance. It suggested that this would put manufacturers, who would be required to demonstrate compliance, at a competitive disadvantage due to testing costs to the manufacturers and cost differences to the end users. (EERE–2008–BT–TP–0014, Craig, No. 1.3.017 at p. 2 and Public Meeting Transcript, No. 1.2.010 at pp. 140 and 179) Kysor suggested that the general contractor at the end-use site could certify the WICF, as general contractors already go through a certification process for other parts of a building. (EERE–2008–BT–TP–0014, Kysor, Public Meeting Transcript, No. 1.2.010 at pp. 66 and 75 – 76) Arctic added that a manufacturer does not have complete control over WICF efficiency because the end-user's behavior can also affect WICF performance. (EERE–2008–BT–TP–0014, Arctic, Public Meeting Transcript, No. 1.2.010 at p. 80)

Others commented on the role of the installer—that is, the entity who places or constructs the WICF in its end use location—in ensuring compliance with the regulation. Craig, Schott Gemtron, and Bally stated that the installer should be considered the manufacturer and thus be held responsible for ensuring compliance. Bally stated that infiltration in particular depends on the ability of the installer and that Bally does not control the installation procedure. (EERE–2008–BT–TP–0014, Bally, Public Meeting Transcript, No. 1.2.010 at p. 132) Schott Gemtron stated that incorrect installation affects WICF performance, which, in its view, should be the responsibility of the installer because WICF manufacturers cannot ensure proper installation. (EERE–2008–BT–TP–0014, Schott Gemtron, Public Meeting Transcript, No. 1.2.010 at pp. 67 and 139)

Craig agreed that the manufacturer cannot control installation in the field, but Craig also mentioned that testing at the point of installation would be infeasible if every application would need to be tested. (EERE–2008–BT–TP–0014, Craig, Public Meeting Transcript, No. 1.2.010 at pp. 70–71) Craig recommended that DOE define the installer as the manufacturer and hold the installer responsible for compliance, or, alternatively, require that the manufacturer assume responsibility and control of all aspects of the process—including installation—so that the manufacturer could verify that the WICF is tested correctly and meets DOE's requirements. (EERE–2008–BT–TP–0014, Craig, No. 1.3.017 at p. 1 and Public Meeting Transcript, No. 1.2.010 at pp. 23, 25 and 52)

American Panel contended that a requirement for a factory representative to oversee installation would be cost prohibitive to the end user. (EERE–2008–BT–TP–0014, American Panel, Public Meeting Transcript, No. 1.2.010 at pp. 74 and 79) Kason urged DOE not to consider the installer the manufacturer because installers have no control over system design and components. (EERE–2008–BT–TP–0014, Kason, No. 1.3.0XX at p. 1) American Panel agreed that the installer should not be part of the testing and certification process set forth by DOE. (EERE–2008–BT–TP–0014, American Panel, No. 1.3.024 at p. 3)

In general, the "manufacturer" is the entity responsible for compliance with any DOE performance standard. EPCA defines the term "manufacture" as "to manufacture, produce, assemble or import." 42 U.S.C. 6291(10) The breadth of this definition leaves open numerous entities that could be held responsible for compliance with a WICF performance standard. To clarify the application of this term in the case of WICFs, DOE proposes that the term be applied to the entity responsible for designing and/or selecting the various components used in a WICF. The term could apply to different entities in different situations. If an entity physically manufactures all components that comprise the WICF, that entity would be considered the manufacturer. Alternatively, if an entity physically manufactures some of the components that comprise the WICF and purchases other components from a supplier, and assembles all components into a complete WICF or supplies all components as a complete kit for assembly at a customer's site, that entity would be considered the manufacturer. In this context, a third party that does not manufacture any components but rather chooses the components that comprise the WICF, would be considered the manufacturer of the WICF for purposes of EPCA. DOE believes this addresses Craig's concern that certain parties involved in the manufacture of a WICF could be put at a competitive disadvantage to others.

While DOE recognizes that incorrect installation or use could affect the performance of the WICF, as stated by Craig, Schott Gemtron, and Bally, DOE believes that testing and compliance responsibility in the case of WICFs should not rest with an entity that simply installs this equipment. This is because an entity who solely installs the equipment, and does not make design decisions about the components that are included in the equipment, would not be in a position to certify compliance with the regulations, as suggested by American Panel and Kason. Therefore, DOE proposes that entities responsible

for physical installation of the system would not be required to certify compliance if they do not otherwise meet criteria for being considered the manufacturer, assuming that the envelope or refrigeration system is physically assembled in accordance with the applicable technical specifications developed by the manufacturer.

The unique nature of WICFs requires DOE to consider carefully the assignment of compliance-related responsibilities. The high level of customization that appears in a significant number of WICF requires DOE to apply its requirements in a manner that recognizes the issues presented by this market. Accordingly, while DOE could opt to require every entity in the manufacturing chain to certify compliance, or even assign that responsibility solely to the installer, the agency believes that the entity who designs the WICF and/or selects components of a WICF, is in the best position to ensure that the WICF, when properly installed, will satisfy the required standard. DOE believes that this approach best balances the equities involved with the manufacture and installation of this type of equipment. Accordingly, DOE proposes the following definition of manufacturer of a WICF:

Manufacturer of a walk-in cooler or walk-in freezer means any person who manufactures, produces, assembles or imports such a walk-in cooler or walk-in freezer, including any person who:

(1) Manufactures, produces, assembles, or imports a walk-in cooler or walk-in freezer in its entirety, including the collection and shipment of all components that affect the energy consumption of a walk-in cooler or walk-in freezer;

(2) Manufactures, produces, assembles or imports a walk-in cooler or walk-in freezer in part, and specifies or approves the walk-in cooler or walk-in freezer's components that affect energy consumption, including refrigeration, doors, lights, or other components produced by others, as for example by specifying such components in a catalogue by make and model number or parts number;

(3) Is any vendor who sells a walk-in cooler or walk-in freezer that consists of a combination of components that affect energy consumption, which are not specified or approved by a person described in paragraph (1) or (2) of this definition; or

(4) Is an individual or a company who arranges for a walk-in cooler or walk-in freezer to be assembled at his own or any other specified premises from components that affect energy consumption, which are specified and approved by him and not by a person described in paragraph (1), (2), or (3) of this definition.

DOE believes the burden on manufacturers of certifying compliance with these prescriptive standards will be minimal because no test is necessary to determine compliance with most of the requirements. The chief burden imposed by this rule is a certification report burden of providing DOE information to show that the product is in compliance with the design standards in EISA 2007. DOE is proposing that manufacturers use the online CCMS templates that DOE develops. DOE notes that the manufacturer, as defined, will be required to certify to DOE that the equipment meets the prescriptive requirements, rather than the general contractor as suggested by Kysor, unless the general contractor meets the criteria for being considered the manufacturer. Furthermore, although the end user's behavior does affect WICF performance as stated by Arctic, DOE will not consider the end user responsible for compliance unless the end user meets the criteria for being considered the manufacturer.

In addition, DOE's regulations for WICF specify a test for one requirement: EPCA contains R-value requirements for insulation and states, "for the purpose of test procedures for WICF: The R-value shall be the 1/K factor multiplied by the thickness of the panel. The K factor shall be based on ASTM test procedure C518–2004." 42 U.S.C. 6314(a)(9)(A)(i)-(ii). This means that ASTM C518–2004 must be used to test foam to determine its R-value. However, for purposes of certifying compliance with the R-value requirements, the manufacturer may elect to use the test procedure to test the foam that they use, or the manufacturer may rely on the results of testing done by a third party on their behalf, for instance, a test lab or the foam supplier. Nevertheless, the manufacturer is still responsible for complying with the standard.

2. Submission of Data Requirements for Fluorescent Lamp Ballast

Under DOE's existing regulations, fluorescent lamp ballast manufacturers currently are not required to submit compliance statements and certification reports. In March 2010, DOE published a test procedure NOPR that proposed submission of data requirements for fluorescent lamp ballasts that would become effective one year following the final rule publication of such requirements. 75 FR 14288 (March 24, 2010).

In response to that proposal, Earthjustice, the Northwest Energy Efficiency Alliance (NEEA), Northwest Power and Conservation Council (NPCC) and several CA utilities supported the addition of submission of data requirements. (EERE–2009–BT–TP–0016; NEEA & NPCC, No. 32 at p. 10; Earthjustice, No. 14 at p. 1; CA Utilities, No. 13 at p. 3) Earthjustice added that as there have been no changes made to the test procedure that would require retesting to determine compliance with existing standards, there is no justification for permitting a full year before manufactures must submit data. It cited a precedent (74 FR 65105 (December 9, 2009)) in which DOE allowed a timeline of 30 days for manufactures to submit required certification reports and compliance statements. Earthjustice also commented that DOE should publish a separate final rule to require written documentation of compliance with energy conservation standards on an accelerated timeframe in advance of the full test procedure final rule. (EERE–2009–BT–TP–0016; Earthjustice, No. 14 at p. 1)

DOE agrees that fluorescent lamp ballasts should be included in the provisions for written documentation of compliance with energy conservation standards on an accelerated timeline. For that reason, DOE is proposing to include provisions for the certification of fluorescent lamp ballasts. The proposed revisions will require that ballast manufacturers follow all existing provisions of subpart F of 10 CFR part 430 and report ballast efficacy factor, power factor, number of lamps operated by the ballast, and type of lamp operated by the ballast.

3. Certification, Compliance, and Enforcement for Electric Motors

As explained throughout the NOPR, DOE has not proposed moving or changing any of the certification, compliance, and enforcement provisions related to electric motors. However, DOE will be considering consolidating the provisions, as applicable, with the proposals from today's NOPR in the second certification, compliance, and enforcement rulemaking. Consequently, DOE is seeking comments on the existing provisions for electric motors, including any previous proposals for small electric motors and any changes DOE should consider in the next rulemaking applicable to these products.

In the next certification, compliance, and enforcement rulemaking, DOE will consider an annual certification requirement for motors similar to what

it is proposing for all other types of covered products and covered equipment in today's proposed rule. In light of the annual requirement for other products, DOE specifically seeks comment on if and how the certification compliance numbers for electric motors could be modified to clearly demonstrate compliance when there is a change in the Federal energy conservation standards for these products. See Issue 5 under "Issues on Which DOE Seeks Comment" in section V of this NOPR.

4. Enforcement for Imports and Exports

As DOE puts an additional emphasis on enforcing its regulatory program, DOE believes that some of the proposals in today's notice will aid in enforcing DOE's regulations relating to products imported and exported from the United States. Specifically, DOE is proposing to modify the label on exported products to read "NOT FOR SALE IN THE UNITED STATES" to make it clear that this product is not for distribution in commerce in the United States. In addition, DOE is interested in seeking comment from interested parties on how DOE could modify its certification, compliance, and enforcement provisions to more effectively enforce at the border. *See* Issue 6 under "Issues on Which DOE Seeks Comment" in section V of this NOPR.

IV. Procedural Issues and Regulatory Review

E. Review Under Executive Order 12866

Today's regulatory action is not a "significant regulatory action" under section 3(f) of Executive Order 12866. Accordingly, this action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB).

F. 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 (IRFA) 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 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 impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of General Counsel's Web site, *http://www.gc.doe.gov*.

DOE reviewed the certification, compliance, and enforcement requirements being proposed under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. As discussed in more detail below, DOE found that because a subset of the proposed certification, compliance, and enforcement regulations have not previously been required of manufacturers, all manufacturers, including small manufacturers, could potentially experience a financial burden associated with new certification, compliance, and enforcement requirements. While examining this issue, DOE determined that it could not certify that the proposed rule, if promulgated, would not have a significant effect on a substantial number of small entities. Therefore, DOE has prepared an IRFA for this rulemaking. The IRFA describes potential impacts on small businesses associated with certification, compliance, and enforcement requirements on covered products and covered equipment.

DOE has transmitted a copy of this IRFA to the Chief Counsel for Advocacy of the Small Business Administration (SBA) for review.

1. Reasons for the Proposed Rule

The reasons for this proposed rule are discussed elsewhere in the preamble and not repeated here.

2. Objectives of and Legal Basis for the Proposed Rule

The objectives of and legal basis for the proposed rule are discussed elsewhere in the preamble and not repeated here.

3. Description and Estimated Number of Small Entities Regulated

DOE used the small business size standards published on January 31, 1996, as amended, by the SBA to determine whether any small entities would be required to comply with the rule. 61 FR 3286; *see* also 65 FR 30836, 30850 (May 15, 2000), as amended at 65 FR 53533, 53545 (September 5, 2000). The size standards are codified at 13 CFR Part 121. The standards are listed by North American Industry Classification System (NAICS) code and industry description and are available at *http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf*.

This proposed rule potentially impacts manufacturers of almost all types of covered products and covered equipment subject to DOE's energy conservation, water conservation, and design standards.

TABLE IV—1 SMALL BUSINESS CLASSIFICATIONS FOR COVERED PRODUCTS AND COVERED EQUIPMENT

Covered product or covered equipment type	NAICS code	NAICS definition of small manufacturer (number of employees)	Total number of small manufacturers
Residential refrigerators, residential refrigerator-freezers, and residential freezers	335222	≤1000	1
Room air conditioners	333415	≤750	0
Residential central air conditioners and heat pumps	333415	≤750	13
Small-duct, high velocity	333415	≤750	2
Through-the-wall air conditioners and heat pumps	333415	≤750	1
Residential water heaters	335228	≤500	6
Residential furnaces and boilers	333415	≤750	25
Dishwashers	335228	≤500	0
Residential clothes washers	335224	≤1000	1
Clothes dryers	335224	≤1000	0
Direct heating equipment	333414	≤500	12
Cooking products	335221	≤750	2
Pool heaters	333414	≤500	1
Fluorescent lamp ballasts	335311	≤750	11

TABLE IV—1 SMALL BUSINESS CLASSIFICATIONS FOR COVERED PRODUCTS AND COVERED EQUIPMENT—Continued

Covered product or covered equipment type	NAICS code	NAICS definition of small manufacturer (number of employees)	Total number of small manufacturers
General service fluorescent lamps	335110	≤1000	1
Incandescent reflector lamps	335110	≤1000	0
Ceiling fans	335211	≤750	91
Ceiling fan light kits	335211	≤750	91
Torchieres	335121	≤500	404
Medium base compact fluorescent lamps	335110	≤1000	70
Dehumidifiers	335211	≤750	0
External power supplies	335999	≤500	250
General service incandescent lamps	335110	≤1000	67
Candelabra base incandescent lamps	335110	≤1000	67
Intermediate base incandescent lamps	335110	≤1000	67
Commercial refrigeration equipment	333415	≤750	20
Commercial warm air furnaces	333415	≤750	3
Commercial packaged boilers	333414 or 332410	≤500	13
Commercial package air-conditioning and heating equipment	333415	≤750	1
Packaged terminal air conditioners and heat pumps	333415	≤750	6
Single package vertical units	333415	≤750	5
Commercial water heaters	333319	≤500	7
Automatic commercial ice makers	333415	≤750	2
Commercial clothes washers	333312	≤500	0
Distribution transformers	335311	≤750	45
Illuminated exit signs	335129	≤500	269
Traffic signal modules and pedestrian modules	335129	≤500	269
Refrigerated bottled or canned beverage vending machines	333311	≤500	6
Walk-in coolers and freezers	333415	≤750	45
Metal halide fixtures	335122	≤500	75
Faucets	332913	≤500	62
Showerheads	332913	≤500	42
Water closets	327111	≤750	9
Urinals	327111	≤750	2
Commercial prerinse spray valves	332919	≤ 500	8

4. Description and Estimate of Compliance Requirements

Many of the certification, compliance, and enforcement provisions subject to today's final rule are already codified in existing regulations for consumer products and commercial and industrial equipment. As a result, DOE expects the impact on all manufacturers to be minimal. Many of the changes being proposed in today's final rule surround expanding DOE's existing certification requirements and could slightly increase the recordkeeping burden. DOE does not expect manufacturers of all types to incur any capital expenditures as a result of the proposals, since the rulemaking does not impose any product-specific requirements that would require changes to existing plants, facilities, product-specifications, or test procedures. Rather, this rule clarifies sampling requirements and imposes certain data reporting requirements, which may have a slight impact on labor costs.

With regard to sampling for certification testing, this rule clarifies that the minimum number of units tested for certification compliance must be no less than 2 unless a different minimum number is specified. DOE does not believe this specification increases the testing burden on manufacturers because DOE has always required a minimum of 2 samples, if not more, to achieve a realistic sample mean and to mitigate the risk of a product to be out of compliance. For a small number of products, DOE is proposing statistical sampling procedures that are based on previously established procedures for consumer products and commercial equipment. These procedures are designed to keep the testing burden on manufacturers as low as possible, while still providing confidence that the test results can be applied to all units of the same basic model. In some cases, manufacturers are permitted to use analytical procedures, such as computer simulations, to determine the efficiencies of their products, which will further minimize testing burden.

With regard to certification, the proposal considers requiring manufacturers of covered products and covered equipment to certify annually that their products meet the applicable energy conservation standard, water conservation standard or design standard. It is expected that manufacturers will re-submit the original certification testing information each year for basic models with no modifications affecting energy consumption, water consumption, or design. As DOE currently requires manufacturers to submit certification information at the introduction of a new or modified basic model, DOE does not anticipate that annual certification on products already submitted will add substantial additional burden to manufacturers.

The cost of certification testing will depend on the number of basic models a manufacturer produces. The cost of certifying should be minimal once testing for each basic model has occurred pursuant to the test procedures prescribed by DOE.

DOE estimates that a typical firm would spend approximately 20 hours complying with the additional certification, compliance, and enforcement procedures being considered in today's proposed rule. This estimate does not include any testing burden, which results from DOE's test procedures. DOE has already considered this burden on all

manufacturers in the test procedure rulemakings for individual manufacturers. Instead, this burden represents the time it would take a certification engineer to gather the appropriate data, apply the statistical sampling methods required, and submit the required certification to DOE both for new basic models and on an annual basis. DOE has tried to mitigate the impacts on all manufacturers by aligning the annual certification schedule with the Federal Trade Commission's model submission schedule for consumer products. At most, DOE expects an average manufacturer to allocate 4 of the 20 hours to meeting the annual certification reporting requirement.

DOE notes that these values likely overestimate the manufacturer reporting burden, as the Federal Trade Commission currently requires annual submission of data regarding all basic models distributed into commerce for consumer products, and many voluntary programs also require annual data submission.

In addition, to minimize the impact that annual certification filings may have on manufacturers, DOE has introduced the online CCMS system through which manufacturers would be required to submit their products for certification. In addition, DOE is making available CCMS templates for each product, which clearly lay out the certification requirements for each covered product and covered equipment.

5. Duplication, Overlap, and Conflict With Other Rules and Regulations

DOE is not aware of any rules or regulations that duplicate, overlap, or conflict with the proposed rule being considered today.

6. Significant Alternatives to the Rule

This section considers alternatives to the proposals in today's certification, compliance, and enforcement rulemaking. DOE could mitigate the small potential impacts on small manufacturers by reducing the number of samples used, eliminating the annual certification filing, or by expanding the groupings of models. However, DOE strongly believes the proposals in today's rulemaking are essential to a sustainable and consistent enforcement program for all of the covered products and covered equipment. While these alternatives may mitigate the potential economic impacts on small entities compared to the proposed provisions, the ability for DOE to enforce its energy conservation regulations far exceeds any potential burdens. Thus, DOE rejected these alternatives and is proposing the certification, compliance, and enforcement provisions set forth in this rulemaking for all manufacturers of covered products and covered equipment. DOE continues to seek input from businesses that would be affected by this rulemaking and will consider comments received in the development of any final rule.

C. Review Under the Paperwork Reduction Act

1. Description of the Requirements

DOE is developing regulations to implement reporting requirements for energy conservation, water conservation, and design standards, and to address other matters including compliance certification, prohibited actions, and enforcement procedures for covered consumer products and commercial and industrial equipment covered by EPCA.

DOE is proposing to require manufacturers of covered consumer products and commercial and industrial equipment to maintain records about how they determined the energy efficiency, energy consumption, water consumption or design features of their products. DOE is also proposing to require manufacturers to submit a certification report indicating that all basic models currently produced comply with the applicable standards using DOE's testing procedures, as well as include the necessary product specific certification data. The certification reports are submitted for each basic model, either when the requirements go into effect (for models already in distribution) or when the manufacturer begins distribution of a particular basic model, and annually thereafter. Reports must be updated when a new model is introduced or a change affecting energy efficiency or use is made to an existing model. The collection of information is necessary for monitoring compliance with the conservation standards and testing requirements for the consumer products and commercial and industrial equipment mandated by EPCA.

The information that would be required by these regulations, if finalized, and that is the subject of this proposed collection of information, would be submitted by manufacturers to certify compliance with energy conservation, water conservation, and design standards established by DOE. DOE would also use the information to determine whether an enforcement action is warranted and to better inform DOE during a test procedure and energy conservation standards rulemaking.

The certification and recordkeeping requirements for certain consumer products in 10 CFR part 430 have previously been approved by OMB and assigned OMB control number 1910–1400. DOE is renewing the previously approved certification and recordkeeping requirements, as well as submitting these new proposed certification and recordkeeping requirements for all consumer products and commercial and industrial equipment subject to certification, compliance, and enforcement regulations to OMB for review and approval under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

2. Method of Collection

Respondents must submit electronic forms using DOE's on-line CCMS system.

3. Data

The following are DOE estimates of the total annual reporting and recordkeeping burden imposed on manufacturers of all consumer products and commercial and industrial equipment subject to certification, compliance, and enforcement provisions. These estimates take into account the time necessary to develop testing documentation, complete the certification, and submit all required documents to DOE electronically.

OMB Control Number: 1910–1400.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Manufacturers of consumer products and commercial and industrial equipment covered by the rulemakings discussed above.

Estimated Number of Respondents: 2,916.

Estimated Time per Response: Certification reports, 20 hours.

Estimated Total Annual Burden Hours: 58,320.

Estimated Total Annual Cost to the Manufacturers: $4,374,000 in recordkeeping/reporting costs.

4. Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques

or other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

D. 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.

E. Review Under Executive Order 13132

DOE reviewed this rule pursuant to Executive Order 13132, "Federalism," 64 FR 43255 (August 4, 1999), which imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. In accordance with DOE's statement of policy describing the intergovernmental consultation process it will follow in the development of regulations that have federalism implications, 65 FR 13735 (March 14, 2000), DOE examined today's proposed rule and determined that the rule would not have a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of Government. *See* 74 FR 61497. Therefore, DOE has taken no further action in today's proposed rule with respect to Executive Order 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 Executive Order 12988, "Civil Justice Reform" (61 FR 4729 (February 7, 1996)) imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the proposed regulations meet the relevant standards of Executive Order 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; 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 a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish estimates of the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) UMRA also 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," and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect such governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. (The policy is also available at *http://www.gc.doe.gov*). Today's proposed rule contains neither an intergovernmental mandate nor a mandate that may result in an expenditure of $100 million or more in any year, so these requirements do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. Today's proposed rule 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

DOE determined under Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights," 53 FR 8859 (March 18, 1988), that today's proposed rule would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution. See 74 FR 61497–98.

J. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. 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 rule under OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 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 OIRA 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 or is expected to lead to promulgation of a final rule, and that (1) is a significant regulatory action under Executive Order 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 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 action and their expected benefits on energy supply, distribution, and use. Today's proposed regulatory action, which proposes amendments to the Department's certification, compliance, enforcement procedures, is not a significant regulatory action under Executive Order 12866 or any successor order; would not have a significant adverse effect on the supply, distribution, or use of energy; and has not been designated by the Administrator of OIRA as a significant energy action. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

V. Public Participation

A. Attendance at Public Meeting

The time, date, and location of the public meeting are provided in the **DATES** and **ADDRESSES** sections at the beginning of this document. Anyone who wants to attend the public meeting must notify Ms. Brenda Edwards at (202) 586–2945. Foreign nationals visiting DOE headquarters are subject to advance security screening procedures.

B. Procedure for Submitting Requests To Speak

Any person who has an interest in the topics addressed in this notice, or who is a representative of a group or class of persons that has an interest in these issues, may request an opportunity to make an oral presentation at the public meeting. Such persons may hand-deliver requests to speak to the address shown in the **ADDRESSES** section at the beginning of this notice between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Requests may also be sent by mail or email to: Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121, or *Brenda.Edwards@ee.doe.gov.* Persons who wish to speak should include in their request a computer diskette or CD in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format that briefly describes the nature of their interest in this rulemaking and the topics they wish to discuss. Such persons should also provide a daytime telephone number where they can be reached.

DOE requests that those persons who are scheduled to speak submit a copy of their statements at least one week prior to the public meeting. DOE may permit any person who cannot supply an advance copy of this statement to participate, if that person has made alternative arrangements with the Building Technologies Program in advance. When necessary, the request to give an oral presentation should ask for such alternative arrangements.

C. Conduct of Public Meeting

DOE will designate a DOE official to preside at the public meeting and may also employ a professional facilitator to aid discussion. The public meeting will be conducted in an informal, conference style. The meeting will not be a judicial or evidentiary public hearing, but DOE will conduct it in accordance with section 336 of EPCA (42 U.S.C. 6306). Discussion of proprietary information, costs or prices, market share, or other commercial matters regulated by U.S. anti-trust laws is not permitted.

DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the public meeting. A court reporter will record the proceedings and prepare a transcript.

At the public meeting, DOE will present summaries of comments received before the public meeting, allow time for presentations by participants, and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant may present a prepared general statement (within time limits determined by DOE) before the discussion of specific topics. Other participants may comment briefly on any general statements. At the end of the prepared statements on each specific topic, participants may clarify their statements briefly and comment on statements made by others. Participants should be prepared to answer questions from DOE and other participants. DOE representatives may also ask questions about other matters relevant to this rulemaking. The official conducting the public meeting will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of procedures needed for the proper conduct of the public meeting.

DOE will make the entire record of this proposed rulemaking, including the transcript from the public meeting, available for inspection at 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. Anyone may purchase a copy of the transcript from the transcribing reporter. Additionally, the record for this proposed rulemaking will be made available at *http://www.regulations.gov.*

D. Submission of Comments

DOE will accept comments, data, and information regarding the proposed rule no later than the date provided at the beginning of this notice. Comments, data, and information submitted to DOE's e-mail address for this rulemaking should be provided in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format. Interested parties should avoid the use of special characters or any form of encryption, and wherever possible, comments should include the electronic signature of the author. Absent an electronic signature, comments submitted electronically must be followed and authenticated by submitting a signed original paper document to the address provided at the beginning of this notice. Comments, data, and information submitted to DOE via mail or hand delivery/courier should include one signed original paper copy. 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 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 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 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) a date upon which such information might lose its confidential nature due to the passage of time, and (7) why disclosure of the information would be contrary to the public interest.

E. Issues on Which DOE Seeks Comment

DOE is particularly interested in receiving comments on the following issues:

1. DOE seeks comment on how manufacturers determine that a particular model constitutes a new basic

model, the types of potential changes manufacturers may make to a given model, and the difference in the energy use characteristics a typical change may have on a per product basis. For example, should DOE contemplate proposing a specific regulation that requires a new basic model declaration and filing when a modification to a given basic model impacts the energy characteristics of the product by a given de minimus percentage? DOE seeks comment on how these de minimus percentages might change for each covered product and covered equipment.

2. DOE seeks comment on the attributes DOE should consider as part of its verification testing program.

3. DOE seeks comment regarding the criteria defining VICPs, and the use of VICPs in DOE's certification, compliance, and enforcement programs for both consumer products and commercial and industrial equipment. Specifically, DOE requests comment about the requirements and details for verification testing programs (*e.g.,* the use of an independent testing laboratory, a specific number of samples randomly tested, *etc.*) and the actions taken by the VICP in conjunction with DOE when a unit is found to have failed the verification testing program of the VICP.

4. DOE is considering adding sampling plans and tolerances for other features of covered products and covered equipment which impact the water or energy characteristics of a product. DOE is seeking comment on this approach, and the methodologies DOE should consider if it decides to extend the sampling provisions to features other than the regulatory metrics.

5. DOE is seeking comments on the existing provisions for electric motors, including any previous proposals for small electric motors and any changes DOE should consider in the next rulemaking applicable to these products. In light of the annual requirement for other products, DOE specifically seeks comment on if, and how, the certification compliance numbers for electric motors could be modified to clearly demonstrate compliance when there is a change in the Federal energy conservation standards for these products.

6. DOE is interested in seeking comment from interested parties on how DOE could modify its certification, compliance, and enforcement provisions to more effectively enforce at the border.

7. DOE continues to seek comment from businesses that would be affected by this rulemaking and will consider comments received in the development of any final rule.

VI. Approval of the Office of the Secretary

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

List of Subjects

10 CFR Part 429

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

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Confidential business information, Energy conservation, Reporting and recordkeeping requirements.

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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, as set forth below:

1. Add new part 429 to read as follows:

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

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Appendix B to Subpart E of Part 429—Sampling Plan for Enforcement Testing of Covered Commercial Equipment and Certain Low-Volume Covered Products
Appendix C to Subpart E of Part 429—Sampling Plan for Enforcement Testing of Distribution Transformers

Authority: 42 U.S.C. 6291–6317.

Subpart A—General Provisions

§ 429.1 Purpose and scope.

This part sets forth the procedures to be followed for certification of compliance and for enforcement for consumer products and commercial and industrial equipment to determine whether covered products and covered equipment comply with the applicable conservation standards set forth in parts 430 and 431 of this subchapter. For the purposes of this subpart, energy conservation standard means any standards meeting the definitions of that term in 42 U.S.C. 6291(6) and 42 U.S.C. 6311(18) as well as any other water conservation standards and design requirements. This part does not cover motors or electric motors as defined in § 431.12, and all references to "covered equipment" in this part exclude such motors.

§ 429.3 Definitions.

(a) The definitions found in §§ 430.2, 431.2, 431.62, 431.72, 431.82, 431.92, 431.102, 431.132, 431.152, 431.172, 431.192, 431.202, 431.222, 431.242, 431.262, 431.292, 431.302, 431.322, and 431.442 apply for purposes of this part.

(b) The following definition applies for the purposes of this part. Any words or terms defined in this section or elsewhere in this part shall be defined as provided in sections 321 and 340 of the Act:

Manufacturer's model number means the identifier used by a manufacturer to uniquely identify the group of identical or essentially identical covered products or covered equipment to which a particular unit belongs. The manufacturer's model number typically appears on the product nameplates, in product catalogs and in other product advertising literature.

Subpart B—Sampling for Certification Testing

§ 429.9 Units to be tested.

(a) When testing of covered products or covered equipment is required to comply with section 323(c) of the Act, or to comply with rules prescribed under sections 324, 325, or 342 of the Act, a sample comprised of production units (or units representative of production units) of the basic model being tested shall be selected at random and tested, and shall meet the following applicable criteria. Components of similar design may be substituted without additional testing if the substitution does not affect energy or water consumption. Any represented values of measures of energy efficiency, water efficiency, energy consumption, or water consumption for basic models not tested shall be the same as for the tested basic model.

(b) For covered products and covered equipment subject to the provisions in this part 429, the minimum number of units tested shall be no less than 2 (except where a different minimum limit is specified in paragraph (c) of this section); and

(c)(1) For each basic model of residential refrigerators, refrigerator-freezers, and freezers, a sample of sufficient size shall be tested to insure that—

(i) Any represented value of estimated annual operating cost, energy consumption, or other measure of energy consumption of a basic model for which consumers would favor lower values shall be no less than the higher of:

(A) The mean of the sample, or

(B) The upper 95 percent confidence limit of the true mean divided by 1.10; and

(ii) Any represented value of the energy factor or other measure of energy consumption of a basic model for which consumer would favor higher values shall be no greater than the lower of:

(A) The mean of the sample, or

(B) The lower 95 percent confidence limit of the true mean divided by 0.90.

(2) For each basic model of room air conditioners, a sample of sufficient size shall be tested to insure that—

(i) Any represented value of estimated annual operating cost, energy consumption or other measure of energy consumption of a basic model for which consumers would favor lower values shall be no less than the higher of:

(A) The mean of the sample, or

(B) The upper 97½ percent confidence limit of the true mean divided by 1.05; and

(ii) Any represented value of the energy efficiency ratio or other measure of energy consumption of a basic model for which consumers would favor higher values shall be no greater than the lower of:

(A) The mean of the sample, or

(B) The lower 97½ percent confidence limit of the true mean divided by 0.95.

(3)(i) For central air conditioners and heat pumps, each single-package system and each condensing unit (outdoor unit) of a split-system, when combined with a selected evaporator coil (indoor unit) or a set of selected indoor units, must have a sample of sufficient size tested in accordance with the applicable provisions of this subpart. The represented values for any model of single-package system, any model of a tested split-system combination, any model of a tested mini-split system combination, or any model of a tested multi-split system combination must be assigned such that—

(A) Any represented value of estimated annual operating cost, energy consumption or other measure of energy consumption of the central air conditioner or heat pump for which consumers would favor lower values shall be no less than the higher of:

(*1*) The mean of the sample, or

(*2*) The upper 90-percent confidence limit of the true mean divided by 1.05;

(B) Any represented value of the energy efficiency or other measure of energy consumption of the central air conditioner or heat pump for which consumers would favor higher values shall be no greater than the lower of:

(*1*) The mean of the sample, or

(*2*) The lower 90-percent confidence limit of the true mean divided by 0.95;

(C) For heat pumps, all units of the sample population must be tested in both the cooling and heating modes and the results used for determining the heat pump's certified SEER and HSPF ratings in accordance with paragraph (c)(3)(i)(B) of this section.

(ii) For split-system air conditioners and heat pumps, the condenser-evaporator coil combination selected for tests pursuant to paragraph (c)(3)(i) of this section shall include the evaporator coil that is likely to have the largest volume of retail sales with the particular model of condensing unit. For mini-split condensing units that are designed to always be installed with more than one indoor unit, a "tested combination" as defined in 10 CFR 430.2 shall be used for tests pursuant to paragraph (c)(3)(i) of this section. For multi-split systems, each model of condensing unit shall be tested with two different sets of indoor units. For one set, a "tested combination" composed entirely of non-ducted indoor units shall be used. For the second set, a "tested combination" composed entirely of ducted indoor units shall be used. However, for any split-system air conditioner having a single-speed compressor, the condenser-evaporator coil combination selected for tests pursuant to paragraph (c)(3)(i) of this section shall include the indoor *coil-only* unit that is likely to have the largest volume of retail sales with the particular model of outdoor unit. This *coil-only* requirement does not apply to split-system air conditioners that are only sold and installed with *blower-coil* indoor units, specifically mini-splits, multi-splits, and through-the-wall units. This coil-only requirement does not apply to any split-system heat pumps. For every other split-system combination that includes the same model of condensing unit but a different model of evaporator coil and for every other mini-split and multi-split system that includes the same model of condensing unit but a different set of evaporator coils, whether the evaporator coil(s) is manufactured by the same manufacturer or by a component manufacturer, either—

(A) A sample of sufficient size, comprised of production units or representing production units, must be tested as complete systems with the resulting ratings for the outdoor unit-indoor unit(s) combination obtained in accordance with paragraphs (c)(3)(i)(A) and (c)(3)(i)(B) of this section; or

(B) The representative values of the measures of energy efficiency must be assigned as follows,

(*1*) Using an alternative rating method (ARM) that has been approved by DOE in accordance with the provisions of § 429.23(e)(1) and (2); or

(*2*) For multi-split systems composed entirely of non-ducted indoor units, set equal to the system tested in accordance with paragraph (c)(3)(i) of this section whose tested combination was entirely non-ducted indoor units;

(*3*) For multi-split systems composed entirely of ducted indoor units, set

equal to the system tested in accordance with paragraph (c)(3)(i) of this section when the tested combination was entirely ducted indoor units; and

(*4*) For multi-split systems having a mix of non-ducted and ducted indoor units, set equal to the mean of the values for the two systems — one having the tested combination of all non-ducted units and the second having the tested combination of all ducted indoor units — tested in accordance with paragraph (c)(3)(i) of this section.

(iii) Whenever the representative values of the measures of energy consumption, as determined by the provisions of paragraph (c)(3)(ii)(B) of this section, do not agree within 5 percent of the representative values of the measures of energy consumption as determined by actual testing, the representative values determined by actual testing must be used to comply with section 323(c) of the Act or to comply with rules under section 324 of the Act.

(4) For each basic model of water heaters, a sample of sufficient size shall be tested to insure that—

(i) Any represented value of estimated annual operating cost, energy consumption or other measure of energy consumption of a basic model for which consumers would favor lower values shall be no less than the higher of:

(A) The mean of the sample, or

(B) The upper 95 percent confidence limit of the true mean divided by 1.10, and

(ii) Any represented value of the energy factor or other measure of energy consumption of a basic model for which consumers would favor higher values shall be no greater than the lower of:

(A) The mean of the sample, or

(B) The lower 95 percent confidence limit of the true mean divided by 0.90.

(5)(i) For each basic model of furnaces, other than basic models of those sectional cast-iron boilers which may be aggregated into groups having identical intermediate sections and combustion chambers, a sample of sufficient size shall be tested to insure that—

(A) Any represented value of estimated annual operating cost, energy consumption or other measure of energy consumption of a basic model for which consumers would favor lower values shall be no less than the higher of:

(*1*) The mean of the sample, or

(*2*) The upper 97½ percent confidence limit of the true mean divided by 1.05, and

(B) Any represented value of the annual fuel utilization efficiency or other measure of energy consumption of a basic model for which consumers would favor higher values shall be no greater than the lower of:

(*1*) The mean of the sample, or

(*2*) The lower 97½ percent confidence limit of the true mean divided by 0.95.

(ii) For the lowest capacity basic model of a group of basic models of those sectional cast-iron boilers having identical intermediate sections and combustion chambers, a sample of sufficient size shall be tested to insure that—

(A) Any represented value of estimated annual operating cost, energy consumption or other measure of energy consumption of a basic model for which consumers would favor lower values shall be no less than the higher of:

(*1*) The mean of the sample, or

(*2*) The upper 97½ percent confidence limit of the true mean divided by 1.05, and

(B) Any represented value of the fuel utilization efficiency or other measure of energy consumption of a basic model for which consumers would favor higher values shall be no greater than the lower of:

(*1*) The mean of the sample, or

(*2*) The lower 97½ percent confidence limit of the true mean divided by 0.95.

(iii) For the highest capacity basic model of a group of basic models of those sectional cast-iron boilers having identical intermediate sections and combustion chambers, a sample of sufficient size shall be tested to insure that—

(A) Any represented value of estimated annual operating cost, energy consumption or other measure of energy consumption of a basic model for which consumers would favor lower values be no less than the higher of:

(*1*) The mean of the sample, or

(*2*) The upper 97½ percent confidence limit of the true mean divided by 1.05, and

(B) Any represented value of the fuel utilization efficiency or other measure of energy consumption of a basic model for which consumers would favor higher values shall be no greater than the lower of:

(*1*) The mean of the sample, or

(*2*) The lower 97½ percent confidence limit of the true mean divided by 0.95.

(iv) For each basic model or capacity other than the highest or lowest of the group of basic models of sectional cast-iron boilers having identical intermediate sections and combustion chambers, represented values of measures of energy consumption shall be determined by either—

(A) A linear interpolation of data obtained for the smallest and largest capacity units of the family, or

(B) Testing a sample of sufficient size to insure that:

(*1*) Any represented value of estimated annual operating cost, energy consumption or other measure of energy consumption of a basic model for which consumers would favor lower values shall be no less than the higher of

(*i*) The mean of the sample, or

(*ii*) The upper 97½ percent confidence limit of the true mean divided by 1.05, and

(*2*) Any represented value of the energy factor or other measure of energy consumption of a basic model for which consumers would favor higher values shall be no greater than the lower of:

(*i*) The mean of the sample, or

(*ii*) The lower 97½ percent confidence limit of the true mean divided by 0.95.

(v) Whenever measures of energy consumption determined by linear interpolation do not agree with measures of energy consumption determined by actual testing, the values determined by testing must be used for certification.

(vi) In calculating the measures of energy consumption for each unit tested, use the design heating requirement corresponding to the mean of the capacities of the units of the sample.

(6) For each basic model of dishwashers, a sample of sufficient size shall be tested to insure that—

(i) Any represented value of estimated annual operating cost, energy or water consumption or other measure of energy or water consumption of a basic model for which consumers would favor lower values shall be no less than the higher of:

(A) The mean of the sample, or

(B) The upper 97½ percent confidence limit of the true mean divided by 1.05, and

(ii) Any represented value of the energy or water factor or other measure of energy or water consumption of a basic model for which consumers would favor higher values shall be no greater than the lower of:

(A) The mean of the sample, or

(B) The lower 97½ percent confidence limit of the true mean divided by 0.95.

(7) For each basic model of residential clothes washers, a sample of sufficient size shall be tested to insure that—

(i) Any represented value of the water factor, the estimated annual operating cost, the energy or water consumption, or other measure of energy or water consumption of a basic model for which consumers would favor lower values shall be no less than the higher of:

(A) The mean of the sample, or

(B) The upper 97½ percent confidence limit of the true mean divided by 1.05, and

(ii) Any represented value of the modified energy factor or other measure of energy or water consumption of a basic model for which consumers would favor higher values shall be no greater than the lower of:

(A) The mean of the sample, or

(B) The lower 97½ percent confidence limit of the true mean divided by 0.95.

(8) For each basic model of clothes dryers a sample of sufficient size shall be tested to insure that—

(i) Any represented value of estimated annual operating cost, energy consumption or other measure of energy consumption of a basic model for which consumers would favor lower values shall be no less than the higher of:

(A) The mean of the sample, or

(B) The upper 97½ percent confidence limit of the true mean divided by 1.05, and

(ii) Any represented value of the energy factor or other measure of energy consumption of a basic model for which consumers would favor higher values shall be no greater than the lower of:

(A) The mean of the sample, or

(B) The lower 97½ percent confidence limit of the true mean divided by 0.95.

(11) For each basic model of pool heater a sample of sufficient size shall be tested to insure that any represented value of the thermal efficiency or other measure of energy consumption of a basic model for which consumers would favor higher values shall be no greater than the lower of:

(i) The mean of the sample, or

(ii) The lower 97½ percent confidence limit of the true mean divided by 0.95.

(12) For each basic model of fluorescent lamp ballasts, a sample of sufficient size, not less than four, shall be tested to insure that—

(i) Any represented value of estimated annual energy operating costs, energy consumption, or other measure of energy consumption of a basic model for which consumers would favor lower values shall be no less than the higher of:

(A) The mean of the sample, or

(B) The upper 99 percent confidence limit of the true mean divided by 1.01, and

(ii) Any represented value of the ballast efficacy factor or other measure of the energy consumption of a basic model for which consumers would favor a higher value shall be no greater than the lower of:

(A) The mean of the sample, or

(B) The lower 99 percent confidence limit of the true mean divided by 0.99.

(13)(i) For each basic model of general service fluorescent lamp, general service incandescent lamp, and incandescent reflector lamp, samples of production lamps shall be tested and the results for all samples shall be averaged for a 12-month period. A minimum sample of 21 lamps shall be tested. The manufacturer shall randomly select a minimum of three lamps from each month of production for a minimum of 7 out of the 12-month period. In the instance where production occurs during fewer than 7 of such 12 months, the manufacturer shall randomly select 3 or more lamps from each month of production, where the number of lamps selected for each month shall be distributed as evenly as practicable among the months of production to attain a minimum sample of 21 lamps. Any represented value of lamp efficacy of a basic model shall be based on the sample and shall be no greater than the lower of the mean of the sample or the lower 95-percent confidence limit of the true mean (X_L) divided by 0.97, *i.e.,*

$$\frac{\bar{X} - t_{0.95}\left(\frac{s}{\sqrt{n}}\right)}{0.97}$$

Where:

$\bar{x}$ = the mean luminous efficacy of the sample

s = the sample standard deviation

$t_{0.95}$ = the t statistic for a 95-percent confidence limit for n-1 degrees of freedom (from statistical tables)

n = sample size

(ii) For each basic model of general service fluorescent lamp, the color rendering index (CRI) shall be measured from the same lamps selected for the lumen output and watts input measurements in paragraph (c)(13)(i) of this section, *i.e.,* the manufacturer shall measure all lamps for lumens, watts input, and CRI. The CRI shall be represented as the average of a minimum sample of 21 lamps and shall be no greater than the lower of the mean of the sample or the lower 95-percent confidence limit of the true mean (X_L) divided by 0.97, *i.e.,*

$$\frac{\bar{X} - t_{0.95}\left(\frac{s}{\sqrt{n}}\right)}{0.97}$$

Where:

$\bar{x}$ = the mean color rendering index of the sample

s = the sample standard deviation

$t_{0.95}$ = the t statistic for a 95-percent confidence limit for n-1 degrees of freedom (from statistical tables)

n = sample size

(14) For each basic model of faucet, a sample of sufficient size shall be tested to ensure that any represented value of water consumption of a basic model for which consumers favor lower values shall be no less than the higher of:

(i) The mean of the sample or

(ii) The upper 95 percent confidence limit of the true mean divided by 1.05.

(15) For each basic model of showerhead, a sample of sufficient size shall be tested to ensure that any represented value of water consumption of a basic model for which consumers favor lower values shall be no less than the higher of:

(i) The mean of the sample or

(ii) The upper 95 percent confidence limit of the true mean divided by 1.05.

(16) For each basic model of water closet, a sample of sufficient size shall be tested to ensure that any represented value of water consumption of a basic model for which consumers favor lower values shall be no less than the higher of:

(i) The mean of the sample or

(ii) The upper 90 percent confidence limit of the true mean divided by 1.1.

(17) For each basic model of urinal, a sample of sufficient size shall be tested to ensure that any represented value of water consumption of a basic model for which consumers favor lower values shall be no less than the higher of:

(1) The mean of the sample or

(2) The upper 90 percent confidence limit of the true mean divided by 1.1.

(18) For each basic model of ceiling fan light kit with sockets for medium screw base lamps or pin-based fluorescent lamps selected for testing, a sample of sufficient size shall be selected at random and tested to ensure that—

(i) Any represented value of estimated energy consumption or other measure of energy consumption of a basic model for which consumers would favor lower values shall be no less than the higher of:

(A) The mean of the sample, or

(B) The upper 95 percent confidence limit of the true mean divided by 1.1; and

(ii) Any represented value of the airflow efficiency or other measure of energy consumption of a basic model for which consumers would favor higher values shall be no greater than the lower of:

(A) The mean of the sample, or

(B) The lower 95 percent confidence limit of the true mean divided by 0.9.

(19) For each basic model of bare or covered (no reflector) medium base compact fluorescent lamp selected for testing, a minimum sample of no less than 5 units per basic model must be used when testing for the efficacy, 1000-hour lumen maintenance, and the lumen maintenance, a minimum sample

of no less than 6 unique units (*i.e.,* units that have not previously been tested) per basic model must be used when testing for the rapid cycle stress, and a minimum sample of no less than 10 units per basic model must be used when testing for the average rated lamp life. With the exception of the rapid cycle stress test, the units tested in the sample should be the same. For the efficacy, the 1000-hour lumen maintenance, and the lumen maintenance, each unit within the sample must be tested in the base up position unless the product is labeled restricted by the manufacturer, in which case the unit should be tested in the manufacturer specified position. For the rapid cycle stress test, each unit within the sample can be tested in the base up or down position as stated by the manufacturer. For the average rated lamp life test, half of the sample should be tested in the base up position and half of the sample should be tested in the base down position, unless specific use or position appears on the packaging of that particular unit. Any representative value of efficacy, 1000-hour lumen maintenance, lumen maintenance, and average rated lamp life, shall be based on the sample selected at random and tested to ensure that the represented value shall be no greater than the lower of:

(i) The mean of the sample, or

(ii) The lower 97.5 percent confidence limit of the true mean divided by 0.95.

(20) For each basic model of dehumidifier selected for testing, a sample of sufficient size shall be selected at random and tested to ensure that—

(i) Any represented value of estimated energy consumption or other measure of energy consumption of a basic model for which consumers would favor lower values shall be no less than the higher of:

(A) The mean of the sample, or

(B) The upper 95 percent confidence limit of the true mean divided by 1.10; and

(ii) Any represented value of the energy factor or other measure of energy consumption of a basic model for which consumers would favor higher values shall be no greater than the lower of:

(A) The mean of the sample, or

(B) The lower 95 percent confidence limit of the true mean divided by 0.90.

(21) For each basic model of external power supply selected for testing, a sample of sufficient size shall be selected at random and tested to ensure that—

(i) Any represented value of the estimated energy consumption of a basic model for which consumers would favor lower values shall be no less than the higher of:

(A) The mean of the sample, or

(B) The upper 97.5 percent confidence limit of the true mean divided by 1.05; and

(ii) Any represented value of the estimated energy consumption of a basic model for which consumers would favor higher values shall be no greater than the lower of:

(A) The mean of the sample, or

(B) The lower 97.5 percent confidence limit of the true mean divided by 0.95.

(22) For each basic model of candelabra base incandescent lamp and intermediate base incandescent lamp, a minimum sample of 21 lamps shall be tested. Any represented value of lamp wattage of a basic model shall be based on the sample and shall be no greater than the lower of the mean of the sample or the lower 95-percent confidence limit of the true mean (X_L) divided by 0.97, *i.e.,*

$$\frac{\bar{X} - t_{0.95}\left(\frac{s}{\sqrt{n}}\right)}{0.97}$$

Where:

$\bar{x}$ = the mean wattage of the sample
s = the sample standard deviation
$t_{0.95}$ = the t statistic for a 95-percent confidence limit for n-1 degrees of freedom (from statistical tables)
n = sample size

(23) For each basic model of commercial refrigerator, freezer, or refrigerator-freezer selected for testing, a sample of sufficient size shall be selected at random and tested to ensure that—

(i) Any represented value of estimated energy consumption or other measure of energy consumption of a basic model for which consumers would favor lower values shall be no less than the higher of:

(A) The mean of the sample, or

(B) The upper 95 percent confidence limit of the true mean divided by 1.10; and

(ii) Any represented value of the energy efficiency or other measure of energy consumption of a basic model for which consumers would favor higher values shall be no greater than the lower of:

(A) The mean of the sample, or

(B) The lower 95 percent confidence limit of the true mean divided by 0.90.

(24) A manufacturer must determine the efficiency of each basic model of commercial heating, ventilating, air conditioning, and water heating (HVAC and WH) equipment either by testing, in accordance with applicable test procedures in §§ 431.76, 431.86, 431.96, or 431.106 and the provisions of this section, or by application of an alternative efficiency determination method (AEDM) that meets the requirements of § 429.23 and the provisions of this section. For each basic model of commercial HVAC and WH equipment, a sample of sufficient size shall be selected and tested to ensure that—

(i) Any represented value of energy efficiency or other measure of energy consumption of a basic model for which consumers would favor higher values shall be no greater than the lower of:

(A) The mean of the sample, or

(B) The lower 95 percent confidence limit of the true mean divided by 0.95, and

(ii) Any represented value of energy consumption or other measure of energy usage of a basic model for which consumers would favor lower values shall be no less than the higher of:

(A) The mean of the sample, or

(B) The upper 95 percent confidence limit of the true mean divided by 1.05.

(25) For each basic model of automatic commercial ice maker selected for testing, a sample of sufficient size shall be selected at random and tested to ensure that—

(i) Any represented value of estimated maximum energy use or other measure of energy consumption of a basic model for which consumers would favor lower values shall be no less than the higher of:

(A) The mean of the sample, or

(B) The upper 95 percent confidence limit of the true mean divided by 1.10; and

(ii) Any represented value of the energy efficiency or other measure of energy consumption of a basic model for which consumers would favor higher values shall be no greater than the lower of:

(A) The mean of the sample, or

(B) The lower 95 percent confidence limit of the true mean divided by 0.90.

(26) For each basic model of commercial clothes washers, a sample of sufficient size shall be tested to insure that—

(i) Any represented value of estimated energy or water consumption or other measure of energy or water consumption of a basic model for which consumers would favor lower values shall be no less than the higher of:

(A) The mean of the sample, or

(B) The upper 97½ percent confidence limit of the true mean divided by 1.05, and

(ii) Any represented value of the modified energy factor, water factor, or other measure of energy or water

consumption of a basic model for which consumers would favor higher values shall be no greater than the lower of:

(A) The mean of the sample, or

(B) The lower 97½ percent confidence limit of the true mean divided by 0.95.

(27) A manufacturer must determine the efficiency of each basic model of distribution transformer either by testing, in accordance with § 431.193 and the provisions of this section, or by application of an AEDM) that meets the requirements of § 429.23 and the provisions of this section.

(i) Selection of units for testing within a basic model. For each basic model a manufacturer selects for testing, it shall select and test units as follows:

(A) If the manufacturer would produce five or fewer units of a basic model over a reasonable period of time (approximately 180 days), then it must test each unit. However, a manufacturer may not use a basic model with a sample size of fewer than five units to substantiate an AEDM pursuant to § 429.23.

(B) If the manufacturer produces more than five units over such period of time, it must either test all such units or select a sample of at least five units and test them.

(ii) Applying results of testing. In a test of compliance with a represented efficiency, the average efficiency of the sample, $\bar{X}$, which is defined by

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

where X_i is the measured efficiency of unit i and n is the number of units tested, must satisfy the condition:

$$\bar{x} \geq \frac{100}{1+\left(1+\frac{0.08}{\sqrt{n}}\right)\left(\frac{100}{RE}-1\right)}$$

where RE is the represented efficiency.

(28) For each basic model of illuminated exit sign selected for testing, a sample of sufficient size shall be selected at random and tested to ensure that—

(i) Any represented value of estimated input power demand or other measure of energy consumption of a basic model for which consumers would favor lower values shall be no less than the higher of:

(A) The mean of the sample, or

(B) The upper 95 percent confidence limit of the true mean divided by 1.10; and

(ii) Any represented value of the energy efficiency or other measure of energy consumption of a basic model for which consumers would favor higher values shall be no greater than the lower of:

(A) The mean of the sample, or

(B) The lower 95 percent confidence limit of the true mean divided by 0.90.

(29) For each basic model of traffic signal module or pedestrian module selected for testing, a sample of sufficient size shall be selected at random and tested to ensure that—

(i) Any represented value of estimated maximum and nominal wattage or other measure of energy consumption of a basic model for which consumers would favor lower values shall be no less than the higher of:

(A) The mean of the sample, or

(B) The upper 95 percent confidence limit of the true mean divided by 1.10; and

(ii) Any represented value of the energy efficiency or other measure of energy consumption of a basic model for which consumers would favor higher values shall be no greater than the lower of:

(A) The mean of the sample, or

(B) The lower 95 percent confidence limit of the true mean divided by 0.90.

(30) For each basic model of commercial prerinse spray valves selected for testing, a sample of sufficient size shall be selected at random and tested to ensure that—

(i) Any represented value of estimated water consumption or other measure of water consumption of a basic model for which consumers would favor lower values shall be no less than the higher of:

(A) The mean of the sample, or

(B) The upper 95 percent confidence limit of the true mean divided by 1.10; and

(ii) Any represented value of the water efficiency or other measure of water consumption of a basic model for which consumers would favor higher values shall be no greater than the lower of:

(A) The mean of the sample, or

(B) The lower 95 percent confidence limit of the true mean divided by 0.90.

(31) For each basic model of refrigerated bottled or canned beverage vending machine selected for testing, a sample of sufficient size shall be selected at random and tested to ensure that—

(i) Any represented value of estimated energy consumption or other measure of energy consumption of a basic model for which consumers would favor lower values shall be no less than the higher of:

(A) The mean of the sample, or

(B) The upper 95 percent confidence limit of the true mean divided by 1.10; and

(ii) Any represented value of the energy efficiency or other measure of energy consumption of a basic model for which consumers would favor higher values shall be no greater than the lower of:

(A) The mean of the sample, or

(B) The lower 95 percent confidence limit of the true mean divided by 0.90.

(32) For each basic model of metal halide lamp ballast selected for testing, a sample of sufficient size, not less than four, shall be selected at random and tested to ensure that:

(i) Any represented value of estimated energy efficiency calculated as the measured output power to the lamp divided by the measured input power to the ballast (P_{out}/P_{in}), of a basic model is no less than the higher of:

(A) The mean of the sample, or

(B) The upper 99-percent confidence limit of the true mean divided by 1.01.

(ii) Any represented value of the energy efficiency of a basic model is no greater than the lower of:

(A) The mean of the sample, or

(B) The lower 99-percent confidence limit of the true mean divided by 0.99.

Subpart C—Certification

§ 429.17 Purpose and scope.

This subpart sets forth the procedures for manufacturers to certify that their covered products and covered equipment comply with the applicable energy conservation standards.

§ 429.19 Certification.

(a) *Certification.* Each manufacturer, before distributing in commerce any basic model of a covered product or covered equipment subject to an applicable energy conservation standard set forth in parts 430 and 431 of this subchapter, and annually thereafter on or before the dates provided in paragraph (e) of this section, shall certify by means of a certification report that each basic model meets the applicable energy conservation standard(s). The certification report(s) must be submitted to DOE in accordance with the submission procedures of paragraph (i) of this section.

(b) *Certification report.* Manufacturers of covered products or covered equipment must submit a certification report for all basic models to DOE. The certification report shall include a compliance statement (*See* paragraph (c) of this section.) for each basic model:

(1) The product or equipment type;

(2) Product or equipment class (as denoted in the provisions of part 430 or 431 containing the applicable energy conservation standard);

(3) Manufacturer's name and address;

(4) Private labeler's name(s) and address (if applicable);

(5) Brand name;

(6) For each brand, the basic model number and the individual manufacturer's model numbers covered by that basic model; in the case of external power supplies, when the manufacturer is certifying using a design family, the individual manufacturer's model numbers covered by the design family; in the case of distribution transformers, the individual manufacturer's model numbers covered by the kilovolt ampere (kVA) grouping;

(7) Whether the submission is for a new model, a discontinued model, a correction to a previously submitted model, data on a historical model, or a model that has been found in violation of a voluntary industry certification program;

(8) The sample size and the total number of tests performed;

(9) Certifying party's U.S. Customs and Border Protection (CBP) importer identification numbers assigned by CBP pursuant to 19 CFR 24.5, if applicable;

(10) Whether certification is based upon any waiver of test procedure requirements under § 430.27 or § 431.401 and the date of such waivers;

(11) Whether certification is based upon any exception relief from an applicable energy conservation standard and the date such relief was issued by DOE's Office of Hearing and Appeals;

(12) Whether certification is based upon the use of an alternate way of determining measures of energy conservation (*e.g.,* an ARM or AEDM), or other method of testing, for determining measures of energy conservation and the approval date, if applicable, of any such alternate rating, testing, or efficiency determination method; and

(13) For:

(i) Residential refrigerators, residential refrigerator-freezers, and residential freezers, the annual energy use in kilowatt hours per year, total adjusted volume in cubic feet, whether the basic model has variable defrost control (in which case, manufacturers must also report the values, if any, of CT_L and CT_M (For an example *see* section 5.2.1.3 in Appendix A to Subpart B of Part 430) used in the calculation of energy consumption), whether the basic model has variable anti-sweat heater control (in which case, manufacturers must also report the values of Heater Watts at the ten humidity levels 5%, 15%, through 95% used to calculate the variable anti-sweat heater "Correction Factor"), and whether testing has been conducted with modifications to the standard temperature sensor locations specified by the figures referenced in section 5.1 of Appendices A1, B1, A, and B to Subpart B of Part 430.

(ii) Room air conditioners, the energy efficiency ratio and cooling capacity in Btu/h.

(iii) Residential central air conditioners, the seasonal energy efficiency ratio, the cooling capacity in Btu/h, and the manufacturer and individual manufacturer's model numbers of the indoor and outdoor unit. For central air conditioners whose seasonal energy efficiency ratio is based on an installation that includes a particular model of ducted air mover (*e.g.,* furnace, air handler, blower kit, *etc.*), the manufacturer's model number of this ducted air mover must be included among the model numbers listed on the certification report.

(iv) Residential central air conditioning heat pumps, the seasonal energy efficiency ratio, the cooling capacity in Btu/h, the heating seasonal performance factor, and the manufacturer and individual model numbers of the indoor and outdoor unit. For central air conditioning heat pumps whose seasonal energy efficiency ratio and heating seasonal performance factor are based on an installation that includes a particular model of ducted air mover (*e.g.,* furnace, air handler, blower kit, *etc.*), the model number of this ducted air mover must be included among the model numbers listed on the certification report.

(v) Small duct, high velocity air conditioners, the seasonal energy efficiency ratio and the cooling capacity in Btu/h. Small duct, high velocity heat pumps, the seasonal energy efficiency ratio, the heating seasonal performance factor, and the cooling capacity in Btu/h.

(vi) Through-the-wall air conditioners, the seasonal energy efficiency ratio and the cooling capacity in Btu/h. Through-the-wall heat pumps, the seasonal energy efficiency ratio, the coefficient of performance, and the cooling capacity in Btu/h.

(vii) Residential water heaters, the energy factor and rated storage volume in gallons.

(viii) Residential furnaces and boilers, the annual fuel utilization efficiency in percent and the input capacity in Btu/h. For cast-iron sectional boilers, a declaration of whether certification is based on linear interpolation or testing. In addition, the type of ignition system for gas-fired steam and hot water boilers and a declaration that the manufacturer has incorporated the applicable design requirements for units manufactured on or after September 1, 2012.

(ix) Dishwashers, the annual energy use in kilowatt hours per year, the water factor in gallons per cycle, and capacity as described in § 430.32(f).

(x) Residential clothes washers, the modified energy factor in cubic feet per kilowatt hour per cycle and the capacity in cubic feet. For top-loading or front-loading standard-size residential clothes washers, a water factor in gallons per cycle per cubic feet must also be reported on or after January 1, 2011.

(xi) Residential clothes dryers, the energy factor in pounds per kilowatt hours, the capacity in cubic feet, and the voltage in volts.

(xii) Direct heating equipment, the annual fuel utilization efficiency in percent and the mean input capacity in Btu/h. Note, vented hearth heaters as defined in § 430.2 must report on or after April 16, 2013.

(xiii) Gas cooking products, the type of pilot light and a declaration that the manufacturer has incorporated the applicable design requirements.

(xiv) Pool heaters, the thermal efficiency in percent and the input capacity in Btu/h.

(xv) Fluorescent Lamp Ballasts, the ballast efficacy factor, the ballast power factor, the number of lamps operated by the ballast, and the type of lamps operated by the ballast.

(xvi) General service fluorescent lamps, the testing laboratory's National Voluntary Laboratory Accreditation Program (NVLAP) identification number or other NVLAP-approved accreditation identification, production date codes (and accompanying decoding scheme), the 12-month average lamp efficacy in lumens per watt, lamp wattage, correlated color temperature, and the 12-month average Color Rendering Index.

(xvii) Incandescent reflector lamps, the laboratory's NVLAP identification number or other NVLAP-approved accreditation identification, production date codes (and accompanying decoding scheme), the 12-month average lamp efficacy in lumens per watt, and lamp wattage.

(xviii) Faucets, the maximum water use in gallons per minute or, in the case of metering faucets, gallons per cycle for each faucet and the flow water pressure in pounds per square inch.

(xix) Showerheads, the maximum water use in gallons per minute and the maximum flow water pressure in pounds per square inch.

(xx) Water closets, the maximum water use in gallons per flush.

(xxi) Urinals, the maximum water use in gallons per flush and for trough-type

urinals, the length of the trough-type urinal.

(xxii) Ceiling fans, the number of spends within the ceiling fan controls and a declaration that the manufacturer has incorporated the applicable design requirements.

(xxiii) Ceiling fan light kits with sockets for medium screw base lamps or pin-based fluorescent lamps, the efficacy in lumens per watt.

(xxiv) Ceiling fan light kits with sockets for other than medium screw base lamps or pin-based fluorescent lamps, the features that have been incorporated into the ceiling fan light kit to meet the applicable design requirement (*e.g.,* circuit breaker, fuse, ballast).

(xxv) Torchieres, the features that have been incorporated into the torchiere to meet the applicable design requirement (*e.g.,* circuit breaker, fuse, ballast).

(xxvi) Medium base compact fluorescent lamps, the testing laboratory's NVLAP identification number or other NVLAP-approved accreditation identification, production date codes (and accompanying decoding scheme), the minimum initial efficacy in lumens per watt, the lumen maintenance at 1,000 hours in percentage, the lumen maintenance at 40 percent of rated life in lumens, the rapid cycle stress test, and the lamp life in hours.

(xxvii) Dehumidifiers, the energy factor in liters per kilowatt hour and capacity in pints per day.

(xxviii) External power supplies, the average active mode efficiency percentage, no-load mode power consumption in watts, nameplate output power in watts, and, if missing from the nameplate, the output current in amperes of the highest- and lowest-voltage models within the external power supply design family.

(xxix) Switch-selectable single-voltage external power supplies, the average active mode efficiency percentage and no-load mode power consumption in watts at the lowest and highest selectable output voltage, nameplate output power in watts, and, if missing from the nameplate, the output current in amperes.

(xxx) On or after the effective dates specified in § 430.32, general service incandescent lamps, the testing laboratory's National Voluntary Laboratory Accreditation Program (NVLAP) identification number or other NVLAP-approved accreditation identification, production date codes (and accompanying decoding scheme), the 12-month average maximum rate wattage, the 12-month average minimum rate lifetime, and the 12-month average Color Rendering Index.

(xxxi) Candelabra base incandescent lamp, the wattage in watts.

(xxxii) Intermediate base incandescent lamp, the wattage in watts.

(xxxiii) Self-contained commercial refrigerators with solid doors, refrigerators with transparent doors, freezers with solid doors, and commercial freezers with transparent doors, the maximum daily energy consumption in kilowatt hours per day and the volume in cubic feet.

(xxxiv) Self-contained commercial refrigerator/freezers with solids doors, the maximum daily energy consumption in kilowatt hours per day and the adjusted volume in cubic feet.

(xxxv) On or after January 1, 2012, remote condensing commercial refrigerators, freezers, and refrigerator-freezers, self-contained commercial refrigerators, freezers, and refrigerator-freezers without doors, commercial ice-cream freezers, and commercial refrigeration equipment with two or more compartments (*i.e.,* hybrid refrigerators, hybrid freezers, hybrid refrigerator-freezers, and non-hybrid refrigerator-freezers), the maximum daily energy consumption in kilowatt hours per day, the total display area (TDA) in feet squared or the volume in cubic feet as necessary to demonstrate compliance with the standards set forth in § 431.66, the rating temperature in degrees Fahrenheit, the operating temperature range in degrees Fahrenheit (*e.g.,* ≥ 32 °F, < 32 °F, and ≤ -5 °F), the equipment family designation as described in § 431.66, and the condensing unit configuration.

(xxxvi) Commercial warm air furnaces, the thermal efficiency in percent and the maximum rated input capacity in Btu/h.

(xxxvii) Commercial packaged boilers, the combustion efficiency in percent and the maximum rated input capacity in Btu/h for equipment manufactured before March 2, 2012. For equipment manufactured on or after March 2, 2012, either the combustion efficiency or the thermal efficiency as required in § 431.87 and the maximum rated input capacity in Btu/h.

(xxxviii) Commercial package air-conditioning and heating equipment (except small commercial package air conditioning and heating equipment that is air-cooled with a cooling capacity less than 65,000 Btu/h), the energy efficiency ratio, the coefficient of performance as necessary to meet the standards set forth in § 431.97, the cooling capacity in Btu/h, and the type of heating used by the unit.

(xxxix) Small commercial package air conditioning and heating equipment that is air-cooled with a cooling capacity less than 65,000 Btu/h, the seasonal energy efficiency ratio, the heating seasonal performance factor as necessary to meet the standards set forth in § 431.97, and the cooling capacity in Btu/h.

(xl) Packaged terminal air conditioners, the energy efficiency ratio, the cooling capacity in Btu/h, and the wall sleeve dimensions in inches. Packaged terminal heat pumps, the energy efficiency ratio, the coefficient of performance, the cooling capacity in Btu/h, and the wall sleeve dimensions in inches.

(xli) Single package vertical air conditioner, the energy efficiency ratio and the cooling capacity in Btu/h. Single package vertical heat pumps, the energy efficiency ratio, the coefficient of performance, and the cooling capacity in Btu/h.

(xlii) Commercial electric storage water heaters, the maximum standby loss in percent per hour and the measured storage volume in gallons.

(xliii) Commercial gas-fired and oil-fired storage water heaters, the minimum thermal efficiency in percent, the maximum standby loss in Btu/h, the rated storage volume in gallons, and the nameplate input rate in Btu/h.

(xliv) Commercial gas-fired and oil-fired instantaneous water heaters greater than or equal to 10 gallons and gas-fired and oil-fired hot water supply boilers greater than or equal to 10 gallons, the minimum thermal efficiency in percent, the maximum standby loss in Btu/h, the rated storage volume in gallons, and the nameplate input rate in gallons.

(xlv) Commercial gas-fired and oil-fired instantaneous water heaters less than 10 gallons and gas-fired and oil-fired hot water supply boilers less than 10 gallons, the minimum thermal efficiency in percent and the storage volume in gallons.

(xlvi) Commercial unfired hot water storage tanks, the minimum thermal insulation (*i.e.,* R-value) and the storage volume.

(xlvii) Automatic commercial ice makers, the maximum energy use in kilowatt hours per 100 pounds of ice, the maximum condenser water use in gallons per 100 pounds of ice, the harvest rate in pounds of ice per 24 hours, the type of cooling, and the equipment type.

(xlviii) Commercial clothes washers, the modified energy factor in cubic feet per kilowatt hour per cycle and the water factor in gallons per cubic feet per cycle for units manufactured on or after January 8, 2013.

(xlix) For the least efficient basic model of distribution transformer within each "kilovolt ampere (kVA) grouping" for which part 431 prescribes an efficiency standard, the kVA rating, the insulation type (*i.e.,* low-voltage dry-type, medium-voltage dry-type or liquid-immersed), the number of phases (*i.e.,* single-phase or three-phase), and the basic impulse insulation level (BIL) group rating (for medium-voltage dry-types). As used in this section, a "kVA grouping" is a group of basic models which all have the same kVA rating, have the same insulation type (*i.e.,* low-voltage dry-type, medium-voltage dry-type or liquid-immersed), have the same number of phases (*i.e.,* single-phase or three-phase), and, for medium-voltage dry-types, have the same BIL group rating (*i.e.,* 20–45 kV BIL, 46–95 kV BIL or greater than 96 kV BIL).

(l) Illuminated exit signs, the input power demand in watts.

(li) Traffic signal modules and pedestrian modules, the maximum wattage in watts, the nominal wattage in watts, and the signal type.

(lii) Commercial unit heaters, the type of ignition system and a declaration that the manufacturer has incorporated the applicable design requirements.

(liii) Commercial prerinse spray valves, the flow rate in gallons per minute.

(liv) Refrigerated bottled or canned beverage vending machines, the maximum daily energy consumption in kilowatt hours per day, the refrigerated volume (V) in cubic feet used to demonstrate compliance with standards set forth in § 431.296, the ambient temperature in degrees Fahrenheit, and the ambient relative humidity in percent during the test for units manufactured on or after August 31, 2012.

(lv) Walk-in coolers and freezers, the door type, the R-value of the insulation of the wall, ceiling, and doors, the R-value of the floor (for freezers only), the motor type, and the efficacy of the lighting including ballast losses. In addition, for those walk-in coolers and freezers with transparent reach-in doors and windows, the glass type of the doors and windows (*e.g.,* double-pane with heat reflective treatment, triple-pane glass with gas fill, *etc.*), the power draw of the antisweat heater in watts, and a declaration that the manufacturer has incorporated the applicable design requirements.

(lvi) Metal halide lamp fixtures, minimum ballast efficiency in percent, the lamp wattage in watts, and the type of ballast (*e.g.,* pulse-start, magnetic probe-start, and non-pulse start electronic).

(c) The compliance statement required by paragraph (b) of this section shall include the date, the name of the company official signing the statement, and his or her signature, title, address, telephone number, and facsimile number and shall certify that:

(1) The basic model(s) complies with the applicable conservation standard(s);

(2) All required testing has been conducted in conformance with the applicable test requirements prescribed in parts 429, 430 and 431 of this subchapter, as appropriate, or in accordance with the terms of an applicable test procedure waiver;

(3) All information reported in the certification report is true, accurate, and complete; and

(4) The manufacturer is aware of the penalties associated with violations of the Energy Policy and Conservation Act (Pub. L. 94–163), as amended by Public Law 95–619, Public Law 100–12, Public Law 100–357, and Public Law 102–486 (the Act), the regulations there under, and 18 U.S.C. 1001 which prohibits knowingly making false statements to the Federal Government.

(d) Copies of reports to the Federal Trade Commission could serve in lieu of the certification report provided the reports include all required information specified in paragraph (b) of this section.

(e) *Annual filing.* All data required by § 429.19(a) through (c) shall be submitted to DOE annually, on or before the following dates:

Product category	Deadline for data submission
(1) Fluorescent lamp ballasts, Medium base compact fluorescent lamps, Incandescent reflector lamps, General service fluorescent lamps, General service incandescent lamps, Intermediate base incandescent lamps, Candelabra base incandescent lamps, Residential ceiling fans, Residential ceiling fan light kits, Residential showerheads, Residential faucets, Residential water closets, and Residential urinals.	Mar. 1.
(2) Residential water heater, Residential furnaces, Residential boilers, Residential pool heaters, Commercial water heaters, Commercial hot water supply boilers, Commercial unfired hot water storage tanks, Commercial packaged boilers, Commercial warm air furnaces, and Commercial unit heaters.	May 1.
(3) Residential dishwashers, Commercial prerinse spray valves, Illuminated exit signs, Traffic signal modules, Pedestrian modules, and Distribution transformers.	June 1.
(4) Room air conditioners, Residential central air conditioners, Residential central heat pumps, Small duct high velocity system, Space constrained products, Commercial package air-conditioning and heating equipment, Packaged terminal air conditioners, Packaged terminal heat pumps, and Single package vertical units.	July 1.
(5) Residential refrigerators, Residential refrigerators-freezers, Residential freezers, Commercial refrigerator, freezer, and refrigerator-freezer, Automatic commercial automatic ice makers, Refrigerated bottled or canned beverage vending machine, Walk-in coolers, and Walk-in freezers.	Aug. 1.
(6) Torchieres, Residential dehumidifiers, Metal halide lamp fixtures, and External power supplies	Sept. 1.
(7) Residential clothes washers, Residential clothes dryers, Residential direct heating equipment, Residential cooking products, and Commercial clothes washers.	Oct. 1.

(f) *New model filing.* (1) In addition to the annual filing schedule in paragraph (e) of this section, any new basic models must be certified pursuant to paragraph (a) of this section before distribution in commerce. New basic model numbers shall be designated whenever a new basic model is created pursuant to this paragraph (f).

(2) Prior to or concurrent with the distribution of a new model of general service fluorescent lamp or incandescent reflector lamp, each manufacturer shall submit a statement signed by a company official stating how the manufacturer determined that the lamp meets or exceeds the energy conservation standards, including a description of any testing or analysis the manufacturer performed. This statement shall also list the model number, lamp wattage, and date of commencement of manufacture. Manufacturers of general service fluorescent lamps and incandescent reflector lamps shall submit the certification report required by paragraph (b) of this section within

one year after the date manufacture of that new model commences.

(3) For distribution transformers, the manufacturer must submit all information required in paragraphs (b) and (c) of this section for the new basic model, unless the manufacturer has previously submitted to the Department a certification report for a basic model of distribution transformer that is in the same kVA grouping as the new basic model.

(g) *Discontinued model filing.* When production of a basic model has ceased and it is no longer being sold or offered for sale by the manufacturer or private labeler, the manufacturer shall report this discontinued status to DOE as part of the next annual certification report following such cessation. For each basic model, the report shall include: Product or equipment type, product or equipment class, the manufacturer's name, the private labeler name(s), if applicable, the brand, and the manufacturer's model number(s) of the basic model that has been discontinued.

(h) *Third party submitters.* A manufacturer may elect to use a third party to submit the certification report to DOE (for example a trade association, independent test lab, or other authorized representative, including a private labeler acting as a third party submitter on behalf of a manufacturer); however, the manufacturer is responsible for submission of the certification report to DOE. DOE may refuse to accept certification reports from third party submitters who have failed, on at least two occasions, to submit reports in accordance with the rules of this part.

(i) *Method of submission.* Reports required by this section must be submitted to DOE electronically at *http://www.regulations.doe.gov/ccms.* A manufacturer or third party submitter can find product-specific templates for each covered product or covered equipment with certification requirements online at *https://www.regulations.doe.gov/ccms/templates.html.*

§ 429.21 Testing Requirements for Certification.

(a) For purposes of a certification of compliance, the determination that a basic model complies with an applicable energy conservation standard or water conservation standard shall be determined from the calculated values derived pursuant to the applicable requirements set forth in parts 429, 430 and 431 of this subchapter. For purposes of a certification of compliance, the determination that a basic model complies with the applicable design standard shall be based upon the incorporation of specific design requirements in parts 430 and 431 or as specified in section 325 and 342 of the Act.

(b) Pursuant to § 429.51, where DOE has determined a particular entity is in noncompliance with an applicable standard or certification requirement, DOE may impose additional testing requirements for certification as a remedial measure.

§ 429.23 Alternative Methods for Determining Efficiency or Energy Use.

(a) *General.* A manufacturer of residential central air conditioners and heat pumps, distribution transformers, and commercial HVAC and WH equipment may not distribute any basic model of such equipment in commerce unless the manufacturer has determined the efficiency of the basic model either from testing of the basic model or from application of an alternative method to the basic model, in accordance with the requirements of this section. In instances where a manufacturer has tested that basic model to validate the alternative method, the efficiency of that basic model must be determined and rated according to results from actual testing. In addition, a manufacturer may not knowingly use an AEDM to overrate the efficiency of a basic model. For each basic model of distribution transformer that has a configuration of windings which allows for more than one nominal rated voltage, the manufacturer must determine the basic model's efficiency either at the voltage at which the highest losses occur or at each voltage at which the transformer is rated to operate.

(b) *Testing.* Testing for each covered product or covered equipment must be done in accordance with the sampling plans established in § 429.9 and the testing procedures in parts 430 and 431 of this subchapter.

(c) *Alternative efficiency determination method (AEDM) for Commercial HVAC and WH equipment*—(1) *Criteria an AEDM must satisfy.* A manufacturer may not apply an AEDM to a basic model to determine its efficiency pursuant to this section unless:

(i) The AEDM is derived from a mathematical model that represents the energy consumption characteristics of the basic model; and

(ii) The AEDM is based on engineering or statistical analysis, computer simulation or modeling, or other analytic evaluation of performance data.

(2) *Substantiation of an AEDM.* Before using an AEDM, the manufacturer must substantiate and validate the AEDM as follows:

(i) A manufacturer must first apply the AEDM to three or more basic models that have been tested in accordance with §§ 431.173(b) and 431.175(a). The predicted efficiency calculated for each such basic model from application of the AEDM must be within five percent of the efficiency determined from testing that basic model, and the predicted efficiencies calculated for the tested basic models must on average be within one percent of the efficiencies determined from testing such basic models; and

(ii) Using the AEDM, the manufacturer must calculate the efficiency of three or more of its basic models. They must be the manufacturer's highest-selling basic models to which the AEDM could apply.

(iii) The manufacturer must test each of these basic models in accordance with § 431.173(b), and either §§ 431.174(b) or 431.175(a), whichever is applicable.

(iv) The predicted efficiency calculated for each such basic model from application of the AEDM must be within three percent of the efficiency determined from testing that basic model, and the average of the predicted efficiencies calculated for the tested basic models must be within one percent of the average of the efficiencies determined from testing these basic models.

(3) *Subsequent verification of an AEDM.* If a manufacturer has used an AEDM pursuant to this section,

(i) The manufacturer must have available for inspection by the Department records showing:

(A) The method or methods used;

(B) The mathematical model, the engineering or statistical analysis, computer simulation or modeling, and other analytic evaluation of performance data on which the AEDM is based;

(C) Complete test data, product information, and related information that the manufacturer generated or acquired under paragraph (c)(1) through (2) of this section; and

(D) The calculations used to determine the average efficiency and energy consumption of each basic model to which an AEDM was applied.

(ii) If requested by the Department, the manufacturer must perform at least one of the following:

(A) Conduct simulations to predict the performance of particular basic models of the commercial HVAC and WH product;

(B) Provide analyses of previous simulations conducted by the manufacturer;

(C) Conduct sample testing of basic models selected by the Department; or

(D) Conduct a combination of these.

(d) *Alternative efficiency determination method for Distribution Transformers*—A manufacturer may use an AEDM to determine the efficiency of one or more of its untested basic models only if it determines the efficiency of at least five of its other basic models (selected in accordance with paragraph (d)(3) of this section) through actual testing.

(1) *Criteria an AEDM must satisfy.* (i) The AEDM has been derived from a mathematical model that represents the electrical characteristics of that basic model;

(ii) The AEDM is based on engineering and statistical analysis, computer simulation or modeling, or other analytic evaluation of performance data; and

(iii) The manufacturer has substantiated the AEDM, in accordance with paragraph (d)(2) of this section, by applying it to, and testing, at least five other basic models of the same type, *i.e.,* low-voltage dry-type distribution transformers, medium-voltage dry-type distribution transformers, or liquid-immersed distribution transformers.

(2) *Substantiation of an AEDM.* Before using an AEDM, the manufacturer must substantiate the AEDM's accuracy and reliability as follows:

(i) Apply the AEDM to at least five of the manufacturer's basic models that have been selected for testing in accordance with paragraph (d)(3) of this section, and calculate the power loss for each of these basic models;

(ii) Test at least five units of each of these basic models in accordance with the applicable test procedure and § 429.9, and determine the power loss for each of these basic models;

(iii) The predicted total power loss for each of these basic models, calculated by applying the AEDM pursuant to paragraph (c)(2)(i) of this section, must be within plus or minus five percent of the mean total power loss determined from the testing of that basic model pursuant to paragraph (c)(2)(ii) of this section; and

(iv) Calculate for each of these basic models the percentage that its power loss calculated pursuant to paragraph (c)(2)(i) of this section is of its power loss determined from testing pursuant to paragraph (c)(2)(ii) of this section, compute the average of these percentages, and that calculated average power loss, expressed as a percentage of the average power loss determined from testing, must be no less than 97 percent and no greater than 103 percent.

(3) *Additional testing requirements.* (i) A manufacturer must select basic models for testing in accordance with the following criteria:

(A) Two of the basic models must be among the five basic models with the highest unit volumes of production by the manufacturer in the prior year, or during the prior 12-calendar-month period beginning in 2003,[1] whichever is later;

(B) No two basic models should have the same combination of power and voltage ratings; and

(C) At least one basic model should be single-phase and at least one should be three-phase.

(ii) In any instance where it is impossible for a manufacturer to select basic models for testing in accordance with all of these criteria, the criteria shall be given priority in the order in which they are listed. Within the limits imposed by the criteria, basic models shall be selected randomly.

(4) *Subsequent verification of an AEDM.* (i) Each manufacturer that has used an AEDM under this section shall have available for inspection by the Department of Energy records showing:

(A) The method or methods used;

(B) The mathematical model, the engineering or statistical analysis, computer simulation or modeling, and other analytic evaluation of performance data on which the AEDM is based;

(C) Complete test data, product information, and related information that the manufacturer has generated or acquired pursuant to paragraph (d)(4) of this section; and

(D) The calculations used to determine the efficiency and total power losses of each basic model to which the AEDM was applied.

(ii) If requested by the Department, the manufacturer must perform at least one of the following:

(A) Conduct simulations to predict the performance of particular basic models of distribution transformers specified by the Department;

(B) Provide analyses of previous simulations conducted by the manufacturer;

(C) Conduct sample testing of basic models selected by the Department; or

(D) Conduct a combination of these.

(e) *Alternate Rating Method (ARM) for residential split-system central air conditioners and heat pumps—(1) Criteria an ARM must satisfy.* The basis of the ARM referred to in § 429.9(c)(3)(ii) for residential central air conditioners and heat pumps must be a representation of the test data and calculations of a mechanical vapor-compression refrigeration cycle. The major components in the refrigeration cycle must be modeled as "fits" to manufacturer performance data or by graphical or tabular performance data. Heat transfer characteristics of coils may be modeled as a function of face area, number of rows, fins per inch, refrigerant circuitry, air-flow rate and entering-air enthalpy. Additional performance-related characteristics to be considered may include type of expansion device, refrigerant flow rate through the expansion device, power of the indoor fan and cyclic-degradation coefficient. Ratings for untested combinations must be derived from the ratings of a combination tested in accordance with § 429.9(c)(3)(i). The seasonal energy efficiency ratio (SEER) and/or heating seasonal performance factor (HSPF) ratings for an untested combination must be set equal to or less than the lower of the SEER and/or HSPF calculated using the applicable DOE-approved alternative rating method (ARM). If the method includes an ARM/simulation adjustment factor(s), determine the value(s) of the factors(s) that yield the best match between the SEER/HSPF determined using the ARM versus the SEER/HSPF determined from testing in accordance with § 429.9(c)(3)(i). Thereafter, apply the ARM using the derived adjustment factor(s) only when determining the ratings for untested combinations having the same outdoor unit.

(2) *Approval of an ARM.* (i) Manufacturers who elect to use an ARM for determining measures of energy consumption under § 429.9(c)(3)(ii)(B)(*1*) and paragraph (e)(1) of this section must submit a request for DOE to review the ARM. Send the request to the U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program (EE–2J), Attention: Certification and Compliance Reports (ARM), Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Approval must be received from the Department to use the ARM before the ARM may be used for rating split-system central air conditioners and heat pumps. If a manufacturer has a DOE-approved ARM for products also distributed in commerce by a private labeler, the ARM may also be used by the private labeler for rating these products. Once an ARM is approved, DOE may contact a

[1] When identifying these five basic models, any basic model that does not comply with Federal energy conservation standards for distribution transformers that may be in effect shall be excluded from consideration.

manufacturer to learn if their ARM has been modified in any way and to verify that the ARM is being applied as approved. DOE will give follow-up priority to individual combinations having questionably high ratings (*e.g.,* a coil-only system having a rating that exceeds the rating of a coil-only highest sales volume combination by more than 6 percent).

(ii) Each request to DOE for approval of an ARM must include:

(A) The name, mailing address, telephone number, and e-mail address of the official representing the manufacturer.

(B) Complete documentation of the alternative rating method to allow DOE to evaluate its technical adequacy. The documentation must include a description of the methodology, state any underlying assumptions, and explain any correlations. The documentation should address how the method accounts for the cyclic-degradation coefficient, the type of expansion device, and, if applicable, the indoor fan-off delay. The requestor must submit any computer programs—including spreadsheets—having less than 200 executable lines that implement the ARM. Longer computer programs must be identified and sufficiently explained, as specified above, but their inclusion in the initial submittal package is optional. Applicability or limitations of the ARM (*e.g.,* only covers single-speed units when operating in the cooling mode, covers units with rated capacities of 3 tons or less, not applicable to the manufacturer's product line of non-ducted systems, *etc.*) must be stated in the documentation.

(C) Complete test data from laboratory tests on four mixed (*i.e.,* non-highest-sales-volume combination) systems per each ARM.

(*1*) The four mixed systems must include four different indoor units and at least two different outdoor units. A particular model of outdoor unit may be tested with up to two of the four indoor units. The four systems must include two low-capacity mixed systems and two high-capacity mixed systems. The low-capacity mixed systems may have any capacity. The rated capacity of each high-capacity mixed system must be at least a factor of two higher than its counterpart low-capacity mixed system. The four mixed systems must meet the applicable energy conservation standard in § 430.32(c) in effect at the time of the rating.

(*2*) The four indoor units must come from at least two different coil families, with a maximum of two indoor units coming from the same coil family. Data for two indoor units from the same coil family, if submitted, must come from testing with one of the "low-capacity mixed systems" and one of the "high capacity mixed systems." A mixed system indoor coil may come from the same coil family as the highest-sales-volume-combination indoor unit (*i.e.,* the "matched" indoor unit) for the particular outdoor unit. Data on mixed systems where the indoor unit is now obsolete will be accepted towards the ARM-validation submittal requirement if it is from the same coil family as other indoor units still in production.

(*3*) The first two sentences of paragraph (e)(2)(ii)(C)(*2*) of this section do not apply if the manufacturer offers indoor units from only one coil family. In this case only, all four indoor coils must be selected from this one coil family. If approved, the ARM will be specifically limited to applications for this one coil family.

(D) All product information on each mixed system indoor unit, each matched system indoor unit, and each outdoor unit needed to implement the proposed ARM. The calculated ratings for the four mixed systems, as determined using the proposed ARM, must be provided along with any other related information that will aid the verification process.

(E) If request for approval is for an updated ARM, manufacturers must identify modifications made to the ARM since the last submittal, including any ARM/simulation adjustment factor(s) added since the ARM was last approved by DOE.

(3) *Changes to DOE's Regulations Requiring Re-Approval of an ARM.* Manufacturers who elect to use an ARM for determining measures of energy consumption under § 429.9(3)(ii)(B)(*1*) and (d)(1) of this section must resubmit a request for DOE to review the ARM when:

(i) DOE amends the energy conservation standards as specified in § 429.32 for residential central air conditioners and heat pumps. In this case, any testing and evidence required under paragraph (e)(2) of this subsection shall be developed with units that meet the amended energy conservation standards specified in § 429.32.

(ii) DOE amends the test procedure for residential air conditioners and heat pumps as specified in Appendix M to Subpart B of Part 430.

(4) Manufacturers that elect to use an ARM for determining measures of energy consumption under § 429.9(c)(3)(ii)(B)(*1*) and (e)(1) of this section must regularly either subject a sample of their units to independent testing, *e.g.,* through a voluntary certification program, in accordance with the applicable DOE test procedure, or have the representations reviewed by an independent state-registered professional engineer who is not an employee of the manufacturer. The manufacturer may continue to use the ARM only if the testing establishes, or the registered professional engineer certifies, that the results of the ARM accurately represent the energy consumption of the unit(s). The manufacturer is to keep the records of any such testing, and any such certifications, on file for review by DOE for two years following the discontinuance of said combination. Any proposed change to the alternative rating method must be approved by DOE prior to its use for rating.

(5) Manufacturers who choose to use computer simulation or engineering analysis for determining measures of energy consumption under § 429.9(c)(3)(ii)(B)(*1*) and (e)(1) through (e)(4) of this section must permit representatives of the Department of Energy to inspect for verification purposes the simulation method(s) and computer program(s) used. This inspection may include conducting simulations to predict the performance of particular outdoor unit "indoor" unit combinations specified by DOE, analysis of previous simulations conducted by the manufacturer, or both.

Subpart D—General Provisions

§ 429.24 Maintenance of records.

The manufacturer of any covered product or covered equipment shall establish, maintain, and retain the records of certification reports, of the underlying test data for all certification testing, and of any other testing conducted to satisfy the requirements of this part 429, part 430, and part 431 of this subchapter. Such records shall be organized and indexed in a fashion that makes them readily accessible for review by DOE upon request. The records shall be retained by the manufacturer for a period of two years from the date that production of the applicable model has ceased.

§ 429.25 Imported products.

(a) Any person importing any covered product or covered equipment into the United States shall comply with the provisions of this part, and is subject to the remedies of this part.

(b) Any covered product or covered equipment offered for importation in violation of this part shall be refused admission into the customs territory of the United States under rules issued by the Department of Homeland Security

(DHS) and subject to further remedies as provided by law, except that DHS may, by such rules, authorize the importation of such covered product or covered equipment upon such terms and conditions (including the furnishing of a bond) as may appear to DHS appropriate to ensure that such covered product or covered equipment will not violate this part, or will be exported or abandoned to the United States.

§ 429.26 Exported products.

This part shall not apply to any covered product or covered equipment if:

(a) Such covered product or covered equipment is manufactured, sold, or held for sale for export from the United States (or such product was imported for export), unless such product is, in fact, distributed in commerce for use in the United States; and

(b) Such covered product or covered equipment, when distributed in commerce, or any container in which it is enclosed when so distributed, bears a stamp or label stating "NOT FOR SALE IN THE UNITED STATES."

§ 429.27 Public record.

Pursuant to the provisions of § 429.71, product-specific information submitted by manufacturers to DOE pursuant to § 429.19(b)(13), including the manufacturer's name, the brand name, and applicable model number(s), shall be considered public information not exempt from public disclosure.

Subpart E—Enforcement

§ 429.29 Purpose and scope.

This subpart describes the enforcement authority of the Secretary and the General Counsel of DOE to ensure compliance with the conservation standards and regulations.

§ 429.31 Prohibited acts subjecting persons to enforcement action.

(a) Each of the following actions are prohibited:

(1) Failure of a manufacturer to provide, maintain, permit access to, or copying of records required to be supplied under the Act and this part or failure to make reports or provide other information required to be supplied under the Act and this part, including but not limited to failure to properly certify covered products and covered equipment in accordance with § 429.19 of this part;

(2) Failure to test any covered product or covered equipment, subject to an applicable energy conservation standard, in conformance with the applicable test requirements prescribed in 10 CFR parts 430 or 431; or deliberate use of controls or features in a covered product or covered equipment to circumvent the requirements of a test procedure and produce test results that are unrepresentative of a product's energy or water consumption if measured pursuant to DOE's required test procedure;

(3) Failure of a manufacturer to supply at the manufacturer's expense a requested number of covered products or covered equipment to a test laboratory designated by the Secretary;

(4) Failure of a manufacturer to permit a representative designated by the Secretary to observe any testing required by the Act and this part and inspect the results of such testing;

(5) Distribution in commerce by a manufacturer or private labeler of any new covered product or covered equipment that is not in compliance with an applicable energy conservation standard prescribed under the Act, except to the extent that the new covered product or covered equipment is covered by a regional standard that is more stringent than the base national standard;

(6) Distribution in commerce by a manufacturer or private labeler of a basic model of covered product or covered equipment after a notice of noncompliance determination has been issued to the manufacturer or private labeler;

(7) Knowing misrepresentation by a manufacturer or private labeler of the applicable conservation standard of any covered product or covered equipment distributed in commerce; or

(8) For any manufacturer, distributor, retailer, or private labeler to distribute in commerce an adapter that—

(i) Is designed to allow an incandescent lamp that does not have a medium screw base to be installed into a fixture or lamp holder with a medium screw base socket; and

(ii) Is capable of being operated at a voltage range at least partially within 110 and 130 volts.

(9) For any manufacturer or private labeler to knowingly sell a product to a distributor, contractor, or dealer with knowledge that the entity routinely violates any regional standard applicable to the product.

(b) When the Secretary has reason to believe that a person has undertaken a prohibited act listed in paragraph (a) of this section, the Secretary may:

(1) Issue a notice of noncompliance determination;

(2) Impose additional certification testing requirements;

(3) Seek injunctive relief;

(4) Assess a civil penalty for knowing violations; or

(5) Undertake any combination of the above.

§ 429.33 Investigation of compliance.

DOE may initiate an investigation of compliance upon belief that a basic model may not be compliant with an applicable conservation standard, certification requirement or other regulation.

§ 429.34 Review of certification data.

DOE may, at any time, request any information relevant to determining compliance with any requirement under parts 429, 430 and 431 of this subchapter, including the data underlying certification of a basic model. Such data may be used by DOE to make a determination of compliance or noncompliance with an applicable standard.

§ 429.35 Subpoena.

For purposes of carrying out parts 429, 430, and 431 of this subchapter, the Secretary or the General Counsel, may sign and issue subpoenas for the attendance and testimony of witnesses and the production of relevant books, records, papers, and other documents, and administer the oaths. Witnesses summoned under the provisions of this section shall be paid the same fees and mileage as are paid to witnesses in the courts of the United States. In case of contumacy by, or refusal to obey a subpoena served, upon any persons subject to this part, the Secretary may seek an order from the District Court of the United States for any District in which such person is found or resides or transacts business requiring such person to appear and give testimony, or to appear and produce documents. Failure to obey such order is punishable by such court as contempt thereof.

§ 429.36 Testing.

DOE may, at any time, test a basic model to assess whether the basic model is in compliance with the applicable energy conservation standard(s).

§ 429.37 Test notice.

To obtain units for enforcement testing to determine compliance with an applicable standard, DOE may issue a test notice addressed to the manufacturer in accordance with the following requirements:

(a) The test notice will be signed by the Secretary or his designee. The test notice will be sent by DOE to the government relations representative or other responsible official, as designated by the manufacturer.

(b) The test notice will specify the basic model to be selected for testing, the method of selecting the test sample,

the maximum size of the sample and the size of the initial test sample, the time at which testing shall be initiated, the date by which testing is scheduled to be completed and the facility at which testing will be conducted. The test notice may also provide for situations in which the selected basic model is unavailable for testing, and may include alternative basic models.

(c) DOE will state in the test notice that it will select the units of a basic model to be tested from the manufacturer, from one or more distributors, and/or from one or more retailers. If any unit is selected from a distributor or retailer, the manufacturer shall reimburse the distributor or retailer (with a replacement unit or a voucher) for any such units.

(d) DOE may require in the test notice that the manufacturer of a basic model ship or cause to be shipped from a retailer or distributor at its expense a requested number of units of a basic model specified in such test notice to a testing laboratory designated by the Secretary. The number of units of a basic model specified in a test notice shall not exceed twenty one (21).

(e) Within 2 working days of the time units are selected, the manufacturer shall ship the specified test units of a basic model to the testing laboratory.

§ 429.39 [Reserved].

§ 429.41 Test unit selection.

(a) To select units for testing from a:

(1) Manufacturer's warehouse, distributor, or other facility affiliated with the manufacturer. A DOE representative will select a batch sample at random of not more than 21 units in accordance with the provisions in § 429.45 and the conditions specified in the test notice. DOE will randomly select an initial test sample of units from the batch sample for testing in accordance with appendices A through C of this subpart. DOE will make a determination whether an alternative sample size will be used in accordance with the provisions in § 429.45(a)(5).

(2) Retailer. A DOE representative will select an initial test sample of units at random, which satisfies the minimum units necessary for testing in accordance with the provisions in appendices A through C of the subpart and the conditions specified in the test notice. Depending on the results of the testing, DOE may select additional units for testing from a retailer in accordance with appendices A through C of the subpart. If the full sample is not available from a retailer, DOE will make a determination based on the provisions in § 429.45(a)(5).

(b) Units tested in accordance with the applicable test procedure under this part by DOE or another Federal agency, pursuant to other provisions or programs, may count toward units in the test sample.

(c) The resulting test data shall constitute official test data for the basic model. Such test data will be used by DOE to make a determination of compliance or noncompliance if a sufficient number of tests have been conducted to satisfy the requirements of § 429.45 and appendix A through appendix C of this subpart.

§ 429.43 Test unit preparation.

(a) Prior to and during testing, a test unit selected in accordance with § 429.41 of this subpart shall not be prepared, modified, or adjusted in any manner unless such preparation, modification, or adjustment is allowed by the applicable DOE test procedure. One test shall be conducted for each test unit in accordance with the applicable test procedures prescribed in parts 430 and 431 of this subchapter.

(b) No quality control, testing or assembly procedures shall be performed on a test unit, or any parts and subassemblies thereof, that is not performed during the production and assembly of all other units included in the basic model.

(c) A test unit shall be considered defective if such unit is inoperative or is found to be in noncompliance due to failure of the unit to operate according to the manufacturer's design and operating instructions. Defective units, including those damaged due to shipping or handling, shall be reported immediately to DOE. DOE shall authorize testing of an additional unit on a case-by-case basis.

§ 429.45 Sampling for enforcement testing.

(a) The Department will base the determination of whether a basic model complies with the applicable energy conservation or water conservation standards on testing conducted in accordance with the applicable test procedures specified in parts 430 and 431 of this subchapter, and with the following statistical sampling procedures:

(1) For products with applicable energy and water conservation standards in § 430.32, the Department will use a sample size of not more than 21 units and follow the sampling plans in Appendix A to Subpart E of Part 429 (Sampling for Enforcement Testing of Covered Consumer Products and Certain High-Volume Commercial Equipment).

(2) For commercial prerinse spray valves, illuminated exit signs, traffic signal modules and pedestrian modules, commercial clothes washers, and metal halide lamp ballasts, the Department will use a sample size of not more than 21 units and follow the sampling plans in Appendix A to Subpart E of Part 429 (Sampling for Enforcement Testing of Covered Consumer Products and Certain High-Volume Commercial Equipment).

(3) For automatic commercial ice makers, commercial refrigerators, freezers, and refrigerator-freezers, refrigerated bottled or canned vending machines, and commercial HVAC and WH equipment, the Department will use an initial sample size of not more than four units and follow the sampling plans in Appendix B to Subpart E of Part 429 (Sampling Plan for Enforcement Testing of Covered Equipment and Certain Low-Volume Covered Products) with the following exceptions:

(i) Except as required or provided in paragraphs (a)(3)(ii) of this section, initially, the Department will test two units.

(ii) If fewer than two units of the basic model are available for testing when the manufacturer receives the test notice, then:

(A) The Department will test the available unit; or

(B) If one or more other units of the basic model are expected to become available within 30 days, the Department may instead at its discretion, test either:

(*1*) The available unit(s) and one or more of the other units that subsequently become available (up to a maximum of four); or

(*2*) Up to four of the other units that subsequently become available.

(4) For distribution transformers, the Department will use an initial sample size of not more than five units and follow the sampling plans in Appendix C to Subpart E of Part 429 (Sampling Plan for Enforcement Testing of Distribution Transformers). If fewer than five units of a basic model are available for testing when the manufacturer receives the test notice, then:

(i) DOE will test the available unit(s); or

(ii) If one or more other units of the basic model are expected to become available within 30 days, the Department may instead at its discretion, test either:

(*A*) The available unit(s) and one or more of the other units that subsequently become available (up to a maximum of 21); or

(*B*) Up to 21 of the other units that subsequently become available.

(5) Notwithstanding paragraphs (a)(1) through (a)(4) of this section, if testing

of the available or subsequently available units of a basic model would be impractical, as for example when a basic model has unusual testing requirements or has limited production, the Department may in its discretion decide to base the determination of compliance on the testing of fewer than the otherwise required number of units.

(6) When the Department makes a determination in accordance with section (a)(5) to test less than the number of units specified (a)(1) through (a)(4) of this section, the Department will base the compliance determination on the results of such testing in accordance with Appendix B to Subpart E of Part 429 (Sampling Plan for Enforcement Testing of Covered Equipment and Certain Low-Volume Covered Products) using a sample size (n_1) equal to the number of units identified in § 429.41 without the option for additional testing at the manufacturer's option.

(6) For the purposes of paragraphs (a)(1) through (a)(5) of this section, available units are those that are available for commercial distribution within the United States.

§ 429.47 [Reserved]

§ 429.49 Notice of noncompliance determination to cease distribution of a basic model.

(a) In the event that DOE determines a basic model is noncompliant with an applicable energy conservation standard, or if a manufacturer or private labeler determines a basic model to be in noncompliance, DOE may issue a notice of noncompliance determination to the manufacturer or private labeler. This notice of noncompliance determination will notify the manufacturer or private labeler of its obligation to:

(1) Immediately cease distribution in commerce of the basic model.

(2) Give immediate written notification of the determination of noncompliance to all persons to whom the manufacturer has distributed units of the basic model manufactured since the date of the last determination of compliance.

(3) Pursuant to a request made by the Secretary, provide DOE within 30 days of the request, records, reports and other documentation pertaining to the acquisition, ordering, storage, shipment, or sale of a basic model determined to be in noncompliance.

(b) In the event that DOE determines a model is noncompliant with an applicable certification requirement, or if a manufacturer or private labeler determines a model to be in noncompliance with the certification requirements, DOE may issue a notice of noncompliance determination to the manufacturer or private labeler. This notice of noncompliance determination will notify the manufacturer or private labeler of its obligation to:

(1) Immediately cease distribution in commerce of the basic model.

(2) Pursuant to a request made by the Secretary, provide DOE within 30 days of the request, records, reports and other documentation pertaining to the acquisition, ordering, storage, shipment, or sale of a basic model determined to be in noncompliance.

(c) If a manufacturer or private labeler fails to comply with the required actions in the notice of noncompliance determination as set forth in paragraphs (a) or (b) of this section, the Secretary may seek, among other remedies, injunctive action and civil penalties, where appropriate.

(d) The manufacturer may modify a basic model determined to be noncompliant with an applicable energy conservation standard in such manner as to make it comply with the applicable standard. Such modified basic model shall then be treated as a new basic model and must be certified in accordance with the provisions of this part; except that in addition to satisfying all requirements of this part, the manufacturer shall also maintain, and provide upon request made by the Secretary, records that demonstrate that modifications have been made to all units of the new basic model prior to distribution in commerce.

§ 429.51 Additional certification testing requirements.

Pursuant to § 429.31(b)(2), if DOE determines that independent, third-party testing is necessary to ensure a manufacturer's compliance with the rules of this part 429, part 430, or part 431 of this subchapter, a manufacturer must base its certification of a basic model under subpart C of this part on independent, third-party laboratory testing.

§ 429.53 Injunctions.

If the Secretary has reason to seek an injunction under the Act:

(a) DOE will notify the manufacturer, private labeler or any other person as required, of the prohibited act at issue and the Secretary's intent to seek a judicial order enjoining the manufacturer, private labeler or any other person as required from engaging in the prohibited act unless the manufacturer, private labeler or any other person as required, delivers to DOE within 15 calendar days a corrective action and compliance plan, satisfactory to DOE, of the steps it will take to ensure that the prohibited conduct ceases. DOE will monitor the implementation of such plan.

(b) If the manufacturer, private labeler or any other person as required, fails to cease engaging in the prohibited conduct or fails to provide a satisfactory corrective action and compliance plan, the Secretary may seek an injunction.

(c) The Secretary shall determine whether the facts of the case warrant the assessment of civil penalties for knowing violations.

§ 429.55 Maximum civil penalty.

Any person who knowingly violates any provision of § 429.31(a) of this part may be subject to assessment of a civil penalty of no more than $200 for each violation. As to § 429.31(a)(1) with respect to failure to certify, and as to § 429.31(a)(2), (5) through (9), each unit of a covered product or covered equipment distributed in violation of such paragraph shall constitute a separate violation. For violations of § 429.31(a)(1), (3), and (4), each day of noncompliance shall constitute a separate violation for each basic model at issue.

§ 429.57 Penalty considerations.

DOE will assess a civil penalty under this subpart taking the following into account:

(a) The nature and scope of the violation;

(b) The provision violated;

(c) The violator's history of compliance or non-compliance;

(d) Whether the violator is a small business;

(e) The violator's ability to pay;

(f) The violator's timely self-reporting of the violation, if any;

(g) The violator's self-initiated corrected action, if any; and

(h) Such other matters as justice may require.

§ 429.59 Notice of proposed civil penalty.

(a) Before issuing an order assessing a civil penalty against any person under this section, the Secretary shall provide to such person notice of the proposed penalty.

(b) The notice of proposed penalty will:

(1) Include the amount of the proposed penalty;

(2) Include a statement of the material facts constituting the alleged violation; and

(3) Inform the person of the opportunity to elect in writing within 30 calendar days of receipt of the notice to have the procedures of § 429.65 (in lieu

of those of § 429.63) apply with respect to the penalty.

§ 429.61 Election of procedures.

(a) In responding to a notice of proposed civil penalty, the respondent may request:

(1) An administrative hearing before an Administrative Law Judge (ALJ) under § 429.63 of this part; or

(2) Elect to have the procedures of § 429.65 apply.

(b) Any election to have the procedures of § 429.65 apply may not be revoked except with the consent of the Secretary.

(c) If the respondent fails to respond to a notice issued under § 429.59 or otherwise fails to indicate its election of procedures, DOE shall refer the civil penalty action to an ALJ for a hearing under § 429.63.

§ 429.63 Administrative law judge hearing and appeal.

(a) When elected pursuant to § 429.61, DOE shall refer a civil penalty action brought under § 429.59 of this part to an ALJ, who shall afford the respondent an opportunity for an agency hearing on the record.

(b) After consideration of all matters of record in the proceeding, the ALJ will issue a recommended decision, if appropriate, recommending a civil penalty. The decision includes a statement of the findings and conclusions, and the reasons therefore, on all material issues of fact, law, and discretion.

(c)(1) The Secretary shall adopt, modify, or set aside the conclusions of law or discretion contained in the ALJ's recommended decision and shall set forth a final order assessing a civil penalty. The Secretary shall include in its final order the ALJ's findings of fact and the reasons for its actions.

(2) Any person against whom a penalty is assessed under this section may, within 60 calendar days after the date of the final order of the Secretary assessing such penalty, institute an action in the United States Court of Appeals for the appropriate judicial circuit for judicial review of such order in accordance with chapter 7 of title 5, United States Code. The court shall have jurisdiction to enter a judgment affirming, modifying, or setting aside in whole or in part, the order of the Secretary, or the court may remand the proceeding to the Secretary for such further action as the court may direct.

§ 429.65 Immediate issuance of order assessing civil penalty.

(a) If respondent elects to forgo an agency hearing pursuant to § 429.61, DOE shall issue an order assessing the civil penalty proposed in the notice of proposed penalty under § 429.59, 30 days after respondent's receipt of the notice of proposed penalty.

(b) If within 60 days of receiving the assessment order in paragraph (a) of this section the respondent does not pay the civil penalty amount, the Secretary shall institute an action in the appropriate United States District Court for an order affirming the assessment of the civil penalty. The court shall have authority to review de novo the law and the facts involved and shall have jurisdiction to enter a judgment enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part, such assessment.

§ 429.67 Collection of civil penalties.

(a) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order under § 429.63 or after the appropriate District Court has entered final judgment in favor of the Secretary under § 429.65, the Secretary shall institute an action to recover the amount of such penalty in any appropriate District Court of the United States. In such action, the validity and appropriateness of such final assessment order or judgment shall not be subject to review.

(b)(1) The Secretary will be represented by the General Counsel of DOE (or any attorney or attorneys within DOE designated by the General Counsel) who shall supervise, conduct, and argue any civil litigation to which § 429.65 applies including any related collection action under paragraph (a) of this section in a court of the United States or in any other court, except the Supreme Court of the United States, consulting with the Attorney General concerning such litigation. The Attorney General will provide, on request, such assistance in the conduct of such litigation as may be appropriate.

(2) The Secretary shall be represented by the Attorney General, or the Solicitor General, as appropriate, in actions under this section, except to the extent provided in paragraph (b)(1) of this section.

(3) DOE will provide to a Respondent contact information for the appropriate administrative law judge when a case is referred for hearing pursuant to § 429.63.

§ 429.69 Compromise and settlement.

(a) The Secretary may compromise, modify, or remit, with or without conditions, any civil penalty (with leave of court if necessary).

(b) In exercising its authority under paragraph (a) of this section, the Secretary may consider the nature and seriousness of the violation, the efforts of the respondent to remedy the violation in a timely manner, and other factors as justice may require.

(c) The Secretary's authority to compromise, modify or remit a civil penalty may be exercised at any time prior to a final decision by the United States Court of Appeals if § 429.63 procedures are utilized, or prior to a final decision by the United States District Court, if § 429.65 procedures are utilized.

(d) Notwithstanding paragraph (a) of this section, the Secretary or the respondent may propose to settle the case. If a settlement is agreed to by the parties, the respondent is notified and the case is closed.

§ 429.71 Confidentiality.

Pursuant to the provisions of 10 CFR 1004.11, any person submitting information or data which the person believes to be confidential and exempt by law from public disclosure should submit one complete copy, and one copy from which the information believed to be confidential has been deleted. In accordance with the procedures established in 10 CFR 1004.11, DOE shall make its own determination with regard to any claim that information submitted be exempt from public disclosure; however, the following records and other material of DOE are not exempt from public disclosure:

(a) Reports of compliance filed pursuant to the rules in this part or pursuant to a provision in a DOE order; and

(b) Product-specific information submitted by manufacturers to DOE pursuant to § 429.19(b)(13), including the manufacturer's name, the brand name, and applicable model number(s).

Appendix A to Subpart E of Part 429—Sampling Plan for Enforcement Testing of Covered Consumer Products and Certain High-Volume Commercial Equipment

(a) The first sample size (n_1) must be four or more units, except as provided by § 429.45.

(b) Compute the mean of the measured energy performance (x_1) for all tests as follows:

$$x_1 = \frac{1}{n_1}\left(\sum_{i=1}^{n_1} x_i\right) \qquad \text{[Equation 1]}$$

where x_i is the measured energy or water efficiency or consumption from test i, and n_1 is the total number of tests.

(c) Compute the standard deviation (s_1) of the measured energy performance from the n_1 tests as follows:

$$s_1 = \sqrt{\frac{\sum_{i=1}^{n_1}(x_i - x_1)^2}{n_1 - 1}} \qquad \text{[Equation 2]}$$

(d) Compute the standard error (s_{x1}) of the measured energy performance from the n_1 tests as follows:

$$s_{x_1} = \sqrt{\frac{s_1}{n_1}} \qquad \text{[Equation 3]}$$

(e) Compute the upper control limit (UCL_1) and lower control limit (LCL_1) for the mean of the first sample using the applicable DOE energy or water performance standard (EPS) as the desired mean and a probability level of 95 percent (two-tailed test) as follows:

$$LCL_1 = EPS - ts_{x_1} \qquad \text{[Equation 4]}$$

and

$$UCL_1 = EPS + ts_{x_1} \qquad \text{[Equation 5]}$$

where t is the statistic based on a 95 percent two-tailed probability level and a sample size of n_1.

(f)(1) For an energy efficiency or water efficiency standard, compare the mean of the first sample (x_1) with the upper and lower control limits (UCL_1 and LCL_1) to determine one of the following:

(2) For an energy or water consumption standard, compare the mean of the first sample (x_1) with the upper and lower control limits (UCL_1 and LCL_1) to determine one of the following:

(A) If the mean of the first sample is below the lower control limit, then the basic model is in noncompliance and testing is at an end. (Do not go on to any of the steps below.)

(B) If the mean of the first sample is equal to or greater than the upper control limit, then the basic model is in compliance and testing is at an end. (Do not go on to any of the steps below.)

(C) If the sample mean is equal to or greater than the lower control limit but less than the upper control limit, then no determination of compliance or noncompliance can be made and a second sample size is determined by Step h(1).

(g)(1) For an energy efficiency or water efficiency standard, determine the second sample size (n_2) as follows:

$$n_2 = \left(\frac{ts_1}{0.05\ EPS}\right)^2 - n_1 \qquad \text{[Equation 6a]}$$

where s_1 and t have the values used in Steps 4 and 5, respectively. The term "0.05 EPS" is the difference between the applicable energy efficiency or water efficiency standard and 95 percent of the standard, where 95 percent of the standard is taken as the lower control limit. This procedure yields a sufficient combined sample size (n_1+n_2) to give an estimated 97.5 percent probability of obtaining a determination of compliance when the true mean efficiency is equal to the applicable standard. Given the solution value of n_2, determine one of the following:

(A) If the value of n_2 is less than or equal to zero and if the mean energy or water efficiency of the first sample (x_1) is either equal to or greater than the lower control limit (LCL_1) or equal to or greater than 95 percent of the applicable energy efficiency or water efficiency standard (EES), whichever is greater, i.e., if $n_2 \leq 0$ and $x_1 \geq$ max (LCL_1, 0.95 EES), the basic model is in compliance and testing is at an end.

(B) If the value of n_2 is less than or equal to zero and the mean energy efficiency of the first sample (x_1) is less than the lower control limit (LCL_1) or less than 95 percent of the applicable energy efficiency standard (EES), whichever is greater, i.e., if $n_2 \leq 0$ and $x_1 \geq$ max (LCL_1, 0.95 EES), the basic model is in noncompliance and testing is at an end.

(C) If the value of n_2 is greater than zero, then value of the second sample size is determined to be the smallest integer equal to or greater than the solution value of n_2 for equation (6). If the value of $n_2$so calculated is greater than $21 - n_1$, set n_2 equal to $21 - n_1$.

(2) For an Energy or Water Consumption Standard, determine the second sample size (n_2) as follows:

$$n_2 = \left(\frac{ts_1}{0.05\ EPS}\right)^2 - n_1 \qquad \text{[Equation 6b]}$$

where $s_1$and t have the values used in (d) and (e), respectively. The term "0.05 EPS" is the difference between the applicable energy or water consumption standard and 105 percent of the standard, where 105 percent of the standard is taken as the upper control limit. This procedure yields a sufficient combined sample size ($n_1 + n_2$) to give an estimated 97.5 percent probability of obtaining a determination of compliance when the true mean consumption is equal to the applicable standard. Given the solution value of n_2, determine one of the following:

(A) If the value of n_2 is less than or equal to zero and if the mean energy or water consumption of the first sample (x_1) is either equal to or less than the upper control limit (UCL_1) or equal to or less than 105 percent of the applicable energy or water performance standard (EPS), whichever is less, *i.e.,* if $n_2 \leq 0$ and $x_1 \leq$ min (UCL_1, 1.05 EPS), the basic model is in compliance and testing is at an end.

(B) If the value of n_2 is less than or equal to zero and the mean energy or water consumption of the first sample (x_1) is greater than the upper control limit (UCL_1) or more than 105 percent of the applicable energy or water performance standard (EPS), whichever is less, *i.e.,* if $n_2 \leq 0$ and $x_1 >$ min (UCL_1, 1.05 EPS), the basic model is in noncompliance and testing is at an end.

(C) If the value of n_2 is greater than zero, then the value of the second sample size is determined to be the smallest integer equal to or greater than the solution value of n_2 for equation (6a). If the value of n_2 so calculated is greater than $20 - n_1$, set n_2 equal to $21 - n_1$.

(h) Compute the combined mean (x_2) of the measured energy or water performance of the n_1 and n_2 units of the combined first and second samples as follows:

$$\bar{x}_2 = \frac{1}{n_1 + n_2}\left(\sum_{i=1}^{n_1+n_2} x_i\right) \qquad \text{[Equation 7]}$$

(i) Compute the standard error (S_{x1}) of the measured energy or water performance of then $_1$ and n_2 units in the combined first and second samples as follows:

$$s_{x_2} = \frac{s^1}{\sqrt{n_1 + n_2}} \qquad \text{[Equation 8]}$$

Note: s_1 is the value obtained in (c).

(j)(1). For an Energy Efficiency Standard, compute the lower control limit (LCL_2) for the mean of the combined first and second samples using the DOE energy efficiency standard (EES) as the desired mean and a one-tailed probability level of 97.5 percent (equivalent to the two-tailed probability level of 95 percent used in Step (e)) as follows:

$$LCL_2 = EPS - ts_{x_2} \qquad \text{[Equation 9a]}$$

where the t-statistic has the value obtained in Step (e).

(j)(2). For an Energy or Water Consumption Standard, compute the upper control limit (UCL_2) for the mean of the combined first and second samples using the DOE energy or water performance standard (EPS) as the desired mean and a one-tailed probability level of 102.5 percent (equivalent to the two-tailed probability level of 95 percent used in Step (e)) as follows:

$$UCL_1 = EPS + ts_{x_1} \qquad \text{[Equation 9b]}$$

where the t-statistic has the value obtained in (e).

(k)(1). For an Energy Efficiency Standard, compare the combined sample mean (x_2) to the lower control limit (LCL_2) to find one of the following:

(A) If the mean of the combined sample (x_2) is less than the lower control limit (LCL_2) or 95 percent of the applicable energy efficiency standard (EES), whichever is greater, *i.e.,* if $x_2 <$ max (LCL_2, 0.95 EES), the basic model is in noncompliance and testing is at an end.

(B) If the mean of the combined sample (x_2) is equal to or greater than the lower control limit (LCL_2) or 95 percent of the applicable energy efficiency standard (EES), whichever is greater, *i.e.,* if $x_2 \geq$ max (LCL_2, 0.95 EES), the basic model is in compliance and testing is at an end.

(k)(2). For an Energy or Water Consumption Standard, compare the combined sample mean (x_2) to the upper control limit (UCL_2) to find one of the following:

(A) If the mean of the combined sample (x_2) is greater than the upper control limit (UCL_2) or 105 percent of the applicable energy or water performance standard (EPS), whichever is less, *i.e.,* if $x_2 >$ min (UCL_2, 1.05 EPS), the basic model is in noncompliance and testing is at an end.

(B) If the mean of the combined sample (x_2) is equal to or less than the upper control limit (UCL_2) or 105 percent of the applicable energy or water performance standard (EPS),

whichever is less, *i.e.,* if $x_2 \leq \min(UCL_2, 1.05\ EPS)$, the basic model is in compliance and testing is at an end.

Appendix B to Subpart E of Part 429—Sampling Plan for Enforcement Testing of Covered Equipment and Certain Low-Volume Covered Products

The Department will determine compliance as follows:

(a) The first sample size (n_1) must be four or more units, except as provided by § 429.45.

(b) Compute the mean of the measured energy performance (x_1) for all tests as follows:

$$x_1 = \frac{1}{n_1}\left(\sum_{i=1}^{n_1} x_i\right) \qquad \text{[Equation 1]}$$

Where x_i is the measured energy efficiency or consumption from test i, and n_1 is the total number of tests.

(c) Compute the standard deviation (s_1) of the measured energy performance from the n_1 tests as follows:

$$s_1 = \sqrt{\frac{\sum_{i=1}^{n_1}(x_i - x_1)^2}{n_1 - 1}} \qquad \text{[Equation 2]}$$

(d) Compute the standard error (s_{x1}) of the measured energy performance from the n_1 tests as follows:

$$s_{x_1} = \sqrt{\frac{s_1}{n_1}} \qquad \text{[Equation 3]}$$

(e)(1) For an energy efficiency standard, compute the lower control limit (LCL_1) according to:

$$LCL_1 = EPS - ts_{x_1} \qquad \text{[Equation 4a]}$$

or

$$LCL_1 = 0.95EPS, \qquad \text{[Equation 4b]}$$

(whichever is greater).

(2) For an energy use standard, compute the upper control limit (UCL_1) according to:

$$UCL_1 = EPS + ts_{x_1} \qquad \text{[Equation 5a]}$$

or

$$UCL_1 = 1.05EPS, \qquad \text{[Equation 5b]}$$

(whichever is less),

Where EPS is the energy performance standard and t is a statistic based on a 97.5 percent, one-sided confidence limit and a sample size of n_1.

(f)(1) Compare the sample mean to the control limit.

(i) The basic model is in compliance and testing is at an end if:

(A) For an energy or water efficiency standard, the sample mean is equal to or greater than the lower control limit, or

(B) For an energy or water consumption standard, the sample mean is equal to or less than the upper control limit.

(ii) Unless the manufacturer requests manufacturer-option testing and provides the additional units for such testing, the basic model is in noncompliance and the testing is at an end because compliance has not been demonstrated if:

(A) For an energy efficiency standard, the sample mean is less than the lower control limit, or

(B) For an energy consumption standard, the sample mean is greater than the upper control limit.

(2) If the manufacturer does request additional testing, and provides the necessary additional units, the Department will test each unit the same number of times it tested previous units. The Department will then compute a combined sample mean, standard deviation, and standard error as described above. (The "combined sample" refers to the units the Department initially tested plus the additional units the Department has tested at the manufacturer's request.) The Department will determine compliance or noncompliance from the mean and the new lower or upper control limit of the combined sample. If, for an energy efficiency standard, the combined sample mean is equal to or greater than the new lower control limit or, for an energy consumption standard, the sample mean is equal to or less than the upper control limit, the basic model is in compliance, and testing is at an end. If the combined sample mean does not satisfy one of these two conditions, the basic model is in noncompliance and the testing is at an end.

Appendix C to Subpart E of Part 429—Sampling Plan for Enforcement Testing of Distribution Transformers

(a) When testing distribution transformers, the number of units in the sample (m_1) shall be in accordance with § 429.45 and DOE shall perform the following number of tests:

(i) If DOE tests four or more units, it will test each unit once;

(ii) If DOE tests two or three units, it will test each unit twice; or

(iii) If DOE tests one unit, it will test that unit four times.

(b) DOE shall determine compliance as follows:

(i) Compute the mean (X_1) of the measured energy performance of the n_1 tests in the first sample as follows:

$$\bar{X}_1 = \frac{1}{n_1}\sum_{i=1}^{n_1} X_i \qquad \text{[Equation 1]}$$

Where X_i is the measured efficiency of test i.

(ii) Compute the sample standard deviation (S_1) of the measured efficiency of the n_1 tests in the first sample as follows:

$$s_1 = \sqrt{\sum_{i=1}^{n_1}\frac{\left(X_i - \bar{X}_1\right)^2}{n_1 - 1}} \qquad \text{[Equation 2]}$$

(iii) Compute the standard error ($SE(X_1)$) of the mean efficiency of the first sample as follows:

$$SE\left(\bar{X}_1\right) = \frac{S_1}{\sqrt{n_1}} \qquad \text{[Equation 3]}$$

(iv) Computer the sample size discount ($SSD(m_1)$) as follows:

$$SSD(m_1) = \frac{100}{1 + \left(1 + \frac{0.08}{\sqrt{m_1}}\right)\left(\frac{100}{RE} - 1\right)} \qquad \text{[Equation 4]}$$

Where m_1 is the number of units in the sample, and RE is the applicable DOE efficiency when the test is to determine compliance with the applicable energy conservation standard, or is the labeled efficiency when the test is to determine compliance with the labeled efficiency value.

(v) Compute the lower control limit (LCL_1) for the mean of the first sample as follows:

$$LCL_1 = SSD(m_1) - tSE\left(\bar{X}_1\right) \qquad \text{[Equation 5]}$$

Where t is the 2.5th percentile of a t-distribution for a sample size of n_1, which yields a 97.5 percent confidence level for a one-tailed t-test.

(vi) Compare the mean of the first sample (X_1) with the lower control limit (LCL_1) to determine one of the following:

(A) If the mean of the first sample is below the lower control limit, then the basic model is in non-compliance and testing is at an end.

(B) If the mean is equal to or greater than the lower control limit, no final determination of compliance or non-compliance can be made; proceed to Step (vii).

(vii) Determine the recommended sample size (n) as follows:

$$n = \left[\frac{tS_1(108 - 0.08RE)}{RE(8 - 0.08RE)} \right]^2 \quad \text{[Equation 6]}$$

Where S_1 and t have the values used in Steps (ii) and (v), respectively. The factor

$$\frac{(108 - 0.08RE)}{(8 - 0.08RE)}$$

is based on an 8-percent tolerance in the total power loss.

Given the value of n, determine one of the following:

(A) If the value of n is less than or equal to n_1 and if the mean energy efficiency of the first sample (X_1) is equal to or greater than the lower control limit (LCL_1), the basic model is in compliance and testing is at an end.

(B) If the value of n is greater than n_1, the basic model is in non-compliance. The size of a second sample n_2 is determined to be the smallest integer equal to or greater than the difference $n - n_1$. If the value of n_2 so calculated is greater than $21 - n_1$, set n_2 equal to $21 - n_1$.

(viii) Compute the combined (X_2) mean of the measured energy performance of the n_1 and n_2 units of the combined first and second samples as follows:

$$\bar{X}_2 = \frac{1}{n_1 + n_2} \left(\sum_{i=1}^{n_1+n_2} X_i \right) \quad \text{[Equation 7]}$$

(ix) Compute the standard error ($SE(X_2)$) of the mean full-load efficiency of the n_1 and $n_2$units in the combined first and second samples as follows:

$$SE\left(\bar{X}_2\right) = \frac{S^1}{\sqrt{n_1 + n_2}} \quad \text{[Equation 8]}$$

(Note that S_1 is the value obtained above in (ii).)

(x) Set the lower control limit (LCL_2) to,

$$LCL_2 = SSD\left(m_1\right) - tSE\left(\bar{X}_2\right) \quad \text{[Equation 9]}$$

Where t has the value obtained in (v), and compare the combined sample mean (X_2) to the lower control limit (LCL_2) to find one of the following:

(A) If the mean of the combined sample (X_2) is less than the lower control limit (LCL_2), the basic model is in non-compliance and testing is at an end.

(B) If the mean of the combined sample (X_2) is equal to or greater than the lower control limit (LCL_2), the basic model is in compliance and testing is at an end.

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

2. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

3. In § 430.2 revise the definition of "Act" and in the definition of "basic model" revise paragraph (24) to read as follows:

§ 430.2 Definitions.

* * * * *

Act means the Energy Policy and Conservation Act of 1975, as amended, 42 U.S.C. 6291–6316.

* * * * *

Basic model * * *

(24) With respect to medium base compact fluorescent lamps, means lamps that have essentially identical light output and electrical characteristics and that do not have any differing physical or functional characteristics that affect energy consumption or efficacy.

* * * * *

§ 430.24 [Removed and Reserved]

4. Remove and reserve § 430.24.

Subpart F—[Removed and Reserved]

5. Remove and reserve Subpart F, consisting of §§ 430.60 through 430.75, and Appendix A and B to subpart F of part 430.

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

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

Authority: 42 U.S.C. 6291–6317.

§ 431.65 [Removed]

7. Section 431.65 is removed.

§ 431.135 [Removed]

8. Section 431.135 is removed.

§§ 431.173 through 431.175 [Removed and Reserved]

9. Sections 431.173 through 431.175 are removed and reserved.

§§ 431.197 and 431.198 [Removed]

10a. Sections 431.197 and 431.198 are removed.

Appendix B to Subpart K of Part 431—[Removed]

10b. Appendix B to subpart K of part 431 is removed.

§ 431.205 [Removed]

11. Section 431.205 is removed.

§ 431.225 [Removed]

12. Section 431.225 is removed.

§ 431.265 [Removed]

13. Section 431.265 is removed.

§ 431.295 [Removed]

14. Section 431.295 is removed.

15. In § 431.302 a new definition of "manufacturer of walk-in cooler or walk-in freezer" is added in alphabetical order to read as follows:

§ 431.302 Definitions concerning walk-in coolers and walk-in freezers.

Manufacturer of a walk-in cooler or walk-in freezer means any person who manufactures, produces, assembles or imports such a walk-in cooler or walk-in freezer, including any person who:

(1) Manufacturers, produces, assembles, or imports a walk-in cooler or walk-in freezer in its entirety, including the collection and shipment of all components that affect the energy consumption of a walk-in cooler or walk-in freezer;

(2) Manufactures, produces, assembles or imports a walk-in cooler or walk-in freezer in part, and specifies or approves the walk-in cooler or walk-in freezer's components that affect energy consumption, including refrigeration, doors, lights, or other components produced by others, as for example by specifying such components in a catalogue by make and model number or parts number;

(3) Is any vendor who sells a walk-in cooler or walk-in freezer that consists of a combination of components that affect energy consumption, which are not specified or approved by a person described in paragraphs (1) or (2) of this definition; or

(4) Is an individual or a company who arranges for a walk-in cooler or walk-in freezer to be assembled at his own or any other specified premises from components that affect energy consumption, which are specified and approved by him and not by a person described in paragraphs (1), (2), or (3) of this definition.

* * * * *

§ 431.325 [Removed]

16. Section 431.325 is removed.

§§ 431.327 through 431.329 [Removed]

17. Remove §§ 431.327 through 431.329.

Appendices A through C to Subpart S of Part 431—[Removed].

18. Remove Appendices A through C to subpart S of part 431.

Subpart T—[Removed]

19. Remove subpart T to part 431, consisting of §§ 431.370 through 431.373 and appendices A through D, is removed.

20a. Revise the heading to Subpart U to read as follows:

Subpart U—Enforcement for Electric Motors

* * * * *

20b. Revise § 431.381 to read as follows

§ 431.381 Purpose and scope for electric motors.

This subpart describes violations of EPCA's energy conservation requirements, specific procedures we will follow in pursuing alleged non-compliance of an electric motor with an applicable energy conservation standard or labeling requirement, and general procedures for enforcement action, largely drawn directly from EPCA, that apply to electric motors.

§§ 431.403 through 431.407 [Removed]

21. Remove §§ 431.403 through 431.407.

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