

U.S. DEPARTMENT OF ENERGY

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NOTICE OF PROPOSED RULEMAKING FOR
CERTIFICATION, COMPLIANCE, AND ENFORCEMENT

+ + + + +

PUBLIC MEETING

+ + + + +

THURSDAY
SEPTEMBER 30, 2010

+ + + + +

The Public Meeting convened in the Large Auditorium in the Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., at 9:00 a.m., Doug Brookman, Facilitator, presiding.

PRESENT

- DOUG BROOKMAN, Facilitator
- MIKE AGRONIN, D&R International
- KARIM AMRANE, Air-Conditioning, Heating and Refrigeration Institute
- ERIC ANDERSEN, Pacific Northwest National Laboratory
- VINCENT ANDERSON, Whirlpool
- TIMOTHY BALLO, Earthjustice
- DALE BASSO, WEG Electric Corp.
- JEFF BAUMAN, Continental Refrigerator
- DALE BENNET, Carrier Corporation
- ROBERT BOTELER, Emerson Motor Technologies
- BILL BROWN, General Electric
- DEBRA BRUNK, Navigant Consulting
- MILTON BUSH, American Council of Independent Laboratories
- CHRISTOPHER K. CARR C2E2 Strategies, LLC

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PRESENT (CONT.)

CHRISTINE CHANG, National Resources Defense
Council
KELLY-ANN CHISHOLM, Natural Resources Canada
JENNIFER CLEARY, Association of Home Appliance
Manufacturers (AHAM)
STEVE COMBS, International Cold Storage
KEITH COOK, Philips
GREG COULTER, Prolec General Electric
ELLIS CRAIG, Craig Industries
DANIEL CRONIN, ICF International
PAUL DANA, A.O. Smith Water Products Company
JOHN DAIVS, Traulsen
RONALD O. BAUBACH, Sylvania
ANDREW deLASKI, Appliance Standards Awareness
Project
PETE DeMARCO, International Association of
Plumbing and Mechanical Officials
(IAPMO)
MARY ANN DICKINSON, Alliance for Water
Efficiency
PAUL DOPPEL, Mitsubishi Electric
MARK DUFFY, General Electric Lighting
JAMES MICHAEL EDWARDS, BSH Home Appliances
DARYL ERBS, Manitowoc Ice
BARBARA FABIAN, Owens Corning
JOHN FICHERA, Osram Sylvania
JESSICA FREND, Steptoe & Johnson
JEFFERY GREENBLATT, Lawrence Berkeley National
Laboratory
DEREK GREENAUER, D&R International
DAVID BEN GRIFE, Arctic Industries
CHARLES GROSS, IAPMO
CHARLES HON, True Manufacturing Inc.
DIANE JAKOBS, Rheem
CHRISTOPHER JOHNSON, LG Electrics
BARRY KALIAN, Underwriters Laboratory
CLAIRE KAMMER, Underwriters Laboratory
BOB KELLER, Nanopore Insulation, LLC
MILEN KIRILOV, Carpenter Co.
KELLEY KLINE, General Electric Appliances and
Lighting
STEVE KOUSKI, Carpenter Co.

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PRESENT (CONT.)

FRANK LADONNE, Underwriters Laboratory
HARMON LEWIS, American Panel Corporation
JOHN MALINOWSKI, Baldor Electric Company
DAN MANOLE, Ingersoll Rand
JOSEPH MATTINGLY, Air-Conditioning, Heating,
and Refrigeration Institute (AHRI)
JOANNA MAUER, Appliance Standards Awareness
Project
MARK MENZER, Intertek
FRED MINELLI, Kysor Panel Systems
ANDREW MOORE, Mitsubishi
JUSTIN NEUMANN, NEMA
JEFF NICHOLS, Johnson Controls, Inc.
MICHAEL PERRODIN, Hill Phoenix Watkins
SALLY REMEDIOS, Delta Faucet Company
R. DOUGLAS ROBERTS, ThermoCor
CHUCK SAMUELS, Association of Home Appliance
Manufacturers (AHAM)
TIM SCHUMANN, SEW Eurodrive
SRIRAM SOMASUNDARAM, Pacific Northwest
National Laboratory
FRANK STANONIK, Air-Conditioning, Heating, and
Refrigeration Institute (AHRI)
MANFRED STAEBLER, BSH Home Appliance
Corporation
CHARLIE STEPHENS, Northwest Energy Efficiency
Alliance
JOAN STERLING, Intertek Testing Services NA
BILL STOMPF, Bally Refrigerated Boxes
CHRIS STONE, Clasp
JACOB TALBOT, ACEEE
JOHN TALBOT
BILL TRITSIS, Air-Conditioning, Heating, and
Refrigeration Institute (AHRI)
JEFF VAN SLOUN, Owens Corning
JIM VERSHAW, Ingersoll Rand
SETH VOYLES, Hearth, Patio & Barbecue
Association (HPBA)
GREGORY WAGNER, Morrison Products, Inc.
KIMBERLY WAGONER, ERG
ROBERT WILBUR, North American Association of
Food Equipment Manufacturers (NAFEM)

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PRESENT (CONT.)

JIM WISEMAN, Schneider Electric

DEPARTMENT OF ENERGY STAFF

ASHLEY ARMSTRONG

LAURA BARHYDT

TIMOTHY LYNCH

MICHAEL McCABE

STEPHANIE WEINER

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P-R-O-C-E-E-D-I-N-G-S

9:06 a.m.

WELCOME

MR. McCABE: Let's get started.

Given the weather and the number of people and with the security here, I'll make apologies to folks who are not here in that there are still some who are checking through the security. But for those who are familiar with our regulatory process in public meetings, you'll recognize this is quite a bit different than what we've done in the past.

And we've had about plus 150 people have asked to -- have indicated they're going to be here today. And so we've moved to the large auditorium. Normally we're in a much more informal process. But we hope that we'll be able to continue some of the informality with a give and take, back and forth and trying to understand the issues.

This is the first major revision that we have made to our certification and

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1 enforcement rule. And actually I might even
2 pause and back up. Some of you recognize and
3 some of you don't even have a clue as to who I
4 am.

5 (Laughter.)

6 I'm Michael McCabe. I am the
7 Supervisor of the Department's Regulatory
8 Programs here within the Building Technologies
9 Program. In that capacity, I am responsible
10 for the Department's Appliance Standards
11 Program, the Test Procedures, our Energy Star
12 Test Procedure activities as well as our
13 Building Code activities. I've been
14 associated with the -- for the Department's
15 Appliance Standards Program for only a short
16 while since as I like to put it tongue in
17 cheek since February of 1979.

18 When we had our first public
19 meeting on certification enforcement which was
20 August of 1980 we were in a very different
21 auditorium, but it was even as crowded as
22 we're expecting today to be. People were --

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1 We had French doors in that auditorium.
2 People were opening the doors, hanging
3 outside, because that day in Washington was
4 about 100 degrees Fahrenheit.

5 Today is a little bit cooler, but
6 a lot wetter. But with this we hope that it
7 will be a lot more comfortable for everybody.

8 But we do expect that there will be
9 questions. There will be some frustrations.
10 This is a significant issue for manufacturers
11 and for others.

12 We understand that there is a cost
13 element here. The purpose of this meeting is
14 to exchange information to get ideas with
15 regards to the notice of proposed rulemaking
16 that we've published.

17 There have been -- There are a
18 number of issues regarding certification
19 enforcement that are not being addressed in
20 this process. We expect as we discussed in
21 the proposed rule to have a follow-on
22 rulemaking that will get into some of the more

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1 product-specific issues so that I will
2 constantly apologize. But I'll apologize in
3 advance that if we get into a discussion that
4 is outside the bounds of this rulemaking we
5 may try -- we may cut it off and ask you to
6 submit those comments in writing because
7 they'll be useful for the next rulemaking.

8 But if there's an issue that's
9 beyond what we are able to address in this
10 rulemaking, what we intend to address in this
11 rulemaking, we're not going to be able to do
12 anything with it in the final rule. And
13 spending too much time on that while it's
14 important for us to hear that for the upcoming
15 activities it will take away from the person
16 sitting next to you and sitting behind you who
17 has issues regarding this rulemaking and the
18 proposed rule that it may be questions. It
19 may be information that is a relevance that
20 could be enlightening to us that if we take
21 away from that person being able to speak it
22 will affect the quality of the rulemaking.

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1 So please we encourage you. We
2 ask you to focus on what is the subject of the
3 today's notice of proposed rulemaking and we
4 can focus on that. We encourage a full and
5 open dialogue. We encourage different
6 opinions because having that back and forth
7 that we find in our normal environment,
8 normally we have the normal layout for our
9 public meetings. It's a U-shaped conference
10 table. The interested parties sitting around
11 that. We have an exchange back and forth.
12 We're going to try to get some of that today,
13 but just given the layout it's going to be
14 very difficult.

15 I'd like to -- With that, I'd like
16 to introduce Tim Lynch who is -- I notice
17 you're Assistant General Counsel or Deputy
18 General Counsel for Litigation and Enforcement
19 who is our partner in the Program Office in
20 putting together the Certification Enforcement
21 Program, the regulations and implementing it.

22 So let me introduce Tim.

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1 MR. LYNCH: Good morning.

2 (Chorus of good mornings.)

3 I'd like to begin by encouraging
4 that people in the back to come forward. This
5 isn't law school where you can be the back
6 benchers. Come on up. Come on up sometime at
7 least at some point during the day.

8 My name is Timothy Lynch. I'm the
9 Deputy General Counsel for Litigation and
10 Enforcement in the Office of the General
11 Counsel. And on behalf of the General
12 Counsel, I'd like to welcome you today to this
13 public forum on our proposed rule.

14 I can tell you that this proposed
15 rule is the product of literally hundreds of
16 hours of work by attorneys, by engineers, by
17 program staff. We have worked very hard on
18 this proposed rule. I can tell you we've done
19 our very best.

20 And yet this is a human project.
21 This is not perfect. And there may be things
22 we didn't get it right. There may be things

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1 that are not clear. There may be things that
2 we could improve upon. There may be technical
3 changes. There may be substantive changes.
4 We're very interested in learning your views
5 on our proposed rule so that we can make it
6 the best rule we can. And that's part of why
7 we're doing this today and as well as why we
8 will be reviewing all of the written comments
9 as well.

10 I want to talk to you just a
11 little bit about the Office of Enforcement
12 that we're building. As you probably know for
13 many years there has not been a significant
14 enforcement effort from the Department of
15 Energy. And that has recently changed. And
16 that change reflects the priorities of the
17 General Counsel, Scott Harris, and the
18 Secretary of Energy, Steve Chu, himself.

19 As part of this renewed
20 enforcement effort, we are making significant
21 progress in enforcing our energy efficiency
22 regulations. And in this past year we have

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1 taken a number of steps to do this. I was
2 brought in -- Before I came here, there was a
3 deputy general counsel for litigation. My
4 position was specifically created to add a
5 deputy general counsel for litigation and
6 enforcement. so that reflects the seriousness
7 with which enforcement efforts are being
8 taken.

9 And in the past year we have built
10 on that mandate. We have brought 76
11 enforcement cases and investigations. Just
12 three weeks ago we brought 27 enforcement
13 cases on one day. These were certification
14 violations and this was largest tranche of
15 cases brought on one day in the Department's
16 history. And of those 27 cases we've already
17 settled 13 of them.

18 We've secured over \$300,000 in
19 penalties. We are bringing more cases. Just
20 to give you a sense of the resources that are
21 being dedicated to enforcement issues, over
22 the past few months more than 30 attorneys in

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1 the Office of General Counsel have been
2 working on enforcement, investigations and in
3 cases.

4 So this clearly is a priority of
5 the Department. And one of the reasons it's a
6 priority of the Department is that it's just
7 time. It's time for this to take place. This
8 is what Congress intended when it enacted our
9 statute. It's what consumers want and what
10 they deserve.

11 And frankly one of the things
12 we're learning is that it is what
13 manufacturers want. We get a lot of our tips
14 from you about other competitors who are not
15 complying with the regs.

16 And one of the reasons that's
17 important is that competitors should not get
18 an unfair competitive advantage by marketing
19 their products and not complying with our
20 regulation. So what we're doing is to try to
21 make sure there's a level playing field among
22 and between manufacturers and distributors and

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1 making sure that these regs. are enforced.

2 And part of this project today,
3 this public rule, is part of this continuing
4 effort on enforcement. We're looking to make
5 improvements to the enforcement regulations
6 and we're looking for your comments so that we
7 can make them better.

8 In particular, I've been working
9 very closely with Laura Barhydt who you know
10 who is helping me build this Office of
11 Enforcement and we are very interested in your
12 comments. I will tell you that I have
13 meetings today. I'm going to be in and out.
14 But I will be very interested in learning what
15 you have to say.

16 So thank you very much for your
17 time.

18 ATTENDEE INTRODUCTIONS AND AGENDA REVIEW

19 MR. BROOKMAN: Good morning,
20 everyone. My name is Doug Brookman from
21 Public Solutions in Baltimore. I'll be
22 facilitating today's meeting.

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1 I think all of you have received a
2 packet of information as you came in the door.

3 I'm going to be doing a very brief agenda
4 review. You also received a packet of
5 PowerPoint slide materials. That will be the
6 material that will be flashed up on the
7 screen.

8 There are many people that are
9 joining us by web for this conference today.
10 So glad you could join us those of you who are
11 listening in via the web.

12 All of you have a copy of the
13 agenda. As I said, immediately following this
14 agenda review we'll have a brief introduction,
15 perhaps an overview, from Ashley and Laura.

16 Following that there's an opportunity
17 for brief opening remarks from interested
18 parties. That is summary statements, a minute,
19 no more than two, perhaps at a high level we
20 would hope on your key issues and concerns
21 regarding this proposed rule.

22 How many of you wish to make an

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1 opening statement this morning?

2 (Show of hands.)

3 Not so awfully many. Okay. Well,
4 we've allocated a significant amount of time
5 to do this. But if you could keep them brief,
6 that will make it easier to then get into the
7 more detailed content.

8 We intend to take a break
9 midmorning around about 11:00 a.m. or so.
10 We'll direct everyone to coffee at that point.

11 (Background hammering noise.)

12 Then immediately following the
13 break we'll go into the scope, reorganization
14 of DOE's existing CCE regulations, applying
15 DOE's existing CCE regulations to other
16 covered products, and basic model provisions.

17 We'll see if we can stop the hammering that's
18 going on.

19 We'll take lunch midday around
20 about noon. And then following lunch
21 certification, enforcement testing,
22 adjudications, verification testing,

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1 additional product-specific discussion, and
2 issues for which Doe seeks comment. The
3 general format for this many of you are
4 familiar with. How many of you are new to
5 this kind of proceeding?

6 (Show of hands.)

7 Several of you. Perhaps one-
8 third. The way this generally works is that
9 Department will push -- you'll have a flash on
10 the screen -- information and a description of
11 what it's trying to convey. And then we'll
12 also create a comment box, a specific
13 opportunity for you to comment on those
14 issues. So we try and keep it organized in
15 that fashion and it's easier for all the
16 commentors to fit their comment in that
17 segment if you're with me. And also it's
18 easier for the Department to then interpret
19 all the comments that it receives both here in
20 this public meeting and in written form.

21 We'll take a break mid afternoon
22 around about 2:15 p.m. or so. Then after the

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1 afternoon break there's yet an opportunity for
2 closing remarks, other key issues that
3 individuals wish to raise. The Department
4 wants very much to provide an opportunity for
5 you to have ample comment on these issues.
6 These are important to you. That's what they
7 want to do.

8 We'll close this afternoon
9 whenever we get there, 3:30 p.m., 4:00 p.m.,
10 whenever. The next steps and then also
11 closing remarks. And as listed in the agenda
12 we intend to adjourn today at 4:00 p.m. We'll
13 see where we end up. Okay.

14 Questions or comments before we
15 proceed?

16 (No verbal response.)

17 So now we're going to have an
18 introduction. Ashley Armstrong.

19 Oh, I should say one more thing.
20 You can see up here on this flip chart. It
21 asks for your consideration. We've developed
22 what I think is courtesy over the span of 15

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1 plus years in these Appliance Standards
2 meetings if you could please speak one at a
3 time. Each time you speak at the microphone -
4 - you see there are four of them around the
5 room -- please say your name for the record so
6 we know who's here.

7 Typically we do introductions.
8 But with 100 of us here in the room it's going
9 to be hard to do. Everybody registered. So
10 the Department has a complete record of who is
11 here. I'm going to cuing people as best as
12 possible. We also wish to encourage follow-
13 on. It will be literally a cue that will form
14 behind each one of these microphones and we'll
15 alternate them around the room.

16 If you could try to be concise,
17 share the air time and also keep the focus
18 here. Please turn your cell phones on silent
19 mode so we limit the interruptions.

20 Ashley.

21 INTRODUCTIONS

22 MS. ARMSTRONG: Good morning,

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1 everyone. My name is Ashley Armstrong. For
2 those who I haven't had the pleasure of
3 meeting, I'm now in the Department of Energy
4 in the Buildings Program.

5 The purpose of today's public
6 meeting is to present our proposed revisions
7 to the Certification, Compliance and
8 Enforcement Regulations, to seek comments from
9 you guys as well as discuss specific questions
10 raised. You'll notice as we go through the
11 public meeting there will be issue boxes
12 throughout the presentation for which will
13 help facilitate a discussion of those issues.

14 As you have questions as we go along, I would
15 encourage you to make your way to the
16 microphone so that everyone can hear you. And
17 we'll go from there.

18 Okay. So here are the steps of
19 the current Certification and Compliance and
20 Enforcement rulemaking. We've already
21 published a notice of proposed rulemaking on
22 September 16th. We're having the public

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1 meeting today. The comment period is open for
2 written comments until October 18th. And we
3 plan to review all the comments, both those
4 from today's meeting as well as those written.

5 And the final rule is expected to be issued
6 by the end of the year.

7 This slide just provides you with
8 a little bit of a history regarding
9 certification, compliance and enforcement for
10 the covered products and covered equipment.
11 It shows a variety of our existing provisions
12 and method both in Parts 430 and 431.

13 Now I'm going to let Doug
14 facilitate a discussion of your opening
15 remarks and your comments from interested
16 parties.

17 BRIEF OPENING REMARKS FROM INTERESTED PARTIES

18 MR. BROOKMAN: Thank you. So any
19 of you that wish to do so please just come up
20 to the microphone and let's get started with
21 these comments.

22 Yes please. And if you would say

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1 your name please.

2 MR. CRAIG: My name is Ellis Craig
3 with Craig Industries, Quincy, Illinois. And
4 we have two or three comments.

5 We're new to this. Our industry
6 is fairly -- Well, it's not even totally
7 regulated yet. But it's being worked on. And
8 DOE is working on some projects that will
9 affect our company quite a bit and the
10 companies in our industry.

11 MR. BROOKMAN: You have just a
12 couple minutes worth of comments.

13 MR. CRAIG: Yes.

14 MR. BROOKMAN: Okay. Great.

15 MR. CRAIG: I'm not reading this
16 whole thing.

17 MR. BROOKMAN: Thank you.

18 MR. CRAIG: You're safe. I've just
19 got some notes at the top of it. Okay.

20 We have three areas that I just
21 want to make real quick comments. One of them
22 is our industry is full of small businesses.

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1 Some have been recognized by the Department of
2 Energy. But many have not.

3 We show in your document that the
4 Department of Energy has recognized around 45
5 small businesses in the walk-in cooler
6 business. And there are probably another 50
7 to 100 that are small garage shop operations
8 that build units one at a time, whatever, over
9 the years. And all of these regulations bring
10 a cost that will probably put 90 percent of
11 those guys out of the business and of the 40
12 left it should probably put about 75 percent
13 of those out of the business by the time we
14 add the cost involved with these regulations.

15 And we think it's kinda unfairly damaging to
16 small businesses. And we just want to bring
17 that to the DOE's attention.

18 Number two is we want to say that
19 there's -- It was kinda thrown in, but in the
20 document that we received on this no par, it
21 talks about the description of who the
22 manufacturer is in our industry. And in our

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1 industry we don't build a product, put it in a
2 box, ship it out, plug it into the wall and it
3 turns on.

4 There are a lot of parties
5 involved. DOE is recognizing that. But in
6 the definition that we got that evidently
7 legal wants to have some input on is that who
8 that definition of the walk-in manufacturer is
9 is anybody who has any input over the
10 selection of the material that goes into a
11 walk-in and makes that final decision is now
12 defined as the manufacturer. And more or less
13 that's kinda of simple definition the way we
14 understand it.

15 But they're excluding the
16 installers who install this product in the
17 field. And in the definition that the DOE is
18 using it says that anybody who imports,
19 manufactures -- They go through several and
20 one of them is assembles walk-ins.

21 But for some reason in this
22 article that we -- in this document that we

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1 were given they're excluding the installer
2 unless the installer actually fixed the
3 material that goes into the walk-in. And we
4 as the manufacturer and other manufacturers
5 have continually brought the attention to the
6 DOE that the installers can have more of an
7 impact on the energy use of that walk-in than
8 probably the manufacturers can.

9 So all the efforts that are going
10 forth right now are based strictly on the
11 people who build products but not the ones
12 that are putting them together. And it's a
13 great concern of ours that all the efforts
14 that are going forth are probably not going --
15 Our big question is -- an example would be --
16 we can build the right product. We can meet
17 the certification.

18 We can send it out in the field,
19 the guy who picks it -- whether we do or the
20 guy in the field who picks it becomes the
21 manufacturer which is fine. But when it goes
22 to being installed if it's installed

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1 incorrectly or not according to specifications
2 and that's a noncompliant product out there
3 and somebody complains to the DOE, who does
4 the DOE Legal Department come after? As it is
5 right now, the way this law is written, they
6 don't go after the guy that installed it.
7 They can only go after the manufacturer or the
8 guy who selected the product.

9 And that's a real concern to us
10 because we're really building parts to be
11 assembled as a walk-in in the field which
12 really the person who is assembling it in the
13 field can verify all the testing is being done
14 by other people.

15 MR. BROOKMAN: Okay.

16 MR. CRAIG: And I'm going to --
17 I'll jump on here.

18 MR. BROOKMAN: Okay.

19 MR. CRAIG: Our concern is that.
20 The last thing I wanted to say is we don't
21 understand the basic unit concept in our
22 industry. And I've read all the documents.

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1 And I'm more confused now than I was at the
2 beginning. We don't know what is going to be
3 defined as a basic unit. Is there going to be
4 100 basic units for us or not? We don't know.

5 Because every walk-in -- Seventy percent of
6 the walk-ins we build are custom. Okay.
7 That's it.

8 MR. BROOKMAN: You've participated
9 in these proceedings previously?

10 MR. CRAIG: Yes.

11 MR. BROOKMAN: So you know the
12 Department wants to see your comments also in
13 writing.

14 MR. CRAIG: They're already in
15 there.

16 MR. BROOKMAN: Yes. And also
17 those specifics around employment impacts and
18 that kind of stuff, how it will affect small
19 businesses. That's stuff the Department
20 really wants to see.

21 MR. CRAIG: Yes.

22 MR. BROOKMAN: Okay.

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1 Andrew, were you next?

2 MR. deLASKI: Thanks Doug. And
3 thanks to the Department for holding this
4 workshop today on critical NOPR. I'm Andrew
5 deLaski with the Appliance Standards Awareness
6 Project. And I want to make a couple of high
7 level comments with regard to the proposed
8 rule today. And I'll look forward to
9 participating in the detailed comments later
10 on this afternoon or this morning.

11 First, I want to congratulate the
12 Department and thank you for advancing this
13 proposed rule and for your actions as you
14 described in the opening remarks to enhance
15 enforcement of appliance standards. As it's
16 been noted, it's long overdue and most welcome
17 to have a more rigorous effort to make sure
18 that we're getting the savings and a level
19 playing field for manufacturers in setting
20 appliance standards.

21 The proposal before us today makes
22 many critical strides forward. And I want to

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1 highlight just a few strides forward although
2 there's a lot. But I just want to emphasize
3 three.

4 One, it make clear that a change
5 in efficiencies on a new basic model. That's
6 a critical improvement.

7 Secondly, it makes clear that DOE
8 can initiate enforcement actions on its own
9 volition, not with just a third party
10 complaint. But DOE on its own can initiate
11 enforcement actions. It's a critical reform.

12 Third, it makes the certification
13 data is subject to public disclosure.

14 These are just three of the
15 important reforms in the NOPR. There are many
16 more. There's a lot of meat there. We think
17 in general there's a lot of things here that
18 are quite positive.

19 But -- and I guess you knew this
20 part was coming -- there are few places where
21 it falls short. Some of which DOE
22 acknowledges in the proposed rule in stating

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1 that you're deferring some critical issues to
2 a sequent rulemaking. But some of which are
3 almost the proposed rule was silent. There
4 are quite a few, but I want to highlight just
5 three in these opening remarks.

6 First, we think this is absolutely
7 critical to a successful enforcement effort is
8 verification testing. The proposed rule says
9 that you're going to defer verification
10 testing to a subsequent rulemaking.

11 We're concerned that this be put
12 off too far into the future because the
13 interaction of verification testing with
14 what's in the rule today has critical
15 implications for what's acceptable and what
16 would work and what you're proposing today.
17 You need to look no further than the
18 preliminary results from DOE's first round of
19 verification testing for the Energy Start
20 Program to see that the critical need for
21 check or spot testing is absolutely clear.

22 We know it's preliminary testing.

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1 The sample sizes are small. The second round
2 testing hasn't been done yet. But the
3 preliminary testing certainly is alarming to
4 what we're seeing in the Energy Star
5 verification testing.

6 If you don't do verification
7 testing, you simply cannot answer the most
8 basic questions about the integrity of
9 national standards. Are our consumers getting
10 the savings promised? Is the nation gaining
11 energy reductions? The energy waste
12 reductions intended? And are manufacturers
13 most of whom play by the rules getting a level
14 playing field on which to compete?

15 Secondly, lab accreditation. In
16 our view all labs must be accredited including
17 and especially lab use for manufacturers self-
18 certification. But NOPR is silent on this
19 question. Lab accreditation is a point of
20 major concern for us.

21 Thirdly, waivers. Last spring in
22 the request for information DOE solicited

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1 comments on waivers. DOE asked "Should
2 manufacturers be required to seek waivers when
3 a test method does not reasonably represent a
4 product's efficiency?"

5 Right now, manufacturers have
6 ample incentive to seek waivers if a method
7 overestimates energy use or simply can't be
8 tested under the test method but zero
9 incentive to do so if it underestimates energy
10 use. Now we've all heard stories of
11 manufacturers who or at least a story of a
12 manufacturer who specifically designed the
13 product to trick the test method. Technology,
14 software, smart products offer the potential
15 for a product to simply detect test conditions
16 and alter its operation.

17 If DOE were to require that
18 manufacturers seek waivers for products that
19 the manufacturer knows significantly deferred
20 from the tested results that would provide a
21 mechanism to address the sort of deliberate
22 circumvention of test methods.

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1 In addition, the number of waivers
2 alerts DOE of a problem with its test methods.

3 DOE is giving much work into the test methods
4 and that's very, very welcome. It's a
5 welcomed change. But the number of waiver
6 applications is a mechanism for DOE to
7 determine which test methods are most need of
8 attention for modification for updating.

9 Those are my opening remarks.
10 Thank you very much.

11 MR. BROOKMAN: Thank you.

12 I believe I'll go to here next.
13 Is it Jennifer. Your name for the record
14 please. And then after that we'll go to here
15 and then back over here.

16 MS. CLEARY: Jennifer Cleary with
17 the Association --

18 MR. BROOKMAN: Louder, Jennifer.

19 MS. CLEARY: Jennifer Cleary with
20 the Association of Home Appliance
21 Manufacturers. AHHM is a strong supporter of
22 redoubling efforts to improve public

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1 confidence in reported energy use.

2 Corporate integrity and competitor
3 oversight have long provided an excellent
4 record of compliance with Federal requirements
5 in the appliance sector in particular. If
6 tighter standards, changes in design and
7 technology and public and government
8 perception require additional assurance of
9 certification and labeling compliance, we
10 support development of appropriate programs
11 and requirements and appreciate the
12 opportunity to be involved in that
13 development.

14 It is critical, however, that
15 enforcement regulations are not over
16 burdensome in order to be successful and that
17 they do not provide redundant and duplicative
18 testing of the same product which only adds to
19 cost with no complimentary gains in oversight.

20 In that regard, AHHM strongly
21 urges DOE to leverage third party verification
22 programs developed by industry, trade

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1 associations such as AHHM. These independent
2 programs often provide the most cost effective
3 use of limited lab testing space and can
4 provide a high level of competency yielding
5 more accurate compliance oversight.

6 We will further discuss this in
7 our later comments.

8 MR. BROOKMAN: Thank you.

9 I believe you were next. Your
10 name.

11 MS. CHANG: My name is Christine
12 Chang and I'm a legal fellow at the Natural
13 Resources Defense Council.

14 NRDC appreciates DOE's effort to
15 revise and expand its regulations in this
16 area. I would like to highlight today just a
17 few areas that require further DOE
18 consideration.

19 The first is on verification
20 testing. NRDC supports the development of a
21 verification program. And I would like to
22 emphasize what Andrew deLaski just said in

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1 that it's critical for the verification
2 program to be developed concurrently with this
3 proposed rulemaking or shortly thereafter
4 because of how interconnected the
5 certification, compliance and enforcement
6 mechanisms are.

7 The interim results of Energy Star
8 verification testing has showed that 17
9 percent of the units tested exceed Energy Star
10 usage specifications by five percent or more.

11 These alarming results should provide DOE
12 further motivation to develop their
13 verification program now. I won't go into the
14 details of what we suggest for a verification
15 program but just want to emphasize that any
16 verification testing should be done off the
17 shelf and by independent, accredited
18 laboratories.

19 On recertification, DOE proposes
20 an annual recertification requiring yearly
21 resubmission of test data from the initial
22 certification. Instead of this, NRDC believes

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1 that it would be more effective if there is
2 regular recertification which would require
3 new laboratory testing. The frequency of this
4 recertification would depend on product-
5 specific factors as well as a production cycle
6 and whether there is any change in energy
7 usage above a de minimus threshold. And these
8 would all be product-specific so as not to
9 unduly burden manufacturers. We also support
10 a laboratory accreditation program similar to
11 the Energy Star accreditation program.

12 Finally, on public disclosure, we
13 urge DOE to clarify that manufacturers must
14 submit full test data including actual
15 performance results rather than just the final
16 result that a given product meet the Federal
17 minimum standard. In the development of a
18 verification program, we would also like
19 individual model data to all be made public.
20 And we think that DOE should establish a
21 public database to be the repository for all
22 of this information to increase transparency

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1 and public access.

2 We will be submitting written
3 comments to further discuss these topics and I
4 want to thank you for your time and for the
5 opportunity to speak today.

6 MR. BROOKMAN: Thank you.

7 Tim, I think this gentleman was
8 next. You're next.

9 MR. DeMARCO: My name is Pete
10 DeMarco. I'm with the International
11 Association of Plumbing and Mechanical
12 Officials. That's IAPMO. I'm here today
13 representing IAPMO R&T which is a third party
14 certifier of plumbing products. We are the
15 largest third party certifier of plumbing
16 products in North America.

17 I'd like to applaud DOE for having
18 this listening program and continuing the
19 process of hearing your stakeholders. I think
20 it's critical to arriving at the right balance
21 in these deliberations.

22 The scope of my comments should be

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1 limited to the consumer products that pertain
2 the plumbing side of the equation here. So
3 it's toilets, urinals, faucets and shower
4 heads.

5 We support the DOE's effort
6 through this process to increase compliance.
7 We think that's critical. I think there's
8 been a lot of -- We think there's been a lot
9 of confusion in the industry in terms of what
10 those requirements are. And we feel that
11 there is a need for DOE to provide additional
12 clarity to manufacturers specifically into
13 what those requirements are so they understand
14 what they need to do in the reporting process.

15 We support the goal of harmonizing
16 reporting requirements with FTC reporting
17 requirements in our industry. We think that's
18 a great idea and support that concept.

19 We support continuing allowing
20 manufacturers in our industry to allow self-
21 testing and self-certification of these
22 particular consumer products only because the

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1 plumbing industry is already a very highly
2 regulated industry for plumbing products.
3 They already for code compliance. There's a
4 need to independently test and certify all of
5 those products with a third party
6 certification entity already in place. That's
7 been going on for years.

8 And hence we don't feel that
9 additional verification or testing
10 independently is necessary. However, we do
11 suggest that or recommend that when a third
12 party provides those services to a
13 manufacturer that the labs that are using or
14 that have applied for that reporting be
15 accredited laboratories.

16 And finally once again we hope
17 that DOE can once these rules have been
18 arrived at that there is a greater outreach
19 program to manufacturers so that they
20 understand exactly what their requirements
21 are. Previously before working with IAPMO, I
22 worked for a long time with a plumbing

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1 manufacturer and I happen to know that there's
2 a lot of confusion among some of my colleagues
3 in the industry as to what those requirements
4 were.

5 MR. BROOKMAN: Okay. So your
6 written remarks in detail will be helpful for
7 the Department.

8 MR. DeMARCO: Will do.

9 MR. BROOKMAN: Tim Ballo.

10 MR. BALLO: Tim Ballo with
11 EarthJustice. First, I just want to thank the
12 Department for all the work you've done in
13 putting this proposal together. I'd like to
14 amplify or at least just second some comments
15 that Natural Resources Defense Council and the
16 Appliance Standards Awareness Project made
17 particularly about annual certification.

18 The determination of when
19 something has been modified if anyone is
20 familiar with the EPA's New Source Review
21 Program under the Clean Air Act when something
22 is modified can often be a very difficult

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1 determination to make. So we support an
2 annual certification particularly in actual
3 retesting to certify the products, not just a
4 resubmission.

5 Secondly, reading those the regs.,
6 folks may have seen me outside this morning as
7 I went through them, there were some
8 inconsistencies. For some products there is a
9 NADRAB (phonetic) certification requirement
10 for the certification testing. For example,
11 many of the lighting products have to be --
12 the labs have to be NADRAB certified.

13 Other products don't. We support
14 NADRAB certification for all certification
15 testing labs and the Department at least needs
16 to explain why it believes that certification
17 is necessary for some products and not for
18 others.

19 Secondly, the tolerances, the
20 confidence intervals for our product specific
21 they tend to vary quite a bit from 90 up to 99
22 percent generally. There may be a valid

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1 justification for some of those variances.
2 But we'd like to see a little more explanation
3 of why the Department proposes to retain the
4 wide variances in confidence intervals. And
5 particularly for many of these confidence
6 intervals they may have been set 10, 20, maybe
7 30 years ago. And it was my assumption that
8 manufacturing processes have improved in the
9 interval such that the confidence intervals
10 that would have been appropriate at the time
11 these both were initially set may no longer be
12 appropriate and need to be reexamined.

13 And finally with regard to the
14 alternative efficiency determination
15 methodologies, they also tend to vary product
16 to product. The Department maybe should look
17 at harmonizing those to the extent possible.
18 It might help simplify the regulations and
19 make them more consistent.

20 Thanks.

21 MR. BROOKMAN: Thank you.

22 Please.

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1 MS. DICKINSON: Good morning. My
2 name is Maryanne Dickinson. I'm the President
3 and CEO of the Alliance for Water Efficiency
4 which is a nonprofit, national stakeholder
5 based organization comprised of 312 member
6 organizations from water utilities, government
7 agencies, business, industry, plumbing and
8 appliance and irrigation manufacturers,
9 retailers, environmental and energy efficiency
10 advocates and other stakeholders. I'm very
11 pleased to be here today at this DOE
12 proceeding precisely because you are now
13 considering issues related to water and we're
14 very happy to see that.

15 Since the addition of water
16 consumption requirements in EPACT in the early
17 1990s we feel that the water has not exactly
18 been a priority for DOE enforcement or
19 verification testing. We all know that a
20 strong nexus exists between water and energy
21 use in pumping, treatment, heating and cooling
22 and especially in power production. The real

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1 loser in a lack of enforcement has been the
2 consumer who knowingly or unknowingly wastes
3 water and thus wastes energy.

4 Manufacturers who have complied
5 with the Federal requirements in good faith
6 for water consumption have been put at a
7 competitive disadvantage because of this lack
8 of enforcement relative to those manufacturers
9 particularly from out of the country who have
10 not. Energy, water and waste water utilities
11 have had to struggle with water capacity
12 constraints or overbuild their infrastructure
13 in part due to excess water use. The Federal
14 Government and state and local government
15 interests have also been impacted with water
16 waste increasing the need for public funding
17 and energy, water and waste water research and
18 infrastructure projects.

19 So thus we are pleased at the
20 Alliance to CDOE take recent enforcement
21 actions on certification during 2010.
22 Hopefully, revised DOE rules will improve the

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1 enforcement of applicable energy and water
2 conservation standards for covered products.

3 We are providing detailed comments
4 per DOE's request. And we'd like to urge DOE
5 to provide the necessary resources for
6 continued enforcement particularly for
7 verification testing based on the invisible
8 and perhaps nonexistent enforcement of water
9 provisions of EPACT over the past 16 years.

10 In our detailed comments, we go
11 through a number of issue areas and I won't
12 take the time to do that here. It's all in
13 writing, but there are four areas which DOE
14 was seeking comments on which I just briefly
15 want to make a few statements on.

16 One concerns the basic model. An
17 individual model-by-model declaration burdens
18 we feel manufacturers with excess filings
19 while not providing significant new
20 information on all those different models. We
21 believe you should allow manufacturers to
22 group models having similar energy and water

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1 use characteristics and file them as one or
2 more basic model bundles which would not
3 require a refiling.

4 Any model contained in a basic
5 model bundle would need to meet DOE criteria,
6 specification, testing results, etc.
7 Manufacturers should be allowed to bundle
8 their models with a not less than/not more
9 than energy and water use designation as they
10 prefer. It would be the manufacturer's
11 responsibility to frequently update DOE on all
12 individual models contained in that model
13 bundle prior to initiating sales. We make
14 this recommendation to try and ease the burden
15 not only on the manufacturers but also on DOE
16 oversight.

17 The issue of verification testing
18 has been raised by a number of speakers. And
19 we would like to go on record as being
20 strongly opposed to the concept of
21 manufacturer self-testing and self-
22 certification especially given the prevalent,

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1 unproven product claims that appear in today's
2 marketplace. Instead we recommend that DOE
3 look at US EPA's Water Sense Program model
4 which requires independent third party testing
5 by accredited certification bodies.

6 DOE should randomly select product
7 from retail distributors, importers or other
8 outlets for periodic independent testing.
9 Upon satisfactory testing the product could
10 then be returned for retail distributors for a
11 modest restocking fee. We recommend that
12 testing not be conducted using a cherry-picked
13 set of samples sent directly from
14 manufacturers to their agents.

15 Products that fail to meet DOE
16 specifications after this initial testing
17 would then enter a second round of testing
18 which would include larger sample sizes from
19 multiple retailers selected by an independent
20 tester. And we go into more detail in our
21 comments.

22 And we have two more comments on

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1 the DOE issues on which you were seeking
2 comment, but I think in the interest of time I
3 will stop here.

4 MR. BROOKMAN: Thank you.

5 MS. DICKINSON: Thank you.

6 MR. BROOKMAN: That's considerate.

7 You're next.

8 MR. KELLER: My name is Bob
9 Keller. I'm with Nanopore Insulation. It's a
10 joint venture between M4 Incorporated
11 (phonetic) and CLR Incorporation (phonetic).

12 The comments I liked to make may
13 or may not be specific to this rulemaking.
14 I'll keep them brief. But I think they are
15 worthy of mention anyway. They are specific
16 to validation testing and the actual
17 specifications themselves.

18 What we've seen and we do applaud
19 of course the increase in the regulations
20 which require energy efficiency. But what is
21 most concerning to us is that there could be a
22 glaring loophole that exists.

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1 Specifically in the area of
2 lifetime performance, all the research we've
3 done so far indicates that once an appliance
4 passes it's expected to maintain that same
5 level of energy efficiency over the lifetime
6 of that model. Wherein, in fact, we are quite
7 confident that many of the new insulating
8 technologies that are being employed could
9 have dropoffs of as much as 70 percent
10 performance over a very short period of time,
11 rendering that same product probably worse off
12 than if we had enacted the legislation at all.

13 So what I am suggesting is that
14 there be some type of lifetime performance
15 enacted or required that would make sure that
16 any product that passes the test initially
17 also passes after a six month, 12 month or
18 whatever is most applicable.

19 MR. BROOKMAN: Okay.

20 MR. KELLER: Thank you.

21 MR. BROOKMAN: Thank you.

22 So we have set aside -- Yes

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1 please.

2 MR. LEWIS: Just didn't want to
3 stand a long time. I'm Harmon Lewis with
4 American Panel Corporation. We make walk-in
5 coolers and freezers like many of the people
6 attending here. I do echo Ellis Craig's
7 opening remarks on walk-in coolers and
8 freezers and their individuality.

9 Additionally one thing we need to
10 not lose sight of is walk-in coolers and
11 freezers are concerned with food safety. Food
12 safety is the overwhelming criteria for our
13 design, both the envelope, the sizing of the
14 refrigeration system and refrigeration must
15 keep those food products safe or even on the
16 hottest days of the year not just on the cool
17 days.

18 If air conditioning is undersized,
19 you just get a little warm, maybe you
20 perspired. If your walk-in cooler or freezer
21 has undersized refrigeration your customers
22 get sick. Maybe even they die just to be

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1 blunt.

2 So walk-in coolers and freezers
3 don't have basic models. We build over 1500
4 each year and probably 1450 of them are
5 different. So each jobsite is unique.
6 Testing criteria must take into account that
7 uniqueness and variability. Testing costs are
8 very significant. Small manufacturers will be
9 more overburdened as compared to large
10 manufacturers. And as Ellis pointed out
11 there's a lot more small manufacturers than
12 large. So we want to keep the level playing
13 field please.

14 Thank you.

15 MR. BROOKMAN: Thank you.

16 Other commentators in the outset.
17 There's time for this if you've got things to
18 raise here at the outset.

19 Nothing additional. Okay. So far
20 as we know the web link is working okay.
21 Right? Yes? Good.

22 Okay. So then let's proceed with

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1 the content. All of you have a copy of the
2 agenda. You also have the presentation packet
3 which has these slides if you want to be
4 taking notes to yourself as the presentation
5 proceeds.

6 SCOPE, REORGANIZATION OF DOE'S EXISTING CCE
7 REGULATIONS, APPLYING DOE'S EXISTING CCE
8 REGULATIONS TO OTHER COVERED PRODUCTS AND
9 BASIC MODEL PROVISIONS

10 MS. ARMSTRONG: Okay. So the
11 first thing we're going to talk about is the
12 scope of this rulemaking and some potential
13 topics for the next rulemaking.

14 The scope of this rulemaking is
15 really there are visions to the existing
16 certification, compliance and enforcement
17 regulations currently found in 430 and 431.
18 They're consolidated and being moved or
19 proposed to being moved to a new Part 429. We
20 did expand to include the EISA 2000 products
21 for which we didn't currently have provisions.

22 In the second round of rulemaking

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1 we are going to consider provisions for
2 electric motors. We did not move the
3 provisions in 431 for electric motors
4 currently or suggest any changes to those.

5 Including potential are revisions
6 to the sampling plans for certification and
7 enforcement testing for all covered products
8 and equipment. That will be a topic for round
9 two including necessary changes to the
10 potential tolerances.

11 Compliance requirements for
12 characteristics other than those for energy
13 efficiency and water efficiency. And an
14 example of that could be a compliance
15 requirement for like the storage volume, the
16 actual storage volume, of a water heater
17 rather than just the rated storage volume.

18 In addition, requirements for
19 voluntary industry certification programs and
20 how that might work with a DOE verification
21 program. Laboratory accreditation is another
22 one as well as there is a couple of other ones

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1 as stated on this slide.

2 As you may have questions or
3 comments to anything I'm saying just make your
4 way to the side so I can see you and stop as
5 I'm going.

6 So the next slide is a brief
7 explanation of what we've done with this
8 notice of proposed rulemaking. As I said
9 earlier we've taken the existing provisions in
10 430 and 431 with the exception of motors and
11 proposed to move it to a new Part 429.

12 As an example, we have on this
13 slide is the data submission requirements that
14 are currently found in three different
15 sections. They will now be housed for all
16 covered products and all covered equipment
17 with issuance of this rule in a new 10 CFR
18 429.19.

19 So the next one is we've expanded
20 to a certain extent our existing
21 certification, compliance and enforcement
22 regulations to all covered products and

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1 covered equipment. That would include -- Yes.

2 MR. BROOKMAN: Do we have Manfred
3 Wilhelm Staebler in the audience?

4 MS. STAEBLER: Yes.

5 MR. BROOKMAN: Would you join?

6 (Off the record comment.)

7 Thank you. Sorry to interrupt.

8 MS. ARMSTRONG: Not a problem.

9 So this slide just lists a handful
10 of products that were added to DOE's authority
11 either by EISA or by EPACT 05 and/or through
12 DOE rulemakings for which we noted we added
13 provisions to.

14 Okay. The next topic is basic
15 model certification. The intent here is that
16 manufacturers will treat models that have
17 essentially the same energy or water
18 consumption characteristics as a basic model.

19 So we provide an example of this.

20 Models with different colors such
21 as the different finish, one that is white
22 versus stainless steel or versus black, could

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1 be considered the same basic model to the
2 extent they have no impact on the energy or
3 water use. What would not be a basic model is
4 a model that has essentially the same internal
5 components but employs a different control
6 strategy that does affect the energy or water
7 use.

8 So with the next slide I'm going
9 to pass the presentation to Doug. But we're
10 interested in determining comments on how many
11 factors determine what is a basic model, what
12 in particular constitutes a basic model as
13 well as there's a number of questions on this
14 slide. So I would encourage you to provide us
15 feedback and direction wherever possible.

16 MR. BROOKMAN: So this is your
17 opportunity to respond specifically to these
18 questions. Several of you referenced the
19 issue of basic model in your opening remarks.

20 Please. I see your name again, Ellis.

21 MR. CRAIG: Ellis Craig, Craig
22 Industries.

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1 This is the point that we brought
2 up in our opening statement and Harmon covered
3 a little bit in his opening statement
4 concerning basic models. Our industry doesn't
5 like I say make standard products. So
6 therefore we are having some real confusion on
7 what's considered a basic model and what group
8 that would be because like in a convenient
9 store where you have an angle put into a walk-
10 in where this customer doesn't want a
11 rectangular walk-in he wants an angled walk-
12 in, that would change maybe the efficiency of
13 the unit because we have an angled walk-in is
14 probably less, uses less energy than straight
15 walls because of the square footage involved.

16 So we would not be able to make
17 maybe 50 to 70 percent of our products because
18 we couldn't afford to go out and get basic
19 model testing on each kind of system that we
20 could manufacture. So this is a great concern
21 to us that are basic models are based open a
22 lot bigger.

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1 MR. BROOKMAN: Could you describe
2 how the Department might address this?

3 MR. CRAIG: Well, when we first
4 had our first NOPR the discussion there was
5 that we would test the panels, the actual
6 insulation inside the panels, that we would
7 maybe work off a square foot rule or a cubic
8 foot rule of the walk-in and going by that we
9 could get an average energy use of that
10 packet. If we went to that, that would be
11 fine.

12 But when you're testing a basic
13 model and then applying it to just this
14 certain criteria of walk-ins, we have
15 thousands of them that we would have to test.

16 And we couldn't afford to test any of them.

17 So a formula would work well that
18 we could apply according to the R value of the
19 panels that we're manufacturing. That would be
20 our recommendation.

21 MR. BROOKMAN: Okay. Thank you.

22 I'm going to Karim next. In these

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1 comments if you could try to specifically
2 address how you think the Department might
3 address your concern then that would be a big
4 help to them.

5 Karim.

6 MR. AMRANE: Yes. Karim Amrane.
7 I'm with the Air Conditioning, Heating and
8 Refrigeration Institute.

9 We have some great concern about
10 the definition of basic model groups as it
11 applies to central air conditioners whether
12 being split systems or variable refrigerant
13 flow systems. And we feel in fact that what
14 DOE is proposing here, what this is attempting
15 the regulation, is in contradiction with DOE
16 had done back in 1987 when NACA was
17 established and where specifically for split
18 system there was a definition of higher sales
19 combination to recognize the fact that there
20 were differences between the thousands and
21 thousands of combinations you could have with
22 split systems. So in fact that's why DOE

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1 required only the highest sales to be tested
2 and allowed manufacturers to use an
3 alternative rating method to rate those
4 combinations.

5 So HRI has been certifying air
6 conditioning equipment and other equipment for
7 over 50 years. And we have a definition for
8 basic model groups that we will share with you
9 and in writing I think of course. But
10 basically we look at the components, the
11 outdoor unit, the indoor unit. Those, yes,
12 have to be similar.

13 But then you could have regular
14 variation in terms of expansion devices that
15 you would use and so on. And even if you have
16 slight variation in use here you could still
17 list those models into your basic model group.
18 But you would be subject to testing through
19 our verification program and if one unit would
20 fail then the entire basic model group would
21 have to be rerated.

22 So we feel that that's the

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1 approach that DOE should look at seriously.
2 And I have to point out again that FTC, if you
3 look at the energy guide label of FTC, you
4 will see that FTC requires the energy
5 consumption or the rating to be only for the
6 highest sales combination. And there is a
7 disclaimer in the label that said that energy
8 efficiency will be different for different
9 combinations.

10 MR. BROOKMAN: Okay. Thank you.

11 Please.

12 MR. VERSHAW: I am Jim Vershaw
13 with Ingersoll Rand. We make Trane and
14 American Standard residential air conditioning
15 equipment. Just to help with what Karim just
16 said, we have currently with the definition
17 that's been used with DOE since the 1900s we
18 have about 90 basic models of outdoor units
19 which then when you match those with indoor
20 units you get close to 200,000 different
21 combinations with ratings.

22 And we would hope that the DOE

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1 would continue on with the proposal for the
2 way we've been doing the basic models over the
3 last several years because it has been working
4 in terms of verification testing we do with
5 independent labs. And the changes we make
6 when we make a change to a basic model, the
7 outdoor unit, it does change the ratings and
8 we will change the model number.

9 Another area, if you get into
10 commercial equipment, we have equipment that's
11 up to about 100 tons which fills a whole
12 flatbed on an 18 wheeler and costs \$200,000
13 for one of those things and it can't be tested
14 anywhere. So as we get into annual
15 recertification thought process, we want to
16 make sure we look specifically at different
17 types of products and what that effect might
18 have on the manufacturers.

19 MR. BROOKMAN: Thank you.

20 Please.

21 MR. DOPPEL: Paul Doppel with
22 Mitsubishi Electric.

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1 I just also want to add a little
2 bit more to what Karim had said. Specifically
3 with ductless, multi-splits and variable
4 refrigerant flow systems, these are our
5 complex systems. And there is currently a
6 tested combination definition that's in Part
7 430 for equipment less than 65,000 and we're
8 going to be submitting comments on amending
9 that definition for systems greater than
10 65,000 to accommodate the more complexities of
11 that.

12 And that adds into the basic model
13 group. Currently, multi-split systems under
14 65,000 the outdoor unit is required to be
15 tested ducted indoor units and nonducted
16 because each has a different efficiency
17 rating. So the current definition of basic
18 model group says that that same outdoor unit
19 would be in two different basic model groups.

20 So we feel that that is sort of contradictory
21 to what we've been doing within the
22 regulations for testing our products.

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1 HRI system has developed several
2 good, what we feel are good, basic model group
3 definitions. And as Karim says and Jim also
4 mentioned, we have defined what that basic
5 model group is and we will submit that.

6 But what happens is you get a
7 larger number of models with the same general
8 characteristics combinations. But that also
9 creates a higher risk in that if there is a
10 failure all of those have to be rerated. So
11 while it appears that we are testing fewer we
12 are actually putting the emphasis on the
13 outdoor unit which in several documents from
14 Department of Energy the energy driver is, has
15 been identified, as the outdoor unit. So we
16 feel that that should be taken in
17 consideration that the outdoor unit is primary
18 in defining what the basic model group is.

19 MR. BROOKMAN: Thank you.

20 Yes.

21 MR. GRIFE: Good morning. My name
22 is David Grife with Arctic Industries. We are

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1 a manufacturer of walk-in coolers and freezers
2 and we say modular panels. Looking around, it
3 seems like there's a lot of people here from a
4 lot of different agencies, a lot of different
5 manufacturers and a lot of different
6 associations.

7 For the moment, I'm specifically
8 talking about walk-in coolers. This basic
9 model to listen to Ellis speak about the
10 differences, there are none. There is
11 absolutely no basic model in this industry.
12 So to stand here and say that I can do that is
13 something that would be untrue. Every single
14 part of it is custom. Every single dimension.
15 Every single refrigeration. Every door.
16 Every metal. Every change.

17 The thing that he did comment
18 about, Mr. Ellis, was about the panel. That
19 is something that we can work on, a cubic
20 square feet, a formula. But there is no basic
21 model.

22 Before I came here today, I pulled

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1 up every single job that we have over the next
2 two months. I could not find barely any that
3 are identical. Every single one is different
4 and our customers demand it based upon their
5 requirement. A simple box as we would say of
6 6' X 8' and someone says, "I want 6' X 9'"
7 would have the same refrigeration due to a
8 very small amount of change in the cubic foot.

9 Therefore you could look at energy
10 efficiency and they will be different. So
11 this basic model does not work. I really want
12 to make sure you hear it. It doesn't work for
13 our particular industry and the idea is to
14 help it work for us and our consumers which is
15 businesses.

16 Thank you.

17 MR. BROOKMAN: Thank you.

18 Andrew. And I'd call your
19 attention while Andrew is coming forward to
20 this specific example that DOE has in this
21 comment box so that some of you might address
22 this if you're able. Should DOE contemplate

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1 proposing a specific regulation that requires
2 a new basic model certification when a
3 modification to a given basic model impacts
4 the energy characteristics of the product by
5 more than a de minimus percentage? So if
6 there is a response to that.

7 Andrew, you're next.

8 MR. deLASKI: I will respond to
9 that in a moment. But I want to ask actually
10 if you could go back to slide 10. I actually
11 was saving up a couple of comments on some of
12 the things that you were moving through
13 earlier.

14 MS. ARMSTRONG: No problem.

15 MR. deLASKI: Or actually slide
16 eight.

17 MS. ARMSTRONG: Okay. Tell me
18 when it's up.

19 MR. deLASKI: So in your second
20 bullet there, in this proposed rule, you laid
21 out that you decided to defer a number of
22 issues. So I'd like to know. I'm interested

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1 in hearing why did you decide to defer
2 addressing electric motors?

3 MS. ARMSTRONG: Go ahead. Yes, go
4 ahead.

5 MS. WEINER: I'm Stephanie --

6 MR. BROOKMAN: You need to get to
7 the microphone.

8 MS. ARMSTRONG: Right behind you
9 is one if you want it.

10 MR. BROOKMAN: Yes.

11 MS. WEINER: Hi. I'm Stephanie
12 Weiner from the General Counsel's office.
13 Electric motors as the rules are currently
14 written include many unique characteristics
15 and it's going to take more time to determine
16 how to harmonize that approach with the other
17 products.

18 MR. deLASKI: Okay. Thank you.
19 And in the same vein, I know there was lots of
20 comment on the verification testing
21 requirement or concept that was laid out in
22 the RFI. Yet you decided to defer this

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1 critical issue. Why?

2 MS. ARMSTRONG: I don't think that
3 -- I think we needed more comments. So there's
4 a number of issues we'll get to. There's a
5 section in the presentation about verification
6 testing specifically. And we're asking for
7 additional comment and specifics on the
8 verification testing program should the
9 Department decide to propose one.

10 MR. deLASKI: Okay. And just to
11 echo some earlier comments, I mean one of the
12 challenges for us trying to comment on your
13 proposed rule today is that it lacks a
14 verification testing program.

15 MS. ARMSTRONG: Okay.

16 MR. deLASKI: So to be explicit,
17 you know, you might be willing to say, "Okay.
18 The certification could be done for instance
19 by manufacturers if we had a good verification
20 program." You would be more concerned absent
21 a verification program that there be a more
22 perhaps rigorous initial certification and re-

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1 certification absent the verification program.

2 So you put us at a bit of a disadvantage in
3 commenting on the NOPR today because we don't
4 see the whole thing.

5 MS. ARMSTRONG: Okay.

6 MR. deLASKI: But I encourage the
7 Department to move quickly to address how you
8 would address your intent for how you would
9 cope with the verification piece. And I would
10 add that for laboratory accreditation as well.
11 It's a critical piece for how these things fit
12 together as well as the other bullets here
13 that you've -- the VICP approach. These are
14 all critical issues that need to be addressed
15 quickly.

16 The next issue is on page 10.

17 MS. ARMSTRONG: Andrew, can I turn
18 it around to you? To the extent that you have
19 specific proposals on what you'd like to see
20 the Department consider for any of those
21 things I would encourage you to submit them.

22 MR. deLASKI: Yes, and I would --

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1 We have and we will.

2 MS. ARMSTRONG: Okay.

3 MR. BROOKMAN: And specifically
4 other models that you've found to be
5 successful, that sort of thing, that's
6 especially helpful.

7 MS. ARMSTRONG: Sure.

8 MR. deLASKI: Yeah.

9 MR. McCABE: This is Michael
10 McCabe. Adding to the request from Ashley
11 both to you, Andrew, and to everybody, a
12 number of these provisions that you've raised
13 we have a lot of, a fair, amount of experience
14 maybe with consumer products, for example, EPA
15 with their Energy Stars, adding verification,
16 laboratory accreditation.

17 But I'll remind everybody that
18 this program is dealing with consumer
19 products, commercial and industrial products,
20 plumbing products, dealing with SPAL, HVAC to
21 under 65,000 BTUs to very large 200,000 BTUs.

22 So as we move everything into one part in

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1 trying to take into account the wide range of
2 products we're needing to get additional
3 information so that when you make some
4 specific suggestions it would be particularly
5 useful if you recognize, everybody recognize,
6 that there are a wide range of products.

7 So if it -- If the recommendation
8 is appropriate for a particular type of
9 product, a particular let's say consumer
10 product, please identify that as for a
11 consumer product. And if there might be
12 something different that we should consider
13 for commercial, industrial or lighting please
14 highlight that.

15 MR. deLASKI: Thanks, Michael, for
16 that clarification. And I acknowledge. I
17 think the Department currently has standards
18 for I think by my count in the order of 50
19 product categories and within each of those
20 many subclasses. And I think that flexibility
21 is critical. And I think any one commentor
22 probably can't comment on the entire scope of

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1 50 products and what's required as you've
2 already heard this morning from the walk-in
3 manufacturers and the air conditioner
4 manufacturers.

5 Each product requires some level
6 of flexibility and some specificity. But what
7 I also think it requires is transparency. So
8 if you go to the next slide, the slide with
9 the questions, you know I think it's -- I'm
10 glad DOE is asking the question of how the
11 manufacturer determines the basic model or
12 change to the basic model.

13 But I think ultimately it's a
14 question for the Department to need to clarify
15 through regulation. But we need transparent
16 description of what is a change in basic model
17 so that each stakeholder and a manufacturer
18 are playing by the same rules. And the very
19 part that the Department is asking the
20 question indicates that we have a problem on
21 our hands that the manufacturers are defining
22 this.

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1 And it may be very -- In the air
2 conditioning for example the process may be
3 very clear because there's a process carried
4 out by the industry. But for some of the
5 other products I think there may some real
6 serious issues with regard to how the basic
7 model is defined.

8 And then to answer the question on
9 the slide, yes. The Department certainly
10 should propose specific regulations that
11 require a new basic model certification when a
12 modification impacts the energy
13 characteristics. And what is the de minimus I
14 think will have to be determined on a product-
15 by-product basis. There's no one answer.

16 MS. ARMSTRONG: To follow on to
17 Andrew's point, to the extent for which anyone
18 in this room and/or listening by Webinar could
19 provide the Department with the data or basis
20 or an indication or a proposal as to what that
21 percentage may be. That's kind of what we're
22 looking for in C.

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1 MR. deLASKI: And then one last
2 question for clarification. Why were ballasts
3 left out of the regulations up until now? You
4 mentioned EPACT 05 and EPACT 07 you were
5 filling in gaps. But yet ballasts date back
6 to EPACT 92.

7 MS. ARMSTRONG: EISA -- Our
8 proposal has ballasts in them today.

9 MR. deLASKI: Okay. All right.
10 Thank you.

11 MR. BROOKMAN: Okay.

12 You're next.

13 MS. EARBS: Hello. My name is
14 Daryl Earbs. I'm with Manitowoc Food Service.
15 We're a manufacturer of various categories of
16 commercial refrigeration equipment. I have
17 two comments.

18 The first one is on this slide
19 where this is a question about requiring a new
20 basic model certification if we make changes
21 that impact energy characteristics. The
22 regulations are really one-sided, right? So

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1 we have a confidence limit that we need to
2 make sure that we can satisfy statistically in
3 the products that we produce.

4 And there may be cases where we'll
5 improve the energy efficiency of the water use
6 of a product by some amount so that we have
7 better confidence. So we'll actually be
8 exceeding that confidence limit that we have
9 to satisfy relative to that metric.

10 Generally, it's in our interest to
11 report that to publish new performance
12 specifications. But there are sometimes cases
13 where because it's not a large enough change
14 to justify the cost to reprinting literature
15 and doing other things we may choose to give
16 the consumer, the purchaser of the equipment,
17 performance that exceeds what we're
18 advertising. And I guess I question the value
19 in forcing us to make that change if we as a
20 business have reasons that we feel it's really
21 not necessary to do that.

22 And then the follow-on which is

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1 even a bigger concern is where it's requiring
2 that we change the model number if we make a
3 change that would affect the energy or water
4 use of one of our basic models. We often will
5 change the product so that its performance is
6 improved. But we want to use the same model
7 number because those model numbers go into
8 selling systems. They go into our ERP system.

9 They have all sorts of system related cost if
10 we change that model number.

11 So in that case I would argue that
12 we should be able to publish and certify new
13 performance data but not be forced to change
14 the model number. In effect, we can give you
15 the new information for that model, but don't
16 ask us to take on the cost of changing all of
17 our systems to implement a new model number.

18 MR. BROOKMAN: Thank you. I
19 thought Kelley was next, but in fact I think,
20 Jennifer, you're next. Kelley corrected me.

21 MS. CLEARY: We think that
22 clearing uniform rules are really required in

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1 this area to give clarity and transparency to
2 the regulated industry. In fact, bright line
3 tests may even be appropriate in this area in
4 order to achieve that clarity.

5 In addition, we think that to echo
6 the comments of the gentleman before me that
7 manufacturers should have discretion regarding
8 rating so long as those ratings are supported
9 by test results. In other words,
10 manufacturers should retain the ability to
11 rate conservatively. Conservative reporting
12 must be permitted and encouraged to ensure
13 full compliance with the labeled value and the
14 Federal minimum or Energy Star limitation.

15 MR. BROOKMAN: Thank you.

16 Kelley.

17 MS. KLINE: This is Kelley Kline
18 from General Electric. Just to pick up on a
19 couple of other comments. In terms of the
20 definition of basic model, we would really
21 urge DOE to think of it more in terms of a
22 model family rather than a basic model. We

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1 think that's kind of a misnomer. I mean in
2 addition to the examples that DOE mentions
3 about changes like in handles and things like
4 that you can see a group or a family of models
5 that share a common energy platform that can
6 have different feature and appearance
7 packages, baskets. I mean there are a lot of
8 different variables there that don't impact
9 energy but that do fall into the same energy
10 platform or model family.

11 And I guess I wanted to also pick
12 up on the last two comments and really
13 reiterate how important we think the question
14 is around the de minimus percentage question
15 that DOE is asking there. We think DOE's
16 interest really should be in ensuring that the
17 standards are met and we would urge DOE to not
18 take an overly restrictive approach for
19 manufacturers who have tested values that are
20 more efficient than the standard or the label.

21 And requiring a very narrow definition of
22 when a new model must be created for changes

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1 in a product that is more efficient than the
2 standard in the label really could create a
3 lot of burden on the manufacturing community.

4 And we'll expand on this in our
5 comments, but it's not just manufacturing
6 expense but downstream expenses in terms of
7 changing out floor models, things like that,
8 that they really are quite significant
9 implications from a too-restrictive approach
10 so long as the manufacturer is, of course,
11 meeting the minimum compliance standard by
12 some margin.

13 MR. BROOKMAN: Okay. Thank you.

14 MR. McCABE: If I could follow up
15 with a question to you, Kelley. And it's
16 really -- This question is directed to all
17 those who have commented about basic models
18 and basic model families.

19 When we came up 30 years ago with
20 a concept of basic model it was in order to
21 reduce testing costs in order to take products
22 that have similar characteristics and the same

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1 energy efficiency. With the comments that
2 have been made about taking or creating a
3 basic model family, taking and collapsing
4 basic models into a larger subset, is that not
5 putting the manufacturer at risk because in
6 one case you are reducing the testing cost?
7 But if you've got a collection of units that
8 may have different energy but similar energy
9 characteristics it may be possible that you
10 could end up having -- A unit could, this
11 large basic model could, end up failing and
12 the entire basic model could be found to be in
13 noncompliance either for a representation or
14 meeting the standard.

15 And so in comments I'd like --
16 Think about it. Is there a risk to the
17 manufacturer on the other side? And if there
18 is, what would be a suggestion to deal with
19 it? Because again the concept of basic model
20 was to recognize testing burden, but also on
21 the other side it's enforcement as well.

22 MS. KLINE: Okay. We certainly

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1 will think about that and respond with more
2 detail in the comments. But I at least have
3 always thought about that as the energy
4 performance remaining constant within the
5 model family and it really being the other
6 features that are differentiated.

7 MR. McCABE: Yeah. With some of
8 the other industries and we talk about the
9 basic model family within a split system
10 central air conditioner where you may have
11 different expansion devices you could end up
12 having theoretically different efficiencies
13 and a risk to the manufacturer.

14 MR. BROOKMAN: You're next.

15 MR. MALINOWSKI: John Malinowski,
16 Baldor Electric Company. Just a comment, a
17 question, on the new Part 429 and what's going
18 to happen with motors. We'd like to know the
19 timing on that as soon as possible.

20 It seems like a lot of the changes
21 that are happening on how we register motors a
22 lot of things are happening here right at the

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1 end. We're 60 days from EISA compliance date.
2 All of our motor companies have been working
3 on changing our product lines over for three
4 years and now the game plan is changing 60
5 days out as to what we're expected to do and
6 there's not a lot of clarification from DOE on
7 what we're expected to do.

8 The inconsistency of answers.
9 There's no site to go to see what everything
10 is supposed to be. We're sort of in a
11 quandary as to what we're to do and now we're
12 hearing a new Part 429 is going to be posted
13 and we're going to talk about it later. Well,
14 we're kinda running out of time.

15 MR. BROOKMAN: Thank you.

16 MS. ARMSTRONG: Can I make one
17 clarification there? So Part 429 as it's
18 being proposed today and pending revisions as
19 it will be finalized by the end of the year
20 will not have any provisions for electric
21 motors in it at that time.

22 Now the second round of rulemaking

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1 we'll consider proposed revisions to those
2 that are currently found in 431. But at this
3 time the proposals for CCE or the regulations
4 for CCE for electric motors will stay in 431.
5 That should help at least a little bit.

6 MR. MALINOWSKI: That will help us
7 a little bit. Thank you.

8 MS. ARMSTRONG: Okay.

9 MR. BROOKMAN: You're next please.

10 MS. CHANG: Christine Chang from
11 Natural Resources Defense Council.

12 We agree that the basic model
13 definition should not be overly broad because
14 we want to make sure that when you test one
15 product it accurately reflects the performance
16 of another product that's under the same
17 umbrella, under the same basic model umbrella.

18 That way we can ensure that if one product
19 fails then the entire basic model can be
20 subject to enforcement.

21 And I would like to point to the
22 California definition of basic model under

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1 Title XX Section 602(a) a good model of how it
2 should be defined. And it states, "All units
3 of a given type of appliance or class thereof
4 that are manufactured by one manufacturer that
5 have the same primary energy source and that
6 do not have any differing electrical,
7 hydraulic, physical or functional
8 characteristics that affect energy
9 consumption."

10 Also I wanted to address the
11 specific question and say that NRDC supports
12 new basic model certification whenever there
13 is a change in energy usage, either an
14 increase or a decrease, more than a de minimus
15 threshold. And we would say that that would
16 depend on, the threshold would depend, on
17 which cover product you're dealing with.
18 However that generally it should not exceed
19 ten percent.

20 MR. BROOKMAN: Okay. Thank you.

21 Yes.

22 MR. MINELLI: Fred Minelli, Kysor

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1 Panel Systems. We manufacture insulated
2 panels for walk-in coolers and freezers. At
3 Kysor, we do not manufacture refrigeration.
4 We do not build basic models. All of our
5 products are custom. We do not use model
6 numbers. We only define the walk-in by the R
7 value required.

8 The R value doesn't change. If
9 the box is 6' X 10' or 80' by 100' it's only R
10 value. So I'm not sure how a basic model
11 would apply to our product in this
12 application.

13 MR. BROOKMAN: Thank you.

14 Harmon, I think you're next and
15 then this gentleman.

16 MR. LEWIS: Harmon Lewis with
17 American Panel Corporation. Again, we walk-in
18 coolers and freezers guys all sound like a
19 broken record. But it's much the same.

20 Our problem -- Our product we
21 could set ten 6' X 8' walk-in coolers up here
22 or we start building walk-ins that are as big

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1 as this room, as big as part of this building,
2 and you can't lump them into a basic model.
3 They do all come back to what is the
4 functionality of the individual panels and you
5 know we build about 2,000 panels every week.
6 And they're distributed all over the place for
7 size and shape.

8 So it all comes back to insulating
9 value. I know Doug's subcommittee if you can
10 call it that has probably turned out 1,000
11 pages from meetings that or Charles' that Doug
12 has moderated there. In the Thursday,
13 September 9th Federal Register there's a whole
14 energy conservative program for walk-in
15 coolers and freezers and the comments there
16 that they're looking for.

17 But that still doesn't quite come
18 back to the basic model testing and what we
19 probably need to do in looking at walk-ins is
20 look at the insulating value of the panels and
21 perhaps test one model size of a cooler, one
22 model size of a freezer and something that is

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1 an economical product, maybe 8' X 10' and
2 determine what that energy usage is between
3 the different manufacturers and do a rating
4 there. But that 8' X 10' is not the same as
5 an 80' X 100' or 100' X 300'. And we make all
6 different sizes day in and day out.

7 MR. BROOKMAN: Thank you.

8 I believe you're next.

9 MR. WISEMAN: Jim Wiseman,
10 Schneider Electric, manufacturers of the
11 Square D products, distribution transformers
12 among many others. I guess my comments are
13 probably most specific to distribution
14 transformers.

15 But what I'm hearing here is a lot
16 of the same and similar concerns we have with
17 the basic model designation. We do have basic
18 models. We think we probably have on the order
19 of 300. But if you throw in some of the
20 things that we've seen for discussion it could
21 be more on the order of 20,000 which gets to
22 the point of having no basic model again.

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1 So I think the work is going to
2 have to be in some manner to get some
3 specificity for the different product groups
4 that are being talked about and as an example
5 of that you know in the low voltage
6 transformers for example we would certainly
7 agree that as you change the number of phases,
8 the KVA rating, the insulation system, the
9 temperature rise rate and the winding
10 material, those are all going to be different
11 basic models.

12 But unlike most other electrical
13 equipment if you change the voltage it doesn't
14 necessarily result in a change in energy
15 consumption that's significant. And that's
16 one of our main concerns is that we need to
17 have some way of knowing that we will have the
18 ability to change voltages without changing
19 basic model. But we also feel the need to
20 have a level field among the industry. We
21 don't see how to get there unless there is
22 something that says that within the rules.

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1 MR. BROOKMAN: So the specifics in
2 writing.

3 MR. WISEMAN: Yes.

4 MR. BROOKMAN: Thank you.

5 I believe this gentleman was next.
6 Ellis, you're next.

7 MR. COULTER: My name is Greg
8 Coulter. I'm representing P:rolec General
9 Electric, also a distribution transformer
10 manufacturer.

11 And my comments also have to do
12 with basic model. It appears to us in the
13 rewrite of all this they were still trying to
14 carve out distribution transformers similar to
15 the way it was in the previous regulations.
16 And we find some inconsistencies there because
17 as we read the new regulation it looks like we
18 have to list every basic model inside a KVA
19 where previously a KVA was the basic model.

20 For a large percentage of our
21 product, each unit is a basic model. So we
22 would listing every unit model number. This

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1 now becomes public record. People will be
2 able to tell every transformer we make. They
3 would know our volume which is a big concern
4 to us in a very competitive industry.

5 We feel something similar to what
6 was in the earlier rules where KVA was the
7 basic model and then when we only had to list
8 the least deficient KVAs, the least deficient
9 models, inside the KVA and if any new least
10 deficient model came along, we would then
11 notify you. If we do it now every time we
12 make a new model, it looks like we have to
13 notify you which would be every week we're
14 sending 150, 200 new notifications.

15 We hope that this is just a
16 problem with the rewrite rather than a basic
17 change to the whole principle.

18 MS. ARMSTRONG: Okay.

19 MR. BROOKMAN: Ellis.

20 MR. CRAIG: Ellis Craig, Craig
21 Industries.

22 I'm assuming that the whole

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1 purpose of this whole project we're working on
2 is to reduce the energy usage of American
3 industry and private use out there. And one
4 thing that's concerning me with the basic
5 model concept, there seems to be
6 conservational ideas that if we get this more
7 defined and more basic models tested that
8 we'll have better control over this.

9 But the more you define basic
10 model to be tighter the more testing that's
11 required. The more testing that's required
12 then manufacturers have a lot less incentive
13 to improve their products. Because if they do
14 improve their products, it's going to cost a
15 lot of money to have testing done again.

16 So it's a concern of ours that the
17 -- You know, we're a small company and if it
18 costs us \$100,000 to test our products and we
19 come up with a great new idea that's a better
20 insulator, we might want to go to vacuum pack
21 or whatever we come up with that's in the
22 industry that's lower in its price we have no

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1 incentive to go do it because it would cost so
2 much money that we couldn't afford to do it
3 again. So the net result is we end up with
4 same old product out there for the next 20 or
5 30 years because it costs too much money to
6 innovate. So that's a concern of ours.

7 MR. BROOKMAN: Okay. Thank you.

8 Other comments on these slides?
9 Yes, Harmon, and then we're going to move on.

10 MR. LEWIS: Right. One quick one.

11 Harmon Lewis from American Panel and putting
12 on my refrigeration hat because we also build
13 refrigeration systems, both packaged and
14 split. I felt bad because we had 8,736
15 different models and we're about a \$24 million
16 company annual sales. After hearing Ingersoll
17 Rand's problem, I'm just going to ask him how
18 he solves it and mimic it.

19 But the testing on refrigeration
20 will be just as awkward for the walk-in
21 manufacturers that build them based on the
22 total number of models involved and the size

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1 of the companies. The testing burden could put
2 us out of business.

3 MR. BROOKMAN: Okay. Thank you.

4 So I think final comments on this
5 subject. I think we'll take one more series
6 of slides and see where we are with respect to
7 our break.

8 Ashley.

9 MS. ARMSTRONG: I think it's just
10 one more slide actually. So some of you
11 touched on this in your comments. But basic
12 model numbers. DOE is proposing in the NOPR
13 to require manufacturers to change the basic
14 model number whenever a new basic model is
15 created.

16 Define a manufacturer model number
17 as the unique identifier by which the product
18 is sold. DOE is not proposing a specific
19 particular system. Manufacturers may do that
20 at their discretion, just that it is unique
21 and then in addition to that within each basic
22 model numbering you would identify in your

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1 certification report all the individual model
2 numbers that fall under that basic model
3 number.

4 Comments? No? Great.

5 MR. BROOKMAN: Yes please. Ellis.

6 MR. CRAIG: Ellis Craig, Craig
7 Industries.

8 I want to make it very clear that
9 in the walk-in business we don't have a model
10 number number one at all right now. It would
11 be impossible for us to come up with model
12 numbers of walk-ins because everything is
13 custom. It's been said but --

14 MS. ARMSTRONG: How do you track
15 your walk-ins? What do you use? What
16 systematic do you use to do that?

17 MR. CRAIG: There -- Every one is
18 built custom. So every systematic is
19 different than the last systematic.

20 MS. ARMSTRONG: Do you use a name?
21 What naming convention?

22 MR. CRAIG: The only thing that we

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1 use is dimensions. That's it. So it's an 8' X
2 10' X 7'6".

3 MS. ARMSTRONG: Okay.

4 MR. CRAIG: That's what we use.
5 So in every walk-in that we manufacture is
6 different than the last walk-in and it's all
7 manufactured differently. So therefore we
8 don't have -- No one calls in and says, "Give
9 me a 1095." You know it just doesn't happen.

10 We wish it did. Believe me. In
11 our industry we would love to have that
12 happen.

13 MS. ARMSTRONG: Maybe we can help
14 you out.

15 MR. CRAIG: It doesn't work that
16 way. So this numbering system would be
17 something it would not work the way we're
18 doing business. I don't see how it could
19 work.

20 MS. ARMSTRONG: Okay.

21 MR. BROOKMAN: Thank you.

22 MS. ARMSTRONG: I appreciate that.

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1 MR. BROOKMAN: Let's let this
2 gentleman go next. Same subject I think.

3 MR. MINELLI: Fred Minelli, Kysor
4 Panel.

5 I would just like to reiterate. We
6 do not as Mr. Craig we do not use model
7 numbers. Every job is drawn custom. The only
8 separation for us in the panel business is
9 panel thickness which is directly related to R
10 value and we're doing a C518 to get R value.
11 That is the basic model testing that we do.

12 We do not build basic models. How
13 can we test some predetermined or DOE
14 determined box if it has nothing to do with
15 the products we build?

16 MS. ARMSTRONG: Okay.

17 MR. BROOKMAN: Got it.

18 MS. ARMSTRONG: Thank you.

19 MR. BROOKMAN: Okay. Yes.

20 MR. BASSO: Dale Basso, WEG
21 Electric. Also Vice Chairman of the NEMA
22 Motor Generator section.

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1 I know this is motors. I assume
2 it still applies to your thinking though.

3 MS. ARMSTRONG: Sure.

4 MR. BASSO: And speaking for motor
5 manufacturers in general probably half our
6 business is stock and model number type, stuff
7 that can get in the catalog. But the other
8 half is unique identifiers. And when we say
9 it doesn't build off a smart part number
10 because in the catalog in the last place I was
11 we had 10^{25} possibilities of combinations and
12 permutations of a product just by building a
13 custom motor out of a catalog. So each one of
14 them gets a serial number and that becomes the
15 unique identifier.

16 But you can't make that a smart
17 part number that builds off a basic model. So
18 it would become impossible. And as somebody
19 else mentioned it would be a matter of us
20 shipping or submitting data to you on a daily
21 basis for all the motors we're shipping. It
22 would be burdensome for both our companies and

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1 for the DOE to manage.

2 MR. BROOKMAN: Thank you.

3 Frank Stanonik.

4 MR. STANONIK: Frank Stanonik with
5 HRI.

6 Ashley, can you go back to the
7 previous slide? The one that had your model
8 number example.

9 MS. ARMSTRONG: Okay. We'll get
10 there maybe.

11 (Off the record comment.)

12 MR. STANONIK: Well, why you're
13 doing that -- Okay. There it was.

14 MS. ARMSTRONG: Thank you.

15 MR. STANONIK: Lost it. My
16 question is in the example you provided
17 between the basic model and the associated
18 models they all still had the same four or
19 five same letters, numbers, at the beginning.

20 MR. BROOKMAN: Did you want this
21 one? Sixteen, that one? Is that the one?

22 MR. STANONIK: That was the one

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1 that she had up before that.

2 MS. ARMSTRONG: This one?

3 MR. STANONIK: Yeah, that one.

4 MR. BROOKMAN: That one.

5 MS. ARMSTRONG: Okay.

6 MR. STANONIK: And I hope if I'm
7 belaboring the obvious I'll apologize. But
8 I'm assuming you just did that for
9 illustration purposes.

10 MS. ARMSTRONG: Yes.

11 MR. STANONIK: And it won't
12 preclude a private brander who would have a
13 totally different modeling number scheme but
14 in fact clearly the model is associated in
15 your case with ABC123.

16 MS. ARMSTRONG: Correct. This is
17 just illustrative completely. We're not
18 proposing any specific scheme.

19 MR. STANONIK: So DOE would only
20 want to know the model numbers of the
21 associated model. You don't have to --

22 MS. ARMSTRONG: Correct. We would

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1 want to know how you mesh those together. In
2 other words, which one is the basic model
3 number and what are all the individual model
4 numbers falling into that basic model number?

5 MR. STANONIK: Okay.

6 MR. McCABE: Following up on that
7 and actually putting a question back to you
8 and to everybody, but particularly for
9 products such as where you have the motors and
10 granted motors are not part of this, but we
11 will be considering it. Distribution
12 transformers are with the walk-in coolers,
13 walk-in freezers. But central air, split
14 systems and central air conditioners, all
15 those products where either there are unique
16 units, they're one of a kind, or you may have
17 multiple -- The OEM may be shipping the
18 product to different private labelers and they
19 come up with different model numbers.

20 A specific suggestion whether or
21 not it's a product specific suggestion or a
22 general suggestion as to how we can track

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1 those units that are part of that basic model,
2 model family or whatever, because again this
3 deals not only with reducing testing burden so
4 that a basic model, a model family, whatever
5 you test it as little as possible in order to
6 ensure the rating compliance with the standard
7 and that the rating on the energy guide label
8 or representations of it are correct.

9 You know we're looking to reduce
10 the burden. But on the other hand we do not
11 want to increase the cost and increase the
12 risk to manufacturers. So if you have a
13 number of individual units that really should
14 be treated as a basic model, how do we
15 identify those so that we don't end up going
16 out and identifying far more products as being
17 covered by an action, a negative action, that
18 would have a cost as well to the manufacturers
19 and disrupt not only the manufacturer's
20 activities but also distributors and
21 retailers? So how should we identify? How do
22 we identify those unique products? How do we

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1 identify those products that are made by one
2 OEM and sold on a number of different labels?

3 MR. STANONIK: Mike, at least
4 speaking from AHI's experience certainly when
5 it comes to models that are built in large
6 quantities that's been a challenge for us
7 since we've been running certifications
8 programs either historically ARI or GAMMA.
9 And so we can certainly give you some
10 suggestions on how we've been wrestling with
11 that.

12 As far as the one-ofs, I'm going
13 to say I don't have as much experience with
14 that. But we'll see if we can offer some
15 ideas.

16 MR. BROOKMAN: Thank you

17 Yes.

18 MR. DOPPEL: Paul Doppel with
19 Mitsubishi Electric.

20 It just seems that in requiring
21 basic model definitions and then getting into
22 specifics on model numbers as the example

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1 here, it's kinda of contradictory and limits
2 the definition on the basic model group.

3 Our suggestion would be that allow
4 us to define the basic model groups and then
5 submit a report to you listing what those
6 basic models are. That would be far easier
7 than trying to finagle something like the
8 example here. Just a report listing basic
9 model one, basic model two and everything
10 that's included in that.

11 MR. BROOKMAN: Okay. Thank you.

12 Other comments on this subject?

13 (No verbal response.)

14 MS. ARMSTRONG: Take a break.

15 MR. BROOKMAN: Yes, let's take a
16 break. Before anybody leaves, you need to --
17 Most of you when you came in got a visitor's
18 badge. You need to have it on you. There's a
19 coffee shop straight down the hallway this way
20 (Indicating). A Dunkin Donuts and up the
21 escalator right as you exit the door to the
22 left there's a big cafeteria. So there's food

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1 and the like. I suspect we probably might go
2 a little past noon and say 12:30 p.m. or maybe
3 a little later before we break for lunch the
4 way this is going.

5 If there are foreign nationals
6 here in attendance, I think you need an escort
7 to be wandering around. I think that's the
8 latest from Security. So find me in the front
9 of the room. We'll get you an escort if
10 you're a foreign national.

11 We're going to break for 15
12 minutes. It's now almost 10:40 a.m. So we'll
13 resume at 10:55 a.m. Off the record.

14 (Whereupon, a short recess was
15 taken.)

16 MR. BROOKMAN: Let's get back to
17 the matter at hand. We are on Slide 17 or so.
18 And we're going to hear from Laura Barhydt,
19 same basic configuration. Laura?

20 MS. BARHYDT: Okay. So as Ashley
21 mentioned, most of the changes that are being
22 proposed are not really changes. We're moving

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1 things around quite a bit.

2 One of the things that we are
3 proposing to change, however, is currently the
4 regulations have more or less a one-time
5 filing requirement. If you have a new basic
6 model, it must be certified before it is
7 distributed in commerce. And we are proposing
8 to switch to an annual certification.

9 We have proposed a schedule that
10 would align that with the FTC's certification
11 requirement for those products that are
12 required to be certified to the Federal Trade
13 Commission. And we are not proposing that you
14 have to test it each year. We did get some
15 initial comments that indicated that that may
16 have been an area of confusion. So I wanted
17 to clarify that.

18 This is a subset of the
19 certification schedule that we have proposed.

20 And it has some of the different deadlines
21 that we have proposed. This is only a subset.

22 And we have tried to group the products so

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1 that similar products or the certification is
2 due at the same time so that for any given
3 manufacturer, hopefully they would only have
4 to submit one certification report a year.

5 Currently each manufacturer or
6 private labeler must have a compliance
7 statement on file as well as submit the
8 certification report. We are proposing to
9 change that so that the compliance statement
10 is included on the certification report. It
11 would not be a separate filing requirement any
12 more.

13 We are also standardizing some of
14 the information that would be required to be
15 reported. You can see a list there of some of
16 the different types of information.

17 Some of this is new information
18 that is not currently required, such as
19 information related to waivers, exemptions,
20 and alternative rating methods.

21 If you filled out the compliance
22 statement previously, you see that it requires

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1 you to certify that you have done testing in
2 accordance with DOE's test procedure. And
3 obviously that is a problem if you have not
4 done the testing in accordance with the DOE
5 test procedure because the model is subject to
6 a waiver or an exemption. So basically that
7 change is just to reflect the reality that not
8 everything has actually been tested in
9 accordance with the DOE test procedure.

10 Ashley already covered that we are
11 proposing to require individual model numbers
12 covered by a basic model to be reported. We
13 are also adding the sample size, number of
14 units tested, basically give us a little bit
15 more information about what exactly is being
16 tested and more information so that we can
17 verify that the regulations are being
18 followed.

19 We are adding reporting
20 requirements for products that were not
21 previously subject to certification reporting
22 requirements. And there are specific

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1 product-specific reporting requirements for
2 all products now. Previously there were some
3 products where you basically just had to
4 certify that the models need to be standard.

5 Particularly in situations where
6 there was a design requirement, as opposed to
7 a performance standard, now all products have
8 specific information that we're proposing
9 would have to be submitted. So you should
10 look for your own individual products to the
11 proposed 10 CFR 429.19(b)(13) for what those
12 specific requirements would be for the
13 products that are relevant to you.

14 Currently each basic model must be
15 certified. And that can be done by the
16 manufacturer or by the private labeler. We
17 would hold either party responsible. We are
18 proposing to change that so that the
19 manufacturer is the responsible party.

20 Under the statute, manufacturer
21 includes an importer. So if you're an
22 importer, you're treated as the manufacturer.

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1 And you would be subject to the reporting
2 requirement.

3 Private labelers would be
4 permitted to do the certification on behalf of
5 the manufacturer as a third party certifier,
6 but they would not be the ones responsible if
7 the certification was not filed. It would be
8 the manufacturers.

9 And if anyone has any questions or
10 comments as I go through, feel free to stand
11 up and move towards a microphone.

12 So currently manufacturers or
13 private labelers may use a third party to
14 submit the certification reports to the
15 Department of Energy. And that party is
16 ultimately responsible for the submission of
17 the certification report to DOE, not the third
18 party certifier.

19 Under the proposed requirement, we
20 would continue to permit the third party
21 certification. And the private labeler could
22 act as that third party certifier.

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1 One of the things that we are
2 proposing to change is that a poor history of
3 performance by a third party certification
4 entity, we could refuse to accept that person
5 as the third party certifier if they routinely
6 either didn't submit or were submitting
7 incorrect information. And that's really to
8 protect the manufacturer from relying on
9 somebody that DOE has determined is not
10 reliable.

11 Currently you can submit the
12 certification reports and the compliance
13 statements through certified mail, e-mail, and
14 our new certification compliance management
15 system, CCMS.

16 That was a very recent change. If
17 you flip back to the slide early on, that sort
18 of had the history of the CCE rulemaking
19 process. It was earlier this year that we
20 added the new options.

21 We're actually proposing to cut
22 back so that CCMS will be the sole method of

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1 submission. We have had very positive
2 feedback from people using CCMS, and we think
3 that that is the best way going forward.

4 MR. DOPPEL: Laura?

5 MS. BARHYDT: Yes?

6 MR. DOPPEL: If you could go back?
7 Paul Doppel with Mitsubishi.

8 If you could go back just a couple
9 of slides for what you're requiring on your
10 certification statement. Right there. Okay.

11 Right there it seems that you're asking us to
12 identify everything that's within that basic
13 model.

14 That's what I was suggesting
15 before, that, instead of trying to do some
16 configuration of model numbers to -- you know,
17 right here is where we would be telling you
18 everything that's in that basic model.

19 MS. BARHYDT: Right.

20 MR. DOPPEL: So, rather than -- so
21 our recommendation would be to just leave that
22 model number part out.

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1 MR. BROOKMAN: Jennifer?

2 MS. ARMSTRONG: Hang on one
3 second, though. So, just as a clarifying
4 point, I don't think the other slide is
5 inconsistent with this slide. And the other
6 slide is not proposing any specific basic
7 model numbering system or model numbering
8 system.

9 It's saying the same thing.
10 Basically any -- you identify the basic model
11 number. And then you also identify all the
12 individual model numbers that fall in that
13 grouping. And that's what both slides were
14 meant to show.

15 MR. BROOKMAN: I see there are
16 some other commenters. Jennifer? And then
17 we'll go to this gentleman.

18 MS. CLEARY: Jennifer Cleary.

19 I think we will provide some
20 written comments, but we do have concerns that
21 some of this information, while it should
22 certainly be reported to DOE, may be

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1 confidential business information; for
2 example, the private labeler in some
3 circumstances. And we'll provide much more
4 detail on that later.

5 I was also wondering if you could
6 give some insight as to why you would like to
7 know the sample size. It would help us in our
8 comments to know what the reasoning behind
9 requesting that information is.

10 MS. BARHYDT: One of the things
11 that we have encountered is that people are
12 not testing in accordance with our sampling
13 plan. And so that is a way for us to actually
14 verify compliance with the regulations.

15 MS. CLEARY: Thank you.

16 MR. BROOKMAN: You're next.

17 MR. HON: Charlie Hon, True
18 Manufacturing.

19 Two comments. Number one is that,
20 obviously, there is an issue of transparency
21 here, when and if this material will be
22 public. And if it is public, we just moved

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1 into a transparent mode.

2 The annual reporting will be
3 problematic because you could have 11, almost
4 12 months later data on someone else's
5 product, which is in the market but has not
6 been reported until the August deadline if
7 they introduce it September 1st as a product.

8 MS. BARHYDT: Okay. So, to
9 clarify, the requirement to certify a basic
10 model before it enters commerce does not
11 change.

12 MR. HON: Okay.

13 MS. BARHYDT: So you still have to
14 certify before a model enters commerce. Then
15 after that, there would be an annual reporting
16 requirement. So we are not getting rid of the
17 requirement to actually certify prior to
18 introduction into commerce.

19 MR. HON: Good. That is what we
20 were hoping to hear.

21 MR. BROOKMAN: Okay. Yes? Let
22 this gentleman follow on. Yes? Go ahead.

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1 MR. DOPPEL: Laura, you mentioned
2 enter into. Paul Doppel, Mitsubishi.

3 You mentioned enter into commerce.
4 And we've looked at the definition. And it's
5 like wide open. So is there a way to get more
6 clarification on exactly what you mean by it
7 because with Mitsubishi, obviously we're
8 importing some of our products?

9 MS. BARHYDT: Introduction into
10 commerce includes importation.

11 MR. DOPPEL: Right. But if you
12 have a meeting with distributors prior to
13 certifying the product, is that introducing
14 into commerce? Because that could be within
15 your definition.

16 MS. BARHYDT: I think we will have
17 to learn more about the specifics of what
18 you're envisioning because I'm not sure I
19 understand. One other thing --

20 MR. DOPPEL: According to what you
21 say, we cannot enter the comments before the
22 product is certified to DOE.

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1 MS. BARHYDT: Correct.

2 MR. DOPPEL: So the way we read
3 that, that would preclude us from having
4 meetings with our distributors or with other
5 groups to tell them about this product until
6 -- and then a lot of times as you're
7 developing products, testing is one of the
8 last things that occurs prior to manufacturing
9 or within a couple of months.

10 So what you're saying would sort
11 of prevent us from doing any preliminary
12 introduction of the product, discussion of the
13 product until it was certified. And then that
14 limits our ability to talk to our
15 distributors, talk to our contractors about
16 the product to get them the information that
17 they need.

18 Especially if you're doing large
19 commercial products, there's a six to
20 nine-month lead time in designing for these
21 systems.

22 MS. BARHYDT: So currently this is

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1 not a change in the requirement. So clearly
2 --

3 MR. DOPPEL: Well, commercial HVAC
4 systems have not previously --

5 MS. BARHYDT: Oh, okay. So
6 specifically for the commercial.

7 MR. DOPPEL: -- been certified.
8 So commercial HVAC systems, this could be a
9 potential problem.

10 MS. BARHYDT: Okay. If you'll
11 provide all of that in your written comments,
12 that would be great.

13 MR. McCABE: This is Mike McCabe.
14 And following up on that, are there other
15 products for which that may be an issue as
16 well? And given some of the discussion that
17 took place in the previous session about the
18 walk-in coolers, walk-in freezers, where
19 everyone is different, that I presume that
20 there may be some discussions that are taking
21 place that would be of the same sort.

22 Similarly with the transformers,

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1 that may be the case as well. So I would ask
2 for anybody who has an issue that follows
3 along those lines, to let us know as far as
4 for their products and offer any specific
5 suggestions.

6 MR. BROOKMAN: Karim, you're next.

7 And any other persons who wish to comment on
8 Michael's point, then, stand up.

9 MR. AMRANE: Karim Amrane, AHRI.

10 I have a question about the total
11 number of tests performed. In the case of
12 central A/C, split systems, in particular, you
13 don't have to test everything. You have to
14 test only the highest split combination. And
15 then for the other combination, you can use an
16 alternative working method.

17 MS. BARHYDT: Right. So what
18 we're proposing is that you would indicate
19 that for this basic model, this is how many
20 were actually tested and this is how many were
21 -- these are the ones that were subject to an
22 ARM.

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1 MR. BROOKMAN: Yes, please? Your
2 name?

3 MR. NICHOLS: Jeff Nichols,
4 Johnson Controls.

5 Just kind of piling on with Mr.
6 Doppel and Mr. Karim --

7 (Laughter.)

8 MR. NICHOLS: Okay. So total
9 number of tests performed. So in the case of
10 a split system, residential product, if it is
11 a match that it was not the highest sales
12 volume, cold combination, but it was done with
13 ARM, that would be no on that basic model
14 group that's listed zero test? And then you
15 have to list your --

16 MS. BARHYDT: And then you would
17 identify that that rating was based on an ARM.

18 MR. NICHOLS: Okay. So, then,
19 based on an ARM or do we have to submit the
20 letter that we have from DOE approving the ARM
21 or --

22 MS. ARMSTRONG: I think -- and

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1 this is off the top of my head. It's spelled
2 out pretty specifically in the regulation or
3 in the proposed regulations what we need, but
4 I think it's the date of approval for the ARM.

5 MR. NICHOLS: Date of approval for
6 the ARM?

7 MS. ARMSTRONG: Since the ARMs
8 have to be approved prior to the --

9 MR. NICHOLS: And then on the
10 promotion side of introducing, I'm going to
11 say it this way. We would want to promote our
12 product before we go to market to get it in
13 front of our customers so that we can build
14 some excitement.

15 So the question is, do I have to
16 hold off on promoting it until I have provided
17 my certification? Because often the
18 certification data won't be ready until just
19 before we start building it and putting it
20 into the marketplace.

21 So that's the point of
22 clarification we would like to -- I would like

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1 to understand.

2 MS. BARHYDT: I don't think that I
3 am going to be able to answer that one off the
4 spot, but --

5 MS. ARMSTRONG: Can I ask a
6 question about that? When you promote your
7 product, do you say anything about its energy
8 efficiency characteristics in that promotion?

9 MR. NICHOLS: Very often. We talk
10 about generalities. And sometimes we may have
11 details, but we may have finished the testing
12 but have not done the submittal, the
13 certification submittal.

14 MS. ARMSTRONG: Okay.

15 MR. NICHOLS: So I guess
16 understanding the details there.

17 MS. ARMSTRONG: Okay.

18 MR. DOPPEL: That is along the
19 same lines as I was talking about. And that
20 would apply to residential systems as well as
21 commercial systems in that you know what
22 you're designing for efficiency-wise and you

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1 have your target. But the actual final
2 testing doesn't take place until maybe a
3 couple of months prior to manufacture.

4 But you need additional time to
5 get the information out to get your customer
6 base aware of this product so they can start
7 preparing their contractors or engineers to
8 use this product for wherever they're doing
9 that.

10 So without having clear definition
11 of put into commerce and with certification
12 tied to that, we're very hamstrung.

13 MR. BROOKMAN: Ellis?

14 MR. CRAIG: Ellis Craig, Craig
15 Industries.

16 I also want to bring that affects
17 out industry, can affect our industry, also,
18 such as a new insulation material that became
19 available. We can implement that new
20 insulation material within a week technically,
21 but now we can't even promote it until we --
22 even though the testing may be done on the

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1 insulation, now we have to recertify it and go
2 through all of this process, testing of the
3 basis unit, or whatever we come up with.

4 So we can't promote that product
5 also until the -- the insulation may come out,
6 but we can't do anything with it. If it's
7 twice our value water, we couldn't do anything
8 with it until we -- so this is a process that
9 could affect us in being able to market the
10 product on a timely basis, which would promote
11 higher energy efficiency products in the
12 field.

13 MR. BROOKMAN: Thank you.

14 Frank?

15 MR. STANONIK: Frank Stanonik,
16 AHRI.

17 I just want to clarify because I
18 really didn't get the answer on the number of
19 tests. So let's say I'm testing a basic model
20 of a water heater because I can talk about
21 water heaters. So I've tested four units.
22 And I tell DOE I've tested four units.

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1 DOE wants to know if I happen to
2 have tested each of those units, let's say,
3 two or three times? They need to know that?

4 MS. BARHYDT: No. So --

5 MS. ARMSTRONG: That is what we
6 ask for.

7 MR. STANONIK: Pardon me?

8 MS. ARMSTRONG: So that is what it
9 asks for, right?

10 MR. STANONIK: That is what I am
11 reading. And that's why I am confused.

12 MS. ARMSTRONG: That's what it
13 asks for.

14 MS. BARHYDT: Your certification
15 is based on a calculation. What numbers did
16 you put into that calculation?

17 MR. McCABE: This is Michael
18 McCabe.

19 MR. STANONIK: All right. Well --

20 MR. McCABE: If I may follow up on
21 your question, Frank, --

22 MR. STANONIK: Yes.

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1 MR. McCABE: -- because it wasn't
2 clear. When you talked about a unit being
3 tested multiple times, were you talking about
4 an individual unit or a number of units, an
5 individual unit to be tested multiple times,
6 or were you talking about a number of units of
7 the basic model being tested?

8 MR. STANONIK: No. Okay. My
9 sample is four. That doesn't vary. I was
10 talking about that if I happened to decide
11 that I wanted to test each of the samples
12 three times to determine my rating; whereas, I
13 really only need to test them each once, I
14 then have to tell DOE that.

15 MS. ARMSTRONG: Yes. I mean, the
16 answer is we are asking for that information
17 to the extent for which you think we should
18 rethink that. But I would say that there is
19 some confusion about whether you test four
20 samples or one sample four times. So this is
21 a way for DOE to understand what is being
22 done.

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1 MR. STANONIK: Okay. All right.
2 Well, certainly for residential products, I am
3 not aware that any of our members had an
4 impression that sampling testing allowed the
5 possibility of taking one unit and just doing
6 repeatability tests.

7 MS. ARMSTRONG: And it depends.
8 Our sampling provisions are to a certain
9 extent part-specific but usually are around
10 sample size, not number --

11 MR. STANONIK: I would suggest at
12 least the possibility that maybe that only
13 needs to be recorded if, in fact, the
14 manufacturer tested each unit more than once
15 if that's really something that needs to be
16 done, but --

17 MS. ARMSTRONG: Well, then I will
18 ask the question to you and the manufacturers
19 in the room that when you determine the rating
20 that you are going to certify to DOE, do you
21 base it just on that single test or do you --
22 the single test for each sample or if you

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1 happen to do three tests, do you take an
2 average over those three tests for each sample
3 and then some average there and then run the
4 sampling procedures? We're trying to
5 understand what people are doing.

6 MR. STANONIK: Okay. And then a
7 very different point here that has gnawed at
8 me a little bit. There is certainly this
9 indication that every basic model has to go
10 through the sampling. Okay?

11 And I would pose to you that there
12 may be circumstances -- again, I have been a
13 company that has been in business for 30-40
14 years. And I have been dealing with
15 efficiency regulations for as long as that.
16 And so I know my product. Okay?

17 And so I've got this model X. And
18 for market reasons, I'm creating a new basic
19 model, especially with this new definition.
20 I'm creating a new basic model where I've just
21 added some other feature, whatever. Okay? I
22 have a wealth of data on model X. My new

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1 model I'm going to call Y. Okay?

2 I believe that the manufacturer
3 does have the option that he could test model
4 Y once -- okay? -- and decide to
5 conservatively rate. Again, his obligation is
6 the rating has to be no more than he claims.
7 Let me rephrase that. He can't overclaim his
8 rating. Okay?

9 But it seems to me a manufacturer
10 does have an option. With knowledge, let's
11 say, of similar designs and things, he could
12 take this new model, test it once, and because
13 of desires to get it to the market for other
14 reasons, -- as much as energy efficiency is
15 important, we do sell products for other
16 reasons. Okay? -- and decide to
17 conservatively rate it. I would say he is
18 complying, but he hasn't done sampling in the
19 rigorous definition I think we're seeing here.

20 And I'm not sure that's right.
21 I'm not sure it's right that he would have to
22 do multiple testings.

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1 We'll make a comment.

2 MS. ARMSTRONG: Okay. I look
3 forward to it.

4 MR. BROOKMAN: Hey, Frank? Frank?
5 Frank, I didn't quite get it. By telling the
6 Department of Energy how you are doing your
7 sampling, that is some additional burden?

8 MR. STANONIK: No. I am saying if
9 it was to be rigorously enforced, sampling
10 certainly implies at least two tests and
11 probably more. Okay? I am claiming that
12 there are circumstances where a manufacturer
13 could comply with the regulations and only
14 test one unit of this new basic model one
15 time.

16 MR. BROOKMAN: Okay.

17 MR. STANONIK: You know, it would
18 be a Saturday check that what he predicted or
19 what he believed he had made, in fact,
20 happened.

21 MR. McCABE: This is Michael
22 McCabe, just following up on Frank.

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1 So what you are describing one
2 could say is that the manufacturer is
3 considering that the new model to be the same
4 basic model as another one based on the test
5 that they could be using. And one scenario
6 could be that the modified an existing basic
7 model.

8 Based on their knowledge, they
9 understand the product that should be
10 performing in the same way or similar to that
11 of the basic model or, for whatever marketing
12 reason, they're considering a different model
13 and they're just testing one unit of that new
14 model to verify their thoughts.

15 And they're giving it a
16 conservative rating, which is the same rating
17 as that basic model that it grew out of and
18 that, in effect, they're considering that to
19 be part of the same basic model.

20 MR. STANONIK: Mike, that is
21 certainly a lot of it except that as currently
22 constructed, they probably couldn't call it

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1 the same basic model. You know, a lot of this
2 goes back to the definition of basic model.

3 But, you know, just as an example,
4 talking about water heaters, you know, the
5 Water Heater Institute was faced with a very
6 difficult situation of providing special
7 NOx-emitting product to Southern California --
8 okay? -- and recognizing that they did put in
9 a different burner, but if they knew that
10 otherwise this thing was going to perform the
11 same as model whatever, you know, again, I
12 think there are options available that they
13 still could comply with the law and not
14 necessarily have to in all cases with the
15 current definition of basic model in all cases
16 test multiple samples.

17 MR. BROOKMAN: You are next.

18 MS. CHANG: Christine Chang,
19 Natural Resources Defense Council.

20 One item that we don't see on this
21 list for reporting requirements that we would
22 like to see is full performance data.

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1 MS. BARHYDT: This is the general
2 information that is required of all products.
3 Paragraph (b)(13) of 429.19 actually has all
4 of the specific product information. And it's
5 different because the performance requirements
6 are different for every product. It's
7 different for each one.

8 MS. CHANG: Okay.

9 MS. BARHYDT: And so definitely we
10 have not gotten rid of the performance
11 reporting requirements.

12 MS. CHANG: Great. So the public
13 will be able to see the extent at which the
14 products meet the federal minimum standards?

15 MS. BARHYDT: Yes.

16 MS. CHANG: Great. And then
17 another comment I wanted to make on annual
18 recertification, given that there also was a
19 requirement in the proposed rulemaking for DOE
20 to be notified whenever a product is
21 discontinued, we were interested in hearing
22 the reasoning behind wanting this annual

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1 recertification of old test data as we're not
2 sure that that really provides any new
3 information to DOE. And we think, instead,
4 that some sort of regular recertification with
5 new test data would be more helpful.

6 MS. ARMSTRONG: I mean, okay.

7 (Laughter.)

8 MR. BROOKMAN: Thank you.

9 Let me note for those of you that
10 are keeping track of the slides we backed up a
11 few.

12 MS. BARHYDT: Yes, we have.

13 MR. BROOKMAN: The comments now,
14 Laura has presented up to slide 24. So that
15 sequence of slides if you have comments? Tim
16 Ballo?

17 MR. BALLO: Tim Ballo with
18 EarthJustice.

19 First, just a question. When
20 talking about running more than one test on a
21 particular unit within a basic model, I just
22 want to be clear. Did DOE's regs or the

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1 proposed regs at least mandate that you run
2 the same number of tests on each unit within
3 the sample of the basic model that you're
4 testing?

5 I guess my concern is you test
6 them once and you have the sample of, say,
7 four and then you run maybe a couple of more
8 tests on the unit that tested really well and
9 then you get your rating that way.

10 MS. BARHYDT: The sampling plan is
11 based on a statistical analysis of the number
12 of units tested. And you would not be able to
13 bump up the number of units tested just
14 because you tested one unit multiple times.

15 MR. BALLO: Okay.

16 MR. BROOKMAN: Yes?

17 MR. COULTER: Greg Coulter, Prolec
18 General Electric.

19 I am just using transformers,
20 talking to those. We like the new CCMS
21 approach, doing it electronically. Our
22 problem is for distribution transformers, it

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1 doesn't exist. And it looks like it's going
2 to come out in the final regulations with no
3 comment. If there's an error or a problem
4 with it, we could be caught flat-footed here.

5 We would kind of like to see it
6 before it comes out and have a chance to
7 comment to it.

8 MR. BROOKMAN: Ashley?

9 MS. ARMSTRONG: Yes. So to the
10 extent that the CCMS, the templates that you
11 find online currently available for certain
12 consumer products for which we collect
13 information now, all it is is a format of the
14 information we are requesting in our regs. So
15 it's what we think is an easy format to fill
16 out.

17 To the extent that once it comes
18 out -- the templates will come out with the
19 final rule, with the information that we had
20 gone final with collecting. To the extent you
21 have feedback, you can contact me.

22 MR. COULTER: We will.

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1 MS. ARMSTRONG: but it's not --

2 MR. COULTER: We kind of --

3 MS. ARMSTRONG: It's not a formal
4 iterative process. So I would suggest that if
5 you have comments about the type of
6 information DOE is collecting or what
7 information it shouldn't be collecting, this
8 is that process. Our regulations say what
9 information. It's just we're making it pretty
10 per se in an Excel template.

11 MR. BROOKMAN: Okay. Good. Other
12 comments on these slides? Because we're going
13 to keep going ahead.

14 MS. BARHYDT: So lets see. We
15 talked about the distribution, the commerce.
16 Currently we do require that it must be
17 reported to DOE when a model is discontinued.
18 We are proposing that, rather than that being
19 an ongoing rolling basis, as it is right now,
20 you would be able to report when a model is
21 discontinued as part of the annual
22 certification.

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1 This rule does not change the
2 current status permitting manufacturers to do
3 in-house testing. It does not require
4 independent testing. We may look at that in
5 the next rulemaking, but at this time we are
6 not making any changes to that.

7 The sampling provisions were
8 scattered. And for consumer products, they
9 were pretty much in one section, but for
10 commercial products, they were scattered
11 throughout part 431. And so we have
12 consolidated all of the sampling procedures
13 into proposed 429.9.

14 We have also added some sampling
15 provisions for products for which there
16 previously were not sampling provisions.

17 We did not make any changes to the
18 sampling plans that had already been adopted,
19 but we do have a lot of questions about how
20 sampling plans perhaps could be improved. And
21 we would be looking at those issues in the
22 next rulemaking.

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1 This is one of the issues that we
2 had specific questions about where we're
3 looking at the sampling plans and tolerances
4 for other features of the covered products and
5 covered equipment that impact the water energy
6 characteristics of the product.

7 We're also seeking comment on the
8 approach that DOE has taken and the
9 methodologies that we should consider if we
10 decide to extend sampling provisions to
11 features other than the regulatory metrics.

12 For example, I think you used the
13 storage volume of a water heater earlier.
14 It's not a regulatory metric. But whether or
15 not that is something that is actually
16 representative across a number of samples we
17 think that perhaps the sampling plan would be
18 in order to ensure that the value being used
19 in the calculation for efficiency is actually
20 a valid metric.

21 MS. ARMSTRONG: Yes. And this is
22 Ashley. I'll take that a step further and

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1 even saying, going to the question about --
2 right now I'll use an example of water
3 heaters, going along with the theme. But
4 right now the energy factor, which is the
5 regulatory metric, is based on the rated
6 storage volume.

7 Then if DOE went down the pathway
8 of adding sampling plans and tolerances for
9 actual measured volume, then subsequently the
10 standards could be based on that actual
11 measured volume other than the rated storage
12 volume.

13 So this is asking whether that is
14 appropriate, whether you agree or disagree. I
15 see a lot of people staring at me.

16 MR. BROOKMAN: This gentleman I
17 believe is first and then Ellis.

18 MR. BROWN: Yes. This is Bill
19 Brown with GE Appliances.

20 The first comment I have regards
21 the concept of discontinued model. If you can
22 go back to that slide?

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1 MS. BARHYDT: Sure.

2 MR. BROWN: Just we have a
3 difficulty with the current definition of
4 discontinued model and being able to track
5 when it is no longer being distributed or no
6 longer for sale.

7 We would suggest possibly a better
8 way to look at a discontinued model is, you
9 know, final production date. We can certainly
10 track the final production date and give
11 yourself enough time as well to let that model
12 go through the process of being sold.

13 We would suggest to be consistent
14 with what the EPA does with EnergyStar, one
15 year after final production would be
16 considered to be discontinued model. We would
17 like to offer that.

18 The other question I have goes
19 back to some other comments we had on number
20 of tests per unit. I know you said that you
21 asked for the sample size just to make sure
22 that people were complying with minimum sample

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1 size. The number of tests per unit, I mean,
2 it's been our reading of the document that you
3 test each unit one time.

4 Does DOE even offer the ability to
5 test a unit multiple times? And then what do
6 you do with that test? I mean, do you take
7 max, min, average?

8 My understanding is you test each
9 unit one time. I don't see in the DOE
10 documents today where it allows for multiple
11 testing of the same unit. And if it did, what
12 do you do with that data?

13 MR. BROOKMAN: Ashley Armstrong?

14 MS. ARMSTRONG: Yes. So as far as
15 testing a unit more than once, multiple times,
16 I would say off the top of my head, I think
17 for most products, DOE is silent on it. So we
18 don't have explicit instructions on whether
19 you test a unit once, whether you're
20 prohibited to test a unit more than one time.

21 We're trying to understand what people are
22 actually doing.

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1 MR. BROWN: What do you recommend?

2 (Laughter.)

3 MR. BROWN: I mean, there's one
4 way to do it and --

5 MS. ARMSTRONG: What would you
6 recommend doing? What do you do?

7 MR. BROWN: We test each unit one
8 time.

9 MS. ARMSTRONG: Okay.

10 MR. BROWN: So everybody is going
11 to do that now?

12 (Laughter.)

13 MR. McCABE: This is Michael
14 McCabe.

15 I would like to just add to what
16 Ashley said, that for some of the commercial
17 products, where there is very low production
18 volume, I believe that there in the
19 enforcement testing, there is a provision for
20 multiple testing of an individual unit. And
21 so some of that consideration is what led to
22 this.

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1 But for the high volume products
2 and for most anything for certification, we
3 would expect that it would be a single test.
4 But, as we were again reminding everybody that
5 we're writing this for all the products. And
6 the time that we spent working together to
7 draft this, we were taking into consideration
8 what was going on with transformers, what was
9 going on with residential refrigerators in
10 trying to draft something that seemed to make
11 sense and then tailor it for the individual
12 products.

13 So as you're looking at these
14 provisions, please think about it both with
15 regards to the product or products that you
16 produce, but also take a look at some of the
17 other products for other industries and see
18 whether or not there might be something there
19 that would be applicable to your industry as
20 well.

21 MS. BARHYDT: One other thing.
22 You mentioned the discontinued product and

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1 making that more explicit as to when exactly a
2 product was discontinued. And you suggested
3 one year like it is for the EnergyStar
4 program.

5 For consumer products, perhaps one
6 year is applicable. But my question would be,
7 what about for commercial products? Would one
8 year be a reasonable time frame? Would it be
9 shorter? Would it be longer? And is one year
10 good for all consumer products even?

11 So if we were to go down the path
12 of making that explicit, we would definitely
13 need some information about what people
14 thought was a reasonable time period for
15 people to clear their stock.

16 MR. BROWN: Okay. That is fair.
17 Just the point I was making is that it is very
18 difficult for us to track when the last model
19 is out there being sold.

20 And on our example, I can see
21 where models being made eight years ago for
22 sale in one place in the country, somebody

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1 still has that one unit. That's not what I
2 want to track. And I don't think that DOE is
3 looking to look for that one unit as what
4 we're trying to sell.

5 So one year for commercial
6 appliances is a very reasonable time frame.
7 I'm sure you'll be getting comments for other
8 products as well that say what is a good time
9 frame for them or if they can reasonably track
10 this final sell, it may be easy for them as
11 well.

12 MR. BROOKMAN: Jennifer?

13 MS. CLEARY: My question kind of
14 echoes Mr. Brown's thoughts of trying to
15 figure out, you know, a model is being
16 discontinued when it is no longer being sold
17 or held out for sale or distribution by the
18 manufacturer or private labeler. I would
19 interpret that to mean that being sold means
20 being sold to whoever the manufacturer sells
21 to, not being sold by --

22 MS. BARHYDT: Correct.

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1 MS. CLEARY: -- X retailer.

2 MR. BROOKMAN: Frank?

3 MR. STANONIK: Frank Stanonik,
4 AHRI.

5 I just want to go back briefly to
6 this question of the sampling and the testing.

7 And specifically I am going to specifically
8 talk about the enforcement testing for
9 consumer products, which has been a regulation
10 since way back when.

11 In that particular case, in fact,
12 the current regulations for consumer products
13 specified initial sampling of four units. And
14 then if there is some disagreement as to the
15 conclusion generated by those four units,
16 there is an opportunity to test more samples.

17 There is no opportunity to repeat the tests.

18 So I think, at least on the aspect
19 of the enforcement testing for consumer
20 products, it is very clear there is no option
21 to repeat the test of a test sample.

22 If there is either not a clear

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1 conclusion or in the case of the manufacturer,
2 it doesn't necessarily agree that the right
3 answer has been achieved, they can ask for
4 more tests, but they don't have an opportunity
5 to say, "Oh, can you test that one again or
6 maybe run it two or three more times?"

7 So I think, at least from that
8 aspect of the rules, the perspective that we
9 have always used I think is there that when
10 you are doing sampling testing, you only get
11 to test each sample once. And that was part
12 of, still part of, my confusion.

13 MR. BROOKMAN: Okay. Thank you.

14 Additional comments on this,
15 please?

16 MS. STERLING: Yes. I would like
17 to move forward to the certification testing
18 slide.

19 MR. BROOKMAN: Can you see what it
20 is?

21 MR. McCABE: This is Joan
22 Sterling.

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1 MS. STERLING: Joan Sterling with
2 Intertek.

3 MR. BROOKMAN: Thank you.

4 MS. BARHYDT: Slide number --

5 MS. STERLING: In-house versus
6 independent testing.

7 MR. BROOKMAN: Twenty-six.

8 MS. STERLING: We would like to
9 request -- and it will become more significant
10 in the future rulemaking -- that the
11 terminology be addressed properly and using
12 ISO ISE guide 2 that we will talk about not in
13 in-house testing but first party testing
14 versus third party testing and not independent
15 testing as such. So if we're starting to use
16 the correct terminology, it will be more clear
17 to the industry exactly what we're talking
18 about.

19 And in other spots in the
20 presentation, there was made mention of
21 self-certification, which, in fact, doesn't
22 exist. I think the appropriate term is

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1 supplier's declaration of conformity.

2 So I think it will become more
3 important in the second rulemaking.

4 MR. BROOKMAN: Thank you. That is
5 helpful. Thank you.

6 Karim?

7 MR. AMRANE: Karim Amrane, AHRI.
8 I have a question for Ashley.

9 Regarding the tolerances for
10 metrics, are you talking about existing
11 metric, like CE, or are you talking about like
12 the volume for water heaters?

13 MS. ARMSTRONG: Yes. This is
14 Ashley.

15 Our sampling plans currently
16 revolve around the regulatory, the existing
17 regulatory metrics, like CE, like EER, like
18 energy factor, one of our -- we're talking
19 about -- well, that's one of the issues.

20 But we're talking about in the
21 specific slide, should DOE add tolerances
22 and/or sampling plans for non-regulatory

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1 metrics, like storage volume, like cooling
2 capacity, like a number of terms for which the
3 standards depend upon.

4 MR. BROOKMAN: Okay. You can see
5 there and it's on the screen issue number 4.
6 Any additional comments adding sampling plans
7 and tolerances for other features of current
8 products and current work that would impact
9 the water or energy characteristics of a
10 product? Additional comments?

11 MS. ARMSTRONG: Karim, back to
12 you. You're shaking your head. Does that
13 mean you agree that DOE should?

14 MR. AMRANE: No, no.

15 (Laughter.)

16 MR. BROOKMAN: Frank?

17 MR. STANONIK: Frank Stanonik,
18 AHRI.

19 Let me specifically ask. We
20 certainly don't agree that you need to be
21 worried about water heater volume. There are
22 other standards, other market forces that

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1 regulate to what degree the actual volume
2 might vary from the rated volume.

3 We have been down that road with
4 the California Energy Commission quite a few
5 years ago. And it just adds a lot more
6 complication and no improvement in ultimately
7 regulating the efficiency of water heaters.

8 MR. McCABE: This is Michael
9 McCabe. Following up on your comment, Frank,
10 and, again, I'll make it very broad that when
11 you -- the other products as well. In most of
12 the products or many of the products, there's
13 a measure of capacity that is required to be
14 reported.

15 Many of the products,
16 refrigerators, water heaters, the standard is
17 a function of capacity. There are, looking at
18 room air conditioners, for example, there is
19 some shorthand information that is out there
20 that says that the EER is the equivalent of
21 capacity divided by wattage.

22 And so the question, just to make

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1 sure that everybody is very clear, it's a very
2 broad question. So it's measures of capacity
3 that we're asking manufacturers to certify to
4 DOE. Should those be subject to the same
5 tolerance, testing requirements?

6 But I would even go beyond that to
7 think about the values that would appear in
8 representations that, as Ashley said, relate
9 to efficiency. So taking clothes washers, for
10 example, since the modified energy factor,
11 there is a relationship between the volume of
12 the clothes washer, and the energy use. You
13 know, should tub volume be subject to the same
14 sampling?

15 So please think about it very
16 broadly, not very narrowly, in this request.

17 MR. BROOKMAN: You are next.

18 MR. VerSHAW: Jim VerShaw,
19 Ingersoll Rand.

20 Yes. We would prefer that you
21 would stick with the regulatory metrics and
22 the sampling that we have. You know, we do

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1 capacity. We do capacity on air conditioners
2 as well as the SEER and the EER and the like.

3 How far can we go on different things? I
4 think you get too broad, and there are too
5 many things going on. We need to stick with
6 the regulatory metric.

7 MR. McCABE: Again, Michael
8 McCabe.

9 Following up on that, I think I
10 failed to make the request to Frank that in
11 your submittal, you talked about some of the
12 exchange with the California Energy
13 Commission. If you could go into that
14 experience, both what the back and forth was
15 and what the final decision was and what the
16 basis of that decision was, it would be
17 useful.

18 MR. BROOKMAN: Okay. Final
19 comments on this segment?

20 (No response.)

21 MR. BROOKMAN: Okay.

22 MS. BARHYDT: So we are also

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1 proposing specific provisions for commercial
2 HVAC and water heater equipment. Currently
3 sampling procedures allow the use of an AEDM.

4 And the sampling procedures are actually more
5 stringent for manufacturers that do not
6 participate in an approved VICP.

7 The proposal is basically getting
8 rid of that distinction. And the requirements
9 would be the same for all manufacturers
10 independent of whether they were participating
11 in a VICP or not.

12 The sampling procedures that would
13 apply are those that are currently the ones
14 that currently apply to nonmembers of VICPs.
15 So they're not completely new. They're just
16 the ones that were in use before for people
17 who were not participating in VICPs.

18 And manufacturers may use both
19 in-house and independent testing labs for
20 certification testing. And we would still
21 allow the third party certification for those
22 people who were participating a VICP.

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1 And then under the next
2 rulemaking, we will be looking at provisions
3 surrounding the VICPs for all covered products
4 and covered equipment and what parameters
5 might should apply to those programs that
6 would actually warrant possibly differential
7 treatment.

8 This is another one where we have
9 sought specific comment, particularly on the
10 criteria defining VICPs and their use in
11 certification compliance and enforcement.

12 And I already see people standing
13 up.

14 MR. McCABE: This is Michael
15 McCabe.

16 If I may add to what Laura has
17 said that, as I would describe it, we are
18 essentially wiping the slate clean for the
19 VICPs at this point. And, as Laura said, we
20 are looking at it for all the products for the
21 subsequent rulemaking.

22 So this should not be viewed as a

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1 comment, a negative comment, on the VICPs but,
2 rather, preparing the rulemaking for
3 consideration in the next step.

4 And while there are regs right now
5 for VICPs' recognition within the regulations,
6 we would encourage every industry, every
7 product line to take a look at this with an
8 eye towards the next rulemaking.

9 MR. BROOKMAN: Daryl?

10 MR. EARBS: Yes. Daryl Earbs,
11 Manitowoc.

12 I think the proposal makes it
13 clear to me that VICP really no longer -- it
14 plays a rule in certification, but a
15 manufacturer can go ahead and do their
16 certification without a VICP.

17 But the VICPs, at least some of
18 them, the ones that I am familiar with, do, in
19 fact, go through a verification process, which
20 to me is basically your enforcement mechanism,
21 right? They use an independent laboratory.
22 They go in, and they take random samples of

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1 products.

2 And so what I would be looking for
3 is a manufacturer who participates in a VICP
4 who is already going through every year an
5 enforcement activity through that VICP be
6 relieved of any additional burden on the part
7 of DOE to go through some additional
8 enforcement because if we have someone who is
9 already doing it through a voluntary program
10 and it satisfies at least the basic sampling
11 requirements that DOE would be looking for, we
12 shouldn't have to do it again.

13 MS. BARHYDT: So are you
14 suggesting that the VICP should provide the
15 information to the Department of Energy about
16 whether products pass or fail?

17 MR. EARBS: I think in the case
18 that a product would fall below a minimum
19 requirement, then that's appropriate. We list
20 products that are above the minimum. They may
21 be between EnergyStar and minimum. We may be
22 required to re-rate. But if it's still above

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1 the minimum, I don't know that there is any
2 good reason why they would supply that
3 information to DOE.

4 But if you fall below a minimum,
5 then I think, yeah, that would be appropriate.

6 MR. BROOKMAN: Karim?

7 MR. AMRANE: Karim Amrane, AHRI.

8 I would like to second what Daryl
9 just said. I guess we don't understand this
10 action by DOE at this point in time, frankly.

11 It's a disincentive for those who are
12 currently in the VICP to continue to be in a
13 VICP for commercial product.

14 I think when DOE will issue this
15 rulemaking on VICP, maybe that will be the
16 time to put all products the same
17 requirements, but right now doing it today
18 while we don't know when this rule will be
19 eventually finalized and published, I think
20 it's premature.

21 MR. BROOKMAN: Thank you.

22 Yes?

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1 MR. VerSHAW: Jim VerShaw,
2 Ingersoll Rand.

3 In terms of commercial air
4 conditioning and -- first of all, we support
5 VICPs. We have been long-term members with
6 AHRI on all of our products.

7 The problem with commercial air
8 conditioning, as I mentioned earlier, is that
9 some of these units can get very big.

10 And they are not on stock.
11 They're special ordered. So if you wanted to
12 do a random sampling of the 100-ton rooftop,
13 you're going to have to order it. And it's
14 going to cost \$150,000. And there is no place
15 in the country you can test it independently.

16 So as you move forward with these
17 rules and regulations, you need to make sure
18 that we can actually do the things that are
19 liked to have been done and that they're
20 reasonable.

21 MS. ARMSTRONG: Just to follow up
22 on that, to the extent that a VICP -- whether

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1 they currently do or in the future, to the
2 extent that they alleviate those problems, I
3 mean, how do they test or how do they
4 spot-check 100-ton units?

5 MR. VerSHAW: They have to come to
6 our lab.

7 MR. BROOKMAN: Other comments on
8 this section?

9 (No response.)

10 MR. BROOKMAN: Okay.

11 MS. BARHYDT: The current
12 regulations require maintenance of records for
13 two years after the production has ceased and
14 is no longer being distributed by the
15 manufacturer.

16 And we're not making any changes
17 to that. We are clarifying the information
18 that DOE believes are public records within
19 the certification data. And that information
20 is listed here.

21 And I think that's about it on
22 that slide. Anything else, any other

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1 comments, on certification?

2 MR. McCABE: Laura, if we could
3 back up to the previous slide?

4 MS. BARHYDT: Sure.

5 MR. McCABE: I would like to point
6 out it is all product-specific information
7 submitted in the certification report. So
8 reviews would be public record. That would
9 mean that anybody coming in and asking for it
10 would have the right to see the information
11 and that we would have the responsibility to
12 provide them with that information upon
13 request.

14 When we looked at the information
15 that we had listed before as far as that we
16 were looking for it to be submitted, we talked
17 about generally and then for each product,
18 there is some specific information.

19 We recognize that from some of the
20 comments made today and discussions had over
21 my 30-year tenure of the program, that some
22 may view some of that as being proprietary.

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1 We have reviewed the information.
2 We do not consider it to be, but I would ask.
3 I want to point it out and make sure that you
4 do comment on it and offer your rationale as
5 to why. If there is any that you would
6 consider to be proprietary, what was the basis
7 of that consideration?

8 MR. BROOKMAN: Okay.

9 MS. BARHYDT: So we have also
10 proposed to change the way enforcement testing
11 is set up. In the current regulation, it
12 states that DOE must receive written
13 information that a covered product or covered
14 equipment may be violating a standard before
15 DOE can conduct enforcement testing.

16 We are proposing to change that so
17 that we can request data, test, or examine in
18 another format the standards compliance of any
19 covered product or covered equipment at any
20 time.

21 We may initiate enforcement
22 testing without written information from a

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1 third party. And this proposal aligns the
2 regulations with the statutory authority
3 Congress provided to DOE in EPCA. The
4 previous regulation was far more narrow than
5 the actual statutory authority.

6 MR. BROOKMAN: Jim?

7 MR. VerSHAW: Yes. Jim VerShaw,
8 Ingersoll Rand.

9 Could you go through how you would
10 decide to initiate enforcement testing without
11 written information? Are you going to use
12 that based on the bullet in front of that or
13 just that you just decide that you're going to
14 check somebody?

15 MS. BARHYDT: I think we are
16 probably going to answer that question as we
17 go further through the process.

18 MR. VerSHAW: All right.

19 MS. BARHYDT: So if we can table
20 that for now? And then if we end up not
21 answering the question, by all means, raise it
22 again.

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1 MR. STANONIK: Excuse me? Excuse
2 me?

3 MR. BROOKMAN: Yes, Frank?

4 MR. STANONIK: Frank Stanonik,
5 AHRI.

6 Under the current enforcement
7 process, if DOE does initiate, again, current
8 products or consumer products, if DOE does
9 initiate an enforcement proceeding, the
10 regulations do provide an opportunity for the
11 manufacturer to meet with DOE and provide any
12 data they might have on testing of that unit
13 and have some opportunity to discuss whatever
14 information DOE has that initiated the process
15 before they go to testing.

16 Is this proposal eliminating that
17 opportunity for the manufacturer to perhaps
18 first meet with DOE and provide whatever data
19 they might have before we immediately go to
20 doing tests?

21 MS. BARHYDT: I don't believe that
22 it is changing that, but I've got to double

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1 check. I've got to look back for the text
2 that we proposed again.

3 MR. STANONIK: All right. Thanks.

4 MR. BROOKMAN: Daryl?

5 MR. EARBS: Yes. I was actually on
6 to the next slide.

7 MS. BARHYDT: Okay.

8 MR. EARBS: I don't know if we can
9 move forward to the -- the majority of our
10 products are basically a build-to-order
11 situation. So we receive orders. And
12 depending on the type of product, we may have
13 lead times as short as five days. But there
14 are other ones that are -- we would describe
15 them as special orders-type models.

16 And so I think this really comes
17 out of the consumer area, but I think you
18 really have to differentiate between
19 consumer-type, which would be a make-to-stop
20 versus a build-to-order-type product. Two
21 days is just completely unrealistic in terms
22 of our ability to make samples available with

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1 that kind of promise.

2 MR. BROOKMAN: Chuck Samuels?

3 MR. SAMUELS: I am Chuck Samuels.

4 I'm counsel to AHAM.

5 First of all, this is an excellent
6 hearing, very well-organized. You're to be
7 commended on it.

8 As Jennifer and Ellis mentioned,
9 we are very supportive of DOE being proactive
10 in this area. And we ourselves are developing
11 verification programs in order to meet the
12 need.

13 I do want to talk now that we're
14 in this enforcement testing area about two
15 issues that I find to be troubling and that
16 aren't raised in your proposed regulations or
17 the slides but really ought to be subject to
18 discussion.

19 The first thing is what appears to
20 be a trend that often without any notice to
21 the manufacturer, a complaint is issued that
22 is made public, thereby creating adverse

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1 publicity before the manufacturer has had any
2 opportunity to respond to the Department or
3 certainly be engaged in any kind of procedure,
4 including adjudicatory procedure. Now, when
5 these complaints are closed, favorably or
6 unfavorably, that's also publicized.

7 But some of these involve mistaken
8 understandings and trivial errors. You just,
9 for example, closed a number of cases, two of
10 which you recognized that, in fact, the
11 manufacturer had sent the certification data
12 in to the Department, although perhaps it was
13 mislaid or perhaps it was not totally done to
14 the right office or electronically. It
15 doesn't seem like that ought to be subject to
16 a press release, particularly if you have
17 given no opportunity to the manufacturer to
18 respond to this at all.

19 The second this is I have noticed
20 that the form of these complaints is not a
21 form that says, "We have noticed that, as far
22 as we can tell, you haven't sent in a

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1 certification form. If this is the case, this
2 is a problem. If you disagree, please let us
3 know."

4 No. It's written "We have made a
5 finding that you are in noncompliance. You
6 are liable potentially in penalties for X, but
7 we are going to do you a favor. And if you
8 respond within X days, then it's going to be X
9 - Y."

10 I mean, this obviously is done in
11 a coercive format that doesn't actually even
12 give the companies the information. And this
13 is particularly applicable to small
14 businesses, that if they think there has been
15 an error or a misunderstanding or they have
16 got contrary data, that they have the full
17 opportunity, hopefully informally, although
18 you have already bypassed that by making it
19 public to some extent, but certainly formally
20 to show that to the Department.

21 So I think that it is a very
22 positive thing that the Program Office and

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1 General Counsel's Office are aggressively
2 enforcing the standards and the ancillary
3 requirements, but I think you really ought to
4 be rethinking some of these procedures.

5 And I find it interesting that
6 these procedures are not to be proposed to be
7 part of either guidelines or the regulations
8 but just totally at the whim and discretion of
9 the Department's. I think that is something
10 to think about and we should be talking about.

11 MR. BROOKMAN: Thank you.

12 Ellis?

13 MR. CRAIG: Ellis Craig, Craig
14 Industries.

15 We manufacture walk-in coolers and
16 freezers, as you know. And our understanding
17 here with this sample basic model identified
18 shipping within two days, we may walk-in
19 coolers and freezers.

20 The standard since we make
21 everything custom -- it's not there are 40 of
22 them sitting on the shelf somewhere, we can

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1 just pull one off and send to you -- it
2 actually has to be manufactured. And part of
3 the manufacturing process takes a certain
4 amount of aging and processes that have to go
5 through before the product chemically can be
6 ready to be tested.

7 So I hope there is consideration
8 taken into some of the manufacturing process
9 involved in some of these products that we
10 manufacture. This just wouldn't work.

11 I'm assuming you're saying here
12 that you call us up one day and say we need a
13 test and we've got to ship it in two days,
14 right?

15 MS. BARHYDT: It is a little more
16 complicated than that, but that's the general
17 gist of it. Actually, a few slides further
18 in, we talk about how we select units for
19 testing. And so that may address some of this
20 shipping issue.

21 MR. CRAIG: So do we get notified
22 and then within two days have to respond or do

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1 we get notified before we get notified? I
2 mean, what is that saying?

3 (Laughter.)

4 MS. BARHYDT: Okay. So, again,
5 further in the presentation --

6 MR. CRAIG: Okay.

7 MS. BARHYDT: -- we're going to go
8 through the whole process.

9 MR. CRAIG: Then I will yield to
10 that.

11 MR. BROOKMAN: Other comments on
12 this segment here? Yes, Jennifer?

13 MS. CLEARY: Jennifer Cleary with
14 AHAM.

15 We also have concerns about this
16 change to two days. The five-day requirement
17 is hard enough for manufacturers to meet now.

18 It's very burdensome. Going to two days with
19 -- the reasoning, I believe, in the NOPR was
20 to increase the efficiency of the enforcement
21 process.

22 And while we agree it should be

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1 efficient, we hardly see how the difference of
2 three days is significantly more efficient,
3 especially given the significant increased
4 burden that that will place on manufacturers,
5 particularly in light of the ramped-up
6 enforcement and liability that goes along with
7 that.

8 We don't want to create a
9 requirement that is next to impossible to
10 meet.

11 MR. BROOKMAN: Thank you.

12 Yes?

13 MR. MINELLI: Fred Minelli, Kysor.

14 I also have serious problems with
15 these short times. At certain times of the
16 year, our lead times are out to as much as 12
17 weeks. So to turn some special project over
18 in two days is nearly impossible.

19 MR. BROOKMAN: Thank you.

20 Paul?

21 MR. DOPPEL: Paul Doppel,
22 Mitsubishi Electric.

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1 The time of year has a great
2 impact on that because in the heat of the
3 summer, it may be impossible to have any
4 products even available in stock due to
5 consumer demand.

6 And also with importing products,
7 you know, sometimes products are hung up in
8 port or things like that. So there are
9 circumstances where we can't -- it would be
10 impossible to comply with even the five days,
11 let alone the two days.

12 And hopefully the days are
13 considered working days and not weekends.

14 (Laughter.)

15 MS. BARHYDT: Yes.

16 MR. BROOKMAN: Thank you for the
17 clarification. Okay.

18 Other comments on these?

19 MR. deLASKI: Andrew deLaski,
20 Appliance Standards Awareness Project.

21 It strikes me that if the concern
22 the Department is trying to get at -- I'm not

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1 sure what it is by shortening this time
2 period, but if the concern is cherry-picking,
3 I don't think this solves the problem.

4 I think the way you solve the
5 problem with cherry-picking is that you select
6 your units from the market, as opposed to the
7 manufacturer. You get them from retail. You
8 get them from distribution. That is the way
9 to address the problem with cherry-picking if
10 that is what you are after.

11 Thank you.

12 MR. BROOKMAN: Thank you.

13 Okay. We're moving on.

14 MS. BARHYDT: So the current
15 requirement for consumer products is an
16 initial sample of 4 products with the second
17 sample size about the 16 units depending on
18 the standard deviation of the initial sample.

19 We're proposing to modify this to account for
20 low-volume and built-to-order basic models.

21 We're basing our proposal on
22 existing sampling provisions for commercial

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1 industrial equipment. And the way it's set
2 up, DOE will have discretion to determine
3 whether a basic model qualifies as low-volume
4 or built-to-order based on the specific facts
5 of the case.

6 And some of the things we will
7 look at are the number of units that are
8 actually available at the manufacturer's site
9 and at all distributors.

10 This is a summary of the sampling
11 procedures for enforcement testing. These are
12 not the sampling plans for certification
13 obviously.

14 And so for most products, the
15 first sample is four units. Of those, maximum
16 sample size will be no more than 21 units.
17 The old regulations had it at 20, but some of
18 the lighting products actually require a
19 sample size of 21. So we have changed that to
20 reflect that specific scenario.

21 And for some of the products,
22 we're proposing that the first sample would

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1 not be more than four units. And there are a
2 variety of different exceptions provided. For
3 distribution transformers, the first sample
4 would be not more than five units.

5 We have posted a new online
6 database that provides guidance and
7 clarification on DOE's test procedures. And
8 it is publicly accessible and searchable.

9 The process is that anyone can
10 submit questions they have about the test
11 procedures. And we will develop draft
12 interpretive guidance, which we will then post
13 on the website and make it open for public
14 comment for 30 days. And then we will
15 finalize the guidance and post it on the
16 website.

17 So guidance that is marked as
18 final represents the official interpretation
19 by DOE. And it may be relied on by industry
20 and members of the public in terms of how DOE
21 interprets its test procedures.

22 So the -- sorry?

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1 MS. CLEARY: This is Jennifer
2 Cleary with AHAM. I do have a comment on that
3 website.

4 The guidance website is a great
5 thing, but it doesn't work.

6 (Laughter.)

7 MS. BARHYDT: Okay.

8 MS. CLEARY: So you can't search.
9 You can't pull up any guidance, even if you
10 search for guidance that you know exists. In
11 order for this to work, the website really
12 does need to function properly.

13 And also it would be very helpful
14 if the Department could come up with some way
15 to give notice to stakeholders when you issue
16 a draft guidance for comment, for example, and
17 when the final guidance is issued.

18 Right now we are finding these
19 mainly by going to the website each day. And
20 that doesn't really help with effective
21 compliance.

22 MR. BROOKMAN: Thank you.

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1 MS. BARHYDT: So currently the way
2 we select units for testing, for enforcement
3 testing, we actually go to the manufacturer's
4 warehouse or a warehouse that they designate
5 for us. And we select the units for testing.

6 We are proposing to broaden that
7 to reflect the fact that some products are
8 built to order, there are none in warehouses,
9 and to reflect the low volume that some
10 manufacturers actually keep on hand. It may
11 not be sufficient for us to do enforcement
12 testing.

13 And so what we are proposing is
14 that we may select units of a basic model from
15 the manufacturer, a distributor, or from
16 retail, and that for low-volume or
17 built-to-order products, we'll determine the
18 most reliable approach for selecting
19 representative units. So for
20 low-volume/built-to-order, we may or may not
21 get those directly from the manufacturer.

22 The batch samples are not

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1 necessary when the units are selected from
2 retail. So right now we go out and we mark 20
3 units. Four of those get shipped off for
4 testing. And the other 16 have to be held.

5 If the testing is not conclusive
6 based on the first four, then more from --
7 this thing moves. From the other 16, those
8 get shipped off for testing to meet the
9 requirements of the sampling.

10 We would not use that batch sample
11 concept if we were selecting from retail
12 because it doesn't carry the issue of
13 cherry-picking. And we are also clarifying
14 that DOE can actually make a determination of
15 compliance when a statistically valid sample
16 size cannot be obtained. And we have an
17 explanation of exactly how we would do that.

18 We also made explicit that we can
19 use testing performed by other agencies that
20 were done in accordance with the DOE test
21 procedure to count towards the ultimate number
22 of units tested. And under the current

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1 regulations, manufacturers assumed the expense
2 of supplying basic models for enforcement
3 testing.

4 And we maintain that requirement
5 under these new regulations, regardless of
6 where we obtained the units from.

7 MR. BROOKMAN: Yes. Let's pause
8 there. Frank Stanonik?

9 MR. STANONIK: Just a couple of
10 issues on this proposed enforcement testing.
11 Again, with consumer products, under the
12 current regulations, even if the sample of
13 four, the first sample of four, indicated
14 noncompliance, the manufacturer currently does
15 have an option to ask for more tests. And, as
16 I read this proposal, that's been eliminated.

17 I am certainly not in agreement
18 with that. I think I have done this, but you
19 can predict, looking at the numbers, you can
20 predict, whether more samples have a chance of
21 changing a decision based on four units.

22 So there are some cases where, in

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1 fact, more sampling should be allowed as an
2 option because it is a better statistical
3 sample. There will be other cases where the
4 result is such that you could test 100 units
5 and you're never going to get into compliance.

6 That can be mathematically determined. So I
7 think DOE has gone a little bit too far on
8 this.

9 And then in the proposed rule,
10 relative to this idea that you are going to
11 pick up a unit at retail and then the
12 manufacturer is being -- it is indicated that
13 the manufacturer will reimburse the retailer.

14 Since DOE has entered into that, I hope that
15 they would perhaps clarify that reimbursement
16 means simply replacing the unit that was
17 selected, as opposed to paying the retailer
18 the value of what he sells it for, as opposed
19 to what the manufacturer sold it to the
20 retailer for.

21 Those are two very different
22 things. And it should be adequate that if the

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1 manufacturer gives the retailer another unit
2 of that same model, that is reimbursement
3 without other things.

4 MR. BROOKMAN: Ellis?

5 MR. CRAIG: Ellis Craig, Craig
6 Industries.

7 Our products since we don't stock
8 them, we don't make them, we don't have
9 models, you're asking us to build you a unit
10 and ship it to you at our expense. The
11 average cost of our product is probably \$6,000
12 a unit. And if you decide you want four of
13 them, you know, then we're talking some real
14 money. And if you wanted 16 more the next
15 test you did, you know, that's talking some
16 bigger money.

17 And everything has to be created.

18 It's not something I can put back on our
19 shelves. So I hope that's taken into
20 consideration.

21 It's not the fact that today in
22 this room you're intending to do any of that.

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1 We all know how laws are when they get passed
2 and regulations get implemented that down the
3 road, somebody might decide to just be ornery
4 and make us make four of them and send them to
5 you.

6 And that bothers us that we are in
7 a position that we are actually having to
8 produce a lot of product and send it to the
9 Department of Energy at our cost. Delivery
10 alone can cost \$1,000 for one unit.

11 So I think it would hurt small
12 business and hurt the people who really can't
13 afford to do it quite as easy. So I think
14 there needs to be some consideration or some
15 kind of limitation to this or it will be too
16 burdensome on our industry.

17 MR. BROOKMAN: Thank you.

18 Paul?

19 MR. DOPPEL: Paul Doppel,
20 Mitsubishi Electric.

21 A couple of things. First of all,
22 for VRF equipment, variable speed, multi-split

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1 ductless systems, the cost of these products
2 can get very high, especially on the VRF
3 systems, up to \$20,000 per system. So the
4 manufacturer would have to absorb the cost of
5 that because once these products are tested,
6 they can no longer be sold. So that's just a
7 lost cost.

8 Now, the other question I have is,
9 who pays for the testing?

10 MS. BARHYDT: DOE pays for the
11 testing.

12 MR. DOPPEL: Okay. Because for
13 the larger VRF-type systems, our testing costs
14 have been estimated up to 25 to 30 thousand
15 dollars per system. So these tests are quite
16 expensive.

17 Additionally, for a lot of these
18 systems, we have to bring an engineer from
19 Japan in order to set the various speeds that
20 are required to do these. Variable speed
21 systems less than 65,000 require 10 different
22 test settings. And the inverter system has to

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1 be set in order to run the compressor at
2 various speeds. So that sometimes takes an
3 engineer from Japan.

4 So that would be additional cost
5 to the manufacturer to provide engineering
6 support to do the testing. So I just wanted
7 to make sure that you understood that it's
8 very expensive for the manufacturer just from
9 the equipment basis alone. And also if we
10 have to bring support personnel, that's
11 additional cost on the manufacturer in order
12 to comply with this.

13 MS. BARHYDT: You mentioned that
14 the products cannot be restocked.

15 MR. DOPPEL: This is true. Once
16 the product is set up for testing, it involves
17 braising or mechanically joining the systems
18 together. And in some cases, you have to do
19 drilling into the cover of the ductless system
20 in order to do a test button that we have
21 provided.

22 So none of the equipment can be

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1 resold. And when we do our annual
2 certification testing, generally those systems
3 are like donated to different universities who
4 have or colleges that have programs for HVAC
5 techs, things of that nature.

6 MR. BROOKMAN: Okay. Please?

7 MR. DeMARCO: Pete DeMarco, IAPMO
8 ORT. I have a question regarding, well,
9 regardless of where the sample was selected,
10 how will the Department determine what third
11 party test lab that it will be tested at?

12 MR. BROOKMAN: Please? Yes?

13 MS. WEINER: Hi. This is
14 Stephanie Weiner from the General Counsel's
15 Office.

16 The test labs will be identified
17 through the procurement process.

18 MR. DeMARCO: I am sorry. Through
19 what?

20 MS. WEINER: The procurement
21 process. We will enter into contracts with
22 test labs to test.

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1 MR. DeMARCO: So will there be one
2 test lab identified for that particular line
3 of products that will, unfortunately, always
4 go to that particular test lab?

5 MR. McCABE: This is Michael
6 McCabe.

7 Not necessarily because given how
8 the industry works, how the products are, you
9 know, at present we have undertaken some
10 contracts for some of the consumer products.
11 And we have multiple laboratories. As to
12 which lab would end up being used, we would
13 certainly have to consider a number of
14 factors, including whether or not there is any
15 relationship, for example, between that
16 laboratory and the manufacturer.

17 MR. DeMARCO: Okay. Very well.
18 And will those processes be put available
19 online for us to be able to understand as well
20 as the rest of this process as a third party
21 certifier, we certainly would like to be aware
22 of how that all is going to happen.

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1 MS. WEINER: We can look into
2 whether the procurement contracts are made
3 public. I don't know the answer to that
4 question.

5 MR. BROOKMAN: Thank you.

6 MR. DeMARCO: One further comment.

7 We certainly would, especially as it pertains
8 to plumbing products, recommend that the
9 manufacturer have some input as to the test
10 lab that they would choose to work with.
11 Familiarity with product designs tends to come
12 into play in some of these plumbing products,
13 specifically with toilets more than anything
14 else.

15 And in order to create consistency
16 in how those products were tested, there is
17 some value and familiarity with those
18 products. So we hope that you could take that
19 into account as well.

20 MR. BROOKMAN: Thank you.

21 Yes?

22 MR. BASSO: Dale Basso, WEG and

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1 NEMA motor manufacturers.

2 The question I have is -- and I
3 know it's motors and you don't want to hear
4 about motors, but it might apply to some of
5 your other stuff -- in the selection of the
6 testing process, one of our biggest concerns
7 as motor manufacturers is that you focus on
8 the motors, but a lot of the issues or
9 violations could come from imported product
10 that has motors contained in the product.

11 Those motors could have a CC
12 number and be a certified product, but they
13 could also not. And so the concern is when
14 you are looking for verification testing, how
15 do you make the selection when you think about
16 the fact that the motor is on a compressor?

17 It may be a \$10,000 part of a
18 \$100,000 piece of equipment and fans and other
19 things or would you avoid enforcing imported
20 product with motors in it and only pick on the
21 motor manufacturers directly? So I guess our
22 concern is, how would you make those

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1 decisions?

2 And then who is responsible to
3 pay? You did say an importer is the
4 manufacturer. So that means the compressor
5 manufacturer is the manufacturer, but maybe
6 it's a motor manufacturer with a compliant
7 motor. So who are you going to make pay for
8 the \$100,000 compressor: the compressor guy
9 or the motor guy that's on there?

10 MR. BROOKMAN: Yes? Go ahead.

11 MR. McCABE: This is Michael
12 McCabe.

13 You know, we have started some
14 discussions with Customs, but those are some
15 very valid points. And as the program looks
16 to other products that may be issues as well,
17 I would encourage you to provide and comment
18 on this proposed rule since specific
19 recommendations as to how we could address
20 that.

21 MR. BROOKMAN: Karim?

22 MR. AMRANE: Karim Amrane, AHRI.

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1 If I understand this slide
2 correctly, are you saying that DOE could
3 supplement its own testing by using tests done
4 by other agencies? And my question is, are
5 they going to be used -- you know, are those
6 agencies using the same labs or DOE is going
7 to be testing products in one lab and using
8 test reports coming from a different lab and
9 assessing --

10 MS. BARHYDT: This is where we can
11 verify that the test was done in accordance
12 with the DOE test procedure.

13 MR. AMRANE: But the DOE test
14 procedure is not sufficient. I mean, there
15 are variations among labs. So, you know, that
16 is something that DOE needs to consider very
17 seriously here because just testing to the DOE
18 test procedure doesn't mean that the lab A is
19 going to get you exactly the same result as
20 lab B. There needs to be some correlation
21 among the labs.

22 MR. McCABE: This is Michael

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1 McCabe.

2 That is an issue that we have had
3 some discussions with regards to verification
4 testing. Karim, do you have a specific
5 proposal as far as how that can be
6 accomplished?

7 MR. AMRANE: At least in this
8 particular case, I think the test reports
9 should come from the same lab, at least to be
10 consistent, but maybe a broader picture would
11 be for DOE to do some correlations among the
12 labs to make sure that the labs are, you know,
13 at the same levels of testing that occurs.

14 MR. McCABE: A round robin testing
15 program?

16 MR. AMRANE: Round robin testing,
17 yes, would be a recommendation, yes.

18 MR. McCABE: So if I understood
19 you correctly -- and please think about this
20 as far as in a written comment, but I
21 understood you to say -- and I'm
22 extrapolating. So I apologize if I am going

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1 wrong -- that you would recommend or consider
2 recommending something that for any laboratory
3 that DOE would accept information from,
4 whether or not it's a DOE-contracted or
5 another federal agency, that the lab had been
6 in a round robin test program or the same lab
7 that DOE is using?

8 MR. AMRANE: That is correct.

9 MR. BROOKMAN: Yes, you're next.

10 MR. MINELLI: Fred Minelli with
11 Kysor.

12 There is a lot of confusion
13 because we're discussing so many different
14 products, but, just to clarify, for walk-in
15 coolers, we're talking about 4 or as many as
16 21 panels to check for R value, not 4 to 21
17 completed walk-ins with refrigeration?

18 In this current rulemaking, is
19 that what we're discussing or are you actually
20 talking about 4 to 21 complete walk-ins?

21 MR. McCABE: This is Michael
22 McCabe.

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1 At this point in time, the walk-in
2 cooler, walk-in freezer standard is a design
3 standard. So it's calls for the R value for
4 the walls. It calls for, I believe, air
5 curtains or quick-closing doors.

6 It is a prescriptive standard on
7 components. So we would not be -- given the
8 current standard, it certainly would not be
9 requiring manufacturers to produce an entire
10 system and test it because the standard does
11 not call for that.

12 There is a rulemaking that is
13 underway, as you are well-aware, for walk-in
14 coolers, walk-in freezers where performance
15 requirements are being looked at. And that is
16 certainly something that we are going to have
17 to examine.

18 And the comments received today
19 and written comments will be guiding us not
20 only as far as the current rulemaking but also
21 the future rulemaking as far as what kind of
22 standard and whether or not any additional

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1 provisions need to be added that would be
2 unique for walk-in coolers, walk-in freezers
3 for the future standard.

4 MR. MINELLI: Thank you.

5 MR. BROOKMAN: You're next.

6 MR. MALINOWSKI: John Malinowski,
7 Baldor Electric Company and NEMA.

8 Another comment on motors. The
9 scope of motors covered is 1 through 500
10 horsepower. And it will not be common for all
11 manufacturers to have the larger ratings in
12 stock and certainly not in the volumes that
13 you might want for sampling. Lead time to do
14 something like that might be as long as 26
15 weeks from some manufacturers.

16 When you look at third party
17 testing of an electric motor, there is no
18 third party tester, to the industry's
19 knowledge, that has the capacity to test
20 electric motors to 500 horsepower.

21 One tester can do about 200 horse.

22 I think CSA can do about 60 horse. UL is

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1 just starting their test program. And that's
2 about it. So if you choose something out of
3 that scope, you know, good luck in finding a
4 tester.

5 MR. BROOKMAN: Thank you.

6 Ellis, you're next.

7 MR. CRAIG: It's Ellis Craig,
8 Craig Industries, on walk-ins.

9 Part of the testing, there are
10 three tests that the DOE is proposing right
11 now. One of them is, of course, insulation
12 testing on an R value test. There is a thin
13 test that has to do with out-gassing. And
14 then there's another test. It's a box test
15 and infiltration test.

16 The infiltration test is a
17 completed walk-in. So if the complaint comes
18 from the field that, hey, this unit out here
19 is letting air in too bad and I can't hold the
20 R value on it and the DOE goes to investigate
21 that, the only way they're going to
22 investigate infiltration losses is if they

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1 test for infiltration losses.

2 So since right now the installer
3 in the field is not held accountable and now
4 we have to test this unit, it will include a
5 complete walk-in be sent to the Department of
6 Energy to be tested or it has to be tested in
7 our plant because the tests that they're
8 coming out for those -- and there's also a box
9 test now that has to do with structural
10 members.

11 So there are several test
12 procedures that require different products.
13 But I know that that test that they've got
14 proposed right now for the infiltration loss
15 is actually setting the walk-in up. And they
16 put a gas in it. And then they wait, and they
17 test that gas that when it leaves the box in
18 that period of time, test how long.

19 So it would be full box testing
20 required to be shipped to the Department of
21 Energy or their testing lab, which could be 4
22 to 21 units.

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1 So that was our concern.

2 MR. BROOKMAN: Okay. Thank you.

3 Yes, please?

4 MS. KAMMER: Yes. Claire Kammer
5 with Underwriter Laboratories.

6 I just wanted to go back to your
7 question about accreditations and the existing
8 systems that can be leveraged to kind of
9 baseline the qualifications for labs, either
10 submitting the initial test data, doing the
11 enforcement testing, or being part of an
12 ongoing verification program.

13 We encourage DOE to leverage those
14 existing accreditation programs where
15 appropriate. 17-025 is a great one for
16 technical competencies specific to a
17 particular set of tasks.

18 Round robin may be part of that,
19 but on its own, round robin is just round
20 robin. So building a round robin system off
21 of an existing accreditation, like 17-025,
22 which can be applicable to both in-house test

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1 laboratories, first party, as well as third
2 party is a tool that can be used.

3 For programs like enforcement
4 testing or verification testing, where you are
5 looking to include authentic third party
6 schemes, guide 65 and some other
7 qualifications of labs on top of that can be
8 looked at that for that.

9 So we just encourage you to look
10 to those type programs and leverage them where
11 appropriate.

12 MR. BROOKMAN: Let me just make a
13 process note. For those of you who are
14 curious, we're going to pause shortly for
15 lunch, so if you're hungry. We're going to
16 get through the enforcement testing section.
17 At that point we'll pause.

18 But you're next.

19 MR. COMBS: Steve Combs,
20 International Cold Storage.

21 Regarding walk-in coolers and
22 freezers and the testing that is proposed

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1 specifically under the supplementary NOPR that
2 is coming out, I would strongly urge the
3 Department to look at the time frame that is
4 to be considered with this testing process.

5 There is a limited number in my
6 experience, limited number, of laboratories
7 around the country that are capable of testing
8 a complete walk-in cooler/freezer unit. And
9 most of those have queues for the testing that
10 can get as much as six months.

11 So we do not want to put the
12 manufacturers at an unnecessary risk of not
13 being able to sell a product just while we're
14 waiting for the testing to be completed on
15 that.

16 MR. BROOKMAN: Thank you.

17 Written comments with specifics?
18 Yes?

19 MR. COULTER: Greg Coulter, Prolec
20 General Electric.

21 I'm going to talk about
22 distribution transformers again. And I'm

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1 going to cover a couple of different things
2 you've covered in here. One is samples at
3 manufacturers' expense.

4 We're basically a made-to-order
5 business also. We have plans to make
6 transformers that may start at \$50,000 and go
7 up from there, made-to-order.

8 It's tough to supply these things
9 at our expenses. We've also found it's tough
10 to get them, let's say, the end-user. Let's
11 say you want to go out and get them from the
12 end-user. Talk about him doing them. They've
13 been made to order, specifically showing up at
14 a certain time for him to us.

15 We notice that this is at DOE's
16 prerogative of how this goes about. You could
17 choose the right unit and we might have it
18 currently available, but you choose wrong
19 units or wrong types of units, it could be
20 very difficult to come up with a unit. And
21 the expense could get very difficult, as I
22 mentioned.

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1 If you choose it from somebody
2 other than us, we have a hard time being able
3 to obtain it. You want to go to an end-user
4 or a distributor. We don't own the unit. We
5 have no ability to get it to you or no legal
6 way to get it to you. We can't yank it away
7 from him.

8 And, finally, I would like to
9 comment about testing. I have been in this
10 business over 40 years. If there is any one
11 area where we have problems when it comes to
12 testing, most people in distribution
13 transformers, like motors probably, these big
14 things can be very difficult to test.

15 And generally when there are
16 disagreements, it gets down to how the testing
17 was done. And we found a lot of laboratories
18 who say they are very good at this who have
19 been dead wrong. And you can follow the DOE
20 rules, but, you know, the DOE rules are you
21 are basically covering for transformers how
22 you certify your own lab.

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1 As far as testing goes, it can get
2 real difficult. And we found it to be a lot
3 of problems. And right now we don't have any
4 way in your proposed rule change to even
5 challenge that.

6 They come up with something.
7 We're guilty as charged at that point with no
8 recourse. And this is an area that we find
9 could be real problematic, especially for
10 distribution transformers. There's such a
11 special product that we think there ought to
12 be some ability to even modify the testing or
13 participate in the testing of these very large
14 transformers to make sure they are done
15 correctly.

16 MR. BROOKMAN: Okay. Thank you.

17 Jim, do you have a --

18 MR. VerSHAW: I'm waiting on a
19 slide.

20 MR. BROOKMAN: Okay. Are there
21 others? Others of you who are standing, do
22 you wish to comment? Otherwise we're moving

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1 on.

2 (No response.)

3 MR. BROOKMAN: We're moving on.

4 MS. BARHYDT: The current
5 regulation allows for manufacturers to request
6 testing at the manufacturer's expense of
7 additional units if DOE determines the basic
8 model is non-compliant. And DOE must follow
9 the unfortunate sampling requirements,
10 resulting in a potential total sample size of
11 20 units. And these sections don't allow the
12 manufacturers to retest the units DOE has
13 tested.

14 Under the prepossessed
15 regulations, we're looking at removing
16 430.70(a)(6) and 431.383(f). So we would not
17 be permitting manufacturers to request
18 additional testing.

19 We believe the additional testing
20 delays the enforcement process. By the time
21 we have reached this point in the process, the
22 manufacturer has already provided us with

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1 their own test data. We have obtained units.

2 We have done testing. We have had
3 discussions about the testing. And we have
4 obtained a result that in most cases, it would
5 be based on a statistically valid sample size.

6 So additional testing just adds additional
7 testing.

8 Manufacturers may perform testing
9 on their units at any time. And that is at
10 their discretion. If they want to provide
11 additional data at a later point, they
12 certainly can.

13 And there is an adjudication
14 process to challenge our conclusions. But
15 doing additional testing after we have already
16 gone through the entire sampling process and
17 done testing, we just don't see that that
18 really adds a lot of value to the enforcement
19 process.

20 I'm guessing that somebody is
21 going to respond.

22 MR. VerSHAW: Yes. Jim VerShaw,

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1 Ingersoll Rand.

2 I want to go back to slide 33.
3 And I didn't hear what the process is that DOE
4 is going to use to decide to do initiate
5 enforcement testing.

6 MS. BARHYDT: That is actually in
7 the next section.

8 MR. BROOKMAN: So after lunch.

9 MR. VerSHAW: After lunch. I'll
10 have to come back after? Okay.

11 So let's say a split system. You
12 want to do enforcement testing on a split
13 system air conditioner and then you ask for
14 four samples of this system. And you'll test
15 those four samples. And if it doesn't come
16 out to be the level, that's it. There are not
17 16 more samples that we can run tests on.

18 MS. BARHYDT: So there is an
19 enforcement sampling plan that has the
20 statistical calculation of whether or not the
21 variability in the test results was too great
22 for us to make a conclusive determination. So

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1 that is what determines whether we test the
2 four or we test more.

3 MR. VerSHAW: Okay. So you test
4 four, look at statistics, and see if you
5 needed to do more testing?

6 MS. BARHYDT: Right.

7 MR. VerSHAW: And there is ability
8 for the manufacturer to discuss the results
9 because laboratories sometimes get their
10 energy balances off and they don't install the
11 unit correctly, hit the wrong charge level in,
12 et cetera. Is there some --

13 MS. BARHYDT: I mean, as we go
14 through the process, we provide the test
15 results to the company. The company does get
16 to see the test results.

17 It's not like we just come to you
18 and say, "Oh, you failed." I mean, you get to
19 see the full test data and all the test
20 reports that are generated by the lab.

21 MR. VerSHAW: So then you collect
22 the fine, and then we appeal?

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1 MS. BARHYDT: Well, actually --

2 (Laughter.)

3 MS. BARHYDT: -- the way --

4 MR. McCABE: If you are offering
5 it.

6 (Laughter.)

7 MS. BARHYDT: This is all in the
8 next section for after lunch.

9 MR. VerSHAW: All right. I will
10 be back.

11 MS. BARHYDT: Okay.

12 MR. BROOKMAN: Thanks.

13 Frank Stanonik?

14 MR. McCABE: This is Michael
15 McCabe. If I may? And I'm looking at you,
16 Frank, since you raised this issue before.

17 The sampling plan, as Laura said,
18 calls for setting aside for the consumer
19 products -- focus again, reiterates consumer
20 products -- setting aside the 21 units. The
21 current calls for setting aside 20. You test
22 the first four. And if you have a wide

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1 distribution or variability or your main is
2 way off the standard, you can immediately
3 fail.

4 If it is above -- we have built
5 into our enforcement testing a five percent
6 tolerance. So if you're 95 percent or better
7 of the standard, there are provisions where
8 you can pass. And when you fall in between
9 those two scenarios is where depending upon
10 the variability, it's either one or under the
11 current rules 15 more units to be tested.

12 With that five percent tolerance
13 that is built into the enforcement testing, as
14 you see it in the appendix B, the subpart E of
15 429, it is not clear to us that any additional
16 testing at a manufacturer's option would make
17 a difference in the conclusion.

18 Particularly, as Laura said, at
19 that point, we have already had numerous
20 exchanges with a manufacturer over our initial
21 data that comes to the complaint, whatever
22 form it is in. And the subsequent

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1 conversations that the additional testing at a
2 manufacturer's options, so far we have not
3 seen a situation where that would make a
4 difference.

5 So following up on your comment
6 earlier, are there any situations that
7 reasonably could exist where manufacturer
8 testing would make a difference?

9 MR. BROOKMAN: Frank Stanonik?

10 MR. STANONIK: Frank Stanonik,
11 AHRI.

12 I will answer that immediate
13 question first. Specifically because we do
14 and did operate a water heater, residential
15 water heat, efficiency certification program
16 and for many years for that program, in
17 particular, if there was a question of a
18 rating, we used the DOE enforcement testing.
19 We immediately went to testing four samples.

20 And that's why I mentioned I've
21 had some experience with trying to determine,
22 is there a chance that more tests will change

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1 the result or not.

2 Mike, there is at least one
3 situation I recall where more testing did turn
4 results around. Now, my problem is, as
5 probably I hope everybody can relate to, we
6 have record retention policies. And I'm sure
7 that this one did not happen in the last five
8 or six years.

9 If I can find that test result, I
10 don't think there's any problem in providing
11 it to DOE, but in all those years, I can
12 recall one where I think we went to like it
13 was seven or eight. And, lo and behold, the
14 statistics changed. And at this point, it's
15 anecdotal. I understand that.

16 MS. BARHYDT: But that is in
17 addition to the initial four, right? Because,
18 I mean --

19 MR. STANONIK: Right.

20 MS. BARHYDT: -- what we're
21 talking about with removing the additional
22 manufacturer testing, that's the testing in

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1 excess of the possible 21. Would anything
2 even beyond that -- because that's the part of
3 the testing that we're talking about removing.

4 MR. STANONIK: Okay. Then I
5 apologize because I misread this proposal that
6 if the results of four samples, result of four
7 samples, said you failed, that the
8 manufacturer no longer had an option to say,
9 "Wait a minute. I want you to test more
10 units."

11 MS. BARHYDT: It is a conclusive
12 determination that it failed based on the
13 statistical analysis. So you're saying that
14 the statistical analysis actually came out and
15 said that they failed and then you did
16 additional testing and that that failed.

17 MR. STANONIK: Yes. And,
18 actually, my initial reason for standing up
19 here is that -- and I'm not a statistician.
20 So, you know, I am going to give you the
21 simple version of statistical theory. Okay?

22 The idea that you have tested four

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1 samples says that I have a certain level of
2 confidence that the result of the four samples
3 gives me the true answer. All right?

4 And in most cases, that's correct.

5 All right? But, in fact, there is -- and I
6 don't know the exact number, but there is, in
7 fact, some probability that that four-unit
8 sample gave you if you are looking to enforce
9 a false negative; in other words, failure that
10 wasn't a failure.

11 And so the idea of allowing the
12 manufacturer to ask for more units be tested
13 was, in fact, this check, if you will, that if
14 there was in the manufacturer's eyes a real
15 question this model shouldn't be failing, that
16 they could -- by increasing the sample size,
17 you increased the likelihood that the answer
18 you get is, in fact, the correct answer.

19 MR. BROOKMAN: And if you get all
20 the way to 21, that still doesn't do it?

21 MR. STANONIK: Well, but at 21 --
22 again, at 20 because for our covered products,

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1 consumer products, it was 20. At 20 it gets
2 to the point where it's been acknowledged that
3 additional testing will not change your
4 results.

5 MR. BROOKMAN: Okay.

6 MR. McCABE: This is Michael
7 McCabe.

8 Picking up on the false negative,
9 we have that five percent built into the
10 enforcement testing in order to avoid a false
11 negative.

12 So what you're describing, Frank,
13 is a situation where there may have been a
14 case, one case, where the testing, additional
15 testing, at manufacturer's option may have
16 brought it from being at 96 percent of an
17 efficiency standard to 94 percent or 95. So
18 it would have been within that five percent
19 tolerance.

20 But I think a statistician may
21 very well have said that if you tested all 21,
22 20-21, or you test the entire sample, that by

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1 the time you get given the data at the initial
2 testing, that the true mean would still be
3 below the standard.

4 And so if you tested everything,
5 they would have failed the standard.

6 MR. BROOKMAN: You're next.

7 MS. FABIAN: Yes. Barbara Fabian
8 with Owens Corning.

9 I would like to speak from a
10 testing perspective. I'm a leader of a R&D
11 laboratory. And one thing that is certain is
12 that manufacturers understand their products.

13 And when you take the testing to an outside
14 laboratory, they don't know your product as
15 well as you do.

16 And it's imperative for the
17 manufacturers to have the ability if a product
18 is out of spec by a third party laboratory,
19 that if it is a nondestructive test, that they
20 be allowed to retest that product and see what
21 their determinations tell.

22 And at that point, you can make a

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1 determination as to whether it was the product
2 or the test that was at fault. And you can
3 investigate it further.

4 MR. BROOKMAN: Okay. Thank you.

5 MS. FABIAN: And interpretation of
6 the test method is also very critical at that
7 point in time because a lot of methodologies
8 leave interpretation very broad and can be
9 interpreted by various laboratories.

10 MR. BROOKMAN: Thank you.

11 You're next.

12 MR. NICHOLS: I guess the question
13 that I have on the ability to retest, one, are
14 there break-in periods that are allowed to
15 happen before the testing would start in that
16 we know for a fact that we have components in
17 the system that are -- when you first start it
18 up through what a typical test profile would
19 be, they're still wearing together. And their
20 efficiency and their performance improves with
21 time. So after a certain period of time, you
22 would have a much better performance, upwards

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1 of two percent or more.

2 So, one, if there is a break-in
3 that a manufacturer can supply of running it
4 this long before the test starts, that's one
5 thing. And if it's not, you're going to see
6 manufacturers, especially the guys who have
7 scroll products in their systems, are going to
8 want to retest if they fall just short because
9 they know they're on the first part of that
10 burn-in time.

11 MR. BROOKMAN: Okay.

12 MR. NICHOLS: Also, there are
13 going to be instances where you just find a
14 defective component in one of the samples,
15 which could dramatically affect the average.
16 And I think it would be reasonable to address
17 the defective component and retest the product
18 as well.

19 MR. McCABE: Michael McCabe.

20 Could you elaborate more on
21 defective component and also look at AHRI and
22 the water heaters? I'll use that as an

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1 example, but there may be other products as
2 well.

3 With any product that have foam
4 insulation, you could have voids in the foam
5 of any size. And, from what I understand,
6 those products may be sold into the
7 marketplace and not replaced. The consumer
8 wouldn't find out about it.

9 So it is a product that is sold to
10 the consumer. It is not detected. It is
11 representative of what is sold to the
12 consumer.

13 If you have a situation where you
14 might have a unit that doesn't, a component
15 that does not perform as designed but is
16 representative of what may be manufactured and
17 sold to the consumer, should that not be a
18 unit that is subject to test?

19 MR. BROOKMAN: This is an
20 important question. Another important
21 question is whether we should pause for lunch,

22 Because I note that there are six

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1 or seven individuals who wish to speak and
2 this is a really important topic, we don't
3 want to diminish anyone's capacity to comment.

4 Do you want to keep going or do you want to
5 pause for lunch? Lunch? Lunch? Let's pause
6 for lunch.

7 And then when we resume, when we
8 come back from lunch, we will take up exactly
9 as we were in this segment here. Pay
10 attention. You need to have these
11 instructions. Don't go anywhere yet.

12 It's five minutes until 1:00
13 almost. We're ahead of schedule. Please
14 quiet. We're ahead of schedule. That's the
15 good news. There are a lot of important
16 topics yet to be discussed.

17 Foreign nationals need an escort.

18 The cafeteria is out the door to the left up
19 the stairs. It's a big cafeteria. It's a
20 really rainy day. So it's going to be
21 crowded. Let's go for an hour for lunch,
22 which means we'll resume at 2:00 o'clock.

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1 There is also a Subway shop down
2 the hallway this way, almost 100 yards.
3 Please make sure you wear your badges in the
4 building.

5 When you come back out of the big
6 cafeteria up the escalator, you will need to
7 pass back through the X-ray machine just so
8 you understand that that is the way they do
9 security there.

10 This room will be -- we can't lock
11 it because there will be people in here
12 supervising this stuff. So you can keep your
13 materials here in the room.

14 And also there is a business card
15 summary, a Xerox copy of all the attendees,
16 out there on the registration table for those
17 of you who wish to pick it up.

18 So we will resume at 2:00.
19 Thanks. We have covered a lot of ground
20 already.

21 (Whereupon, a luncheon recess was
22 taken at 12:52 p.m.)

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1 MR. BROOKMAN: Thanks for coming
2 back and being on time. We're going to
3 resume, and, as promised, we're going to pick
4 up just where we left off before lunch. By my
5 record, we have the correct slide up here on
6 the screen, Enforcement Testing, Testing at
7 Manufacturer's Option. There were several
8 commentors that were wanting to speak, so I
9 think you're next. Were you finished?

10 (Off the record comments.)

11 MR. BROOKMAN: Do you want them to
12 respond to Defective Component now, or wait
13 for Michael to get back?

14 MS. BARHYDT: Yes. I would like to
15 continue discussing the Defect Component
16 issue.

17 MR. BROOKMAN: Let's do that.
18 Okay. So, then please identify yourselves.
19 And, as I understand it, you've kind of put
20 your heads together with respect to Defective
21 Components?

22 MR. DOPPEL: Yes.

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1 MR. BROOKMAN: So, then tell us
2 what you're thinking.

3 MR. DOPPEL: Paul Doppel,
4 Mitsubishi Electric. I've had several
5 experiences in testing over the last, I don't
6 want to say how many years, but where during
7 the test, it was revealed that one of the
8 components actually was defective either by
9 handling damage, or some other issue. Anyway,
10 AHRI has a provision that allows for a re-look
11 at a unit that has -- that experiences like
12 more than 20 percent, so if it's only at an 80
13 percent level, obviously, there is a gross
14 problem with that. But it may be 80-85
15 percent, I don't remember exactly what it is
16 off the top of my head. But that account for
17 like a thermal expansion valve, or compressor,
18 or fan motor not operating properly. And
19 those things, and even in a sampling, that
20 rare one somehow has the propensity to be the
21 one that's selected.

22 MR. BROOKMAN: Paul, are you

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1 speaking on behalf of your company, or are you
2 reflecting the views of AHRI?

3 MR. DOPPEL: My company.

4 MR. BROOKMAN: Your company.

5 MR. DOPPEL: Right.

6 MR. BROOKMAN: Are there others
7 that wish to weigh in on this subject of
8 defective components? Let's do so now,
9 please. Your name.

10 MR. TRITSIS: Bill Tritsis, AHRI.
11 We can certainly provide you with some of our
12 guidelines and processes that have been
13 established, again, after 40, 50 years of our
14 experience running certification programs.
15 And there are cases where during shipment, a
16 component could be damaged, and it's not
17 visible; however, it affects the performance.

18 MR. DOPPEL: Yes.

19 MR. TRITSIS: And our regulations
20 do allow one defective claim; however, only at
21 our discretion to decide whether, indeed, it
22 was a defective component issue, or a quality

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1 issue. So, again, it's not -- we receive some
2 documentation and we judge whether it is, or
3 not, but the cases do occur.

4 MR. DOPPEL: The issue that Mike
5 McCabe was raising was whether that's
6 something that would be reflective of
7 everything that's in stock, or everything --
8 in most cases or not, I did have the
9 experience one time, however, where a
10 compressor manufacturer knowingly shipped us
11 compressors that were out of their
12 specification for a certain period, so that
13 would have been the situation that those were
14 out of spec. And it was -- I mean, it was not
15 anything that we could have known, because we
16 rely on the compressor manufacturer, or other
17 component manufacturers to supply products
18 that are within those specifications. So, in
19 cases like this, then it goes back to the
20 supplier, and you have to question whether the
21 manufacturer can be fully held accountable if
22 what they're getting is defective unknown to

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1 them, a small percentage unknown to them.

2 MR. BROOKMAN: Do you want to ask
3 any additional questions, Laura?

4 MS. BARHYDT: Yes. I think the way
5 that we got on to the subject of defective
6 components was someone was making -- was
7 saying that it would be necessary for
8 manufacturers to test the same units that we
9 had tested in order for there to be a
10 determination that a component was defective.

11 And what I was wondering was, is that
12 something you cannot tell by looking at the
13 test data to see that there was a defective
14 component, and that's why that unit tested so
15 far off?

16 MR. NICHOLS: Jeff Nichols, Johnson
17 Controls. Sometimes you can see it in the
18 test data, and sometimes you have to fiddle
19 with it to find it. You get into diagnostic
20 activity. Often, the test data indicates two
21 or three things that you might think are
22 defective, but you don't know definitively

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1 until you've examined it, and/or replaced the
2 component.

3 MS. BARHYDT: Thank you.

4 MR. DOPPEL: In the case of this
5 compressor problem that we had, it was only
6 through extensive diagnostic testing that we
7 were able to determine. And the percentage
8 off was like 10, 12 percent, so it wasn't a
9 lot, it wasn't like at the 80 percent level.
10 So, that was a particularly troubling
11 situation, it took some time to resolve.

12 MR. BROOKMAN: Thank you. I,
13 actually, think this gentleman here is next
14 and then I'm coming back to you. Yes, you're
15 next.

16 MR. DUFFY: Thank you. Oh, Mark
17 Duffy, GE Lighting. Before lunch, the topic
18 that had triggered my thoughts had to do with
19 the sampling plans and certification
20 requirements. And, of course, we want to urge
21 you to make acceptable ones, and we'll provide
22 comment on it. However, the enforcement

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1 provisions that are in the NOPR should avoid
2 false triggers by random sampling variation.
3 One in particular that concerns the lighting
4 industry is lamplight. It is very prone to
5 small statistical samplings, 10 lamps, so
6 forth, reaching the wrong conclusion. So,
7 ultimately, we would like to see a high degree
8 of confidence to determine non-compliance, and
9 encourage the DOE to do computer simulation of
10 this before concluding that they have a high
11 degree of confidence that they won't have a
12 false signal of non-compliance.

13 MR. BROOKMAN: Okay. Thank you.

14 MR. DUFFY: Thank you.

15 MR. BROOKMAN: You're next, and
16 then to Kelley.

17 MR. HON: Charlie Hon, True
18 Manufacturing. There are several issues here
19 that need to be discussed. Number one is, on
20 one of your previous slides you discussed how
21 often you tested the same unit. That is a
22 critical component, because under commercial

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1 refrigeration rules you have a test condition
2 of 38 degrees plus or minus 2 internal
3 temperature shift. We've run tests on units
4 which we've notified different groups over the
5 years, because we've seen a 7 to 8 percent
6 shift in the test data within those
7 temperature ranges easily, and we've seen as
8 high as 12 percent shift in temperature range
9 from one extreme of the test condition to the
10 other. So, you've got to be very cognizant of
11 how the test is run, and that's one of the
12 discussions we have to be very careful of.
13 And, also, component variation is still there.

14 I think if we're doing our job right as
15 engineers, we should be taking in all the
16 standard component variations.

17 MR. BROOKMAN: In your comment, did
18 you say how you thought the Department should
19 address it, because I wasn't sure.

20 MR. HON: I didn't. We do not know
21 how to address that.

22 MR. BROOKMAN: Okay. Thank you.

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1 That's important here. To the extent we can
2 identify it, right.

3 MR. HON: Because the 5 percent
4 variation, which they have put on, is the same
5 as UL has put on, and several other test
6 organizations have put into their standards,
7 is that during recertification testing, if
8 you're within 5 percent, it works. And we
9 don't have a problem, because somebody has to
10 draw a line someplace.

11 MR. BROOKMAN: Yes.

12 MR. HON: But you have to
13 understand that there is variation within
14 those tests. And the manufacturers are
15 inherently going to run the test on the warm
16 end of the specification because it makes us
17 look better in published data.

18 MR. BROOKMAN: Okay. Kelley.

19 MS. KLINE: Kelley Kline, GE
20 Appliances & Lighting. Just a couple of
21 points here as DOE considers its position on
22 not allowing additional testing at the

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1 manufacturer's request, and also the retest of
2 units that DOE has already tested.

3 I'd just point out here that I
4 think two really important considerations
5 there are the test procedure variability
6 issues, or interpretation issues that may be
7 out there, and also what was hit upon, and
8 there was some discussion on earlier about the
9 validating the results through round-robin
10 testing or otherwise at the test labs. And
11 I'm thinking here, in particular, about some
12 examples of where labs can test the same or
13 similar product and get very different
14 results. And I think that so long as those
15 variability questions exist among labs, and
16 also questions exist around test procedures,
17 it does put manufacturers in very difficult
18 situations at some time to be able to feel
19 comfortable and validate those results. So,
20 I'd just DOE to consider that.

21 MR. BROOKMAN: Thank you. Daryl.

22 MR. EARBS: Hi, Daryl Earbs,

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1 Maniwoc Food Service. I just -- my concern
2 I think is the same, that if we have defective
3 components, and we do from time to time, the
4 question about whether that would be
5 detectible by the end-user, in most cases it
6 is, it would result in a warranty call to our
7 company, and then we have a corrective action
8 process. So, if we can't retest, then the
9 other question would be, well, will you just
10 throw that result out, and how would you know
11 what result to throw out? But, clearly, if
12 there's a defective component that has a
13 significant impact on the performance, putting
14 that into the distribution is going to really
15 skew it. And I don't think that's what you
16 want to do.

17 If it's a test lab that doesn't
18 know some of the nuances of a piece of
19 equipment that they've tested, something they
20 haven't tested before, so that there's a
21 fairly complex process to figure out what's
22 wrong, they might just accept it not knowing

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1 that it was really not performing correctly.
2 So, I think it's something where industry
3 should be allowed to somehow interact in the
4 process before any judgment is passed, because
5 once you include that data and say it can't be
6 taken out, then it really gets difficult to
7 undo that effect.

8 MR. BROOKMAN: Thank you. Chuck
9 Samuels.

10 MR. SAMUELS: Thank you. Chuck
11 Samuels, AHAM Council. I understand the
12 interest in trimming down the section of the
13 CFR that you've got up there right now, but we
14 have to recognize that minimizing delay in the
15 enforcement process isn't the only, or even
16 the highest value here. The highest value
17 here is being fair and getting good and
18 accurate results. So, although it's true
19 manufacturers may perform testing on the units
20 at any time, you need to build in a process
21 where that can be accommodated before you come
22 to a final decision, because it doesn't do

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1 them any good after-the-fact, after the next
2 press release has gone out, or after penalties
3 have been levied to do the testing. It should
4 be built in fairly early, it should be
5 expeditious. You can't let these things lag
6 forever, but you've got to integrate it into
7 your process so that it's real, and
8 meaningful, and not just some theoretical
9 right.

10 MR. BROOKMAN: Thank you. Jim.

11 MR. VERSHAW: Jim Vershaw,
12 Ingersoll Rand. One of the key things in
13 taking data is to make sure that you've got
14 good gauge R&R on your test equipment, and in
15 your measurement techniques. And when you get
16 to the serious point of enforcement testing,
17 you test four units, and you fall out of bed
18 in terms of where you should be below 5
19 percent. I think there ought to be a way to go
20 back and make sure that the lab is actually
21 where it should be. In other words, you test
22 one of those four units four times, or five

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1 times, get a gauge R&R, make sure it's not a
2 lab issue, not a setup issue, not a technician
3 issue, because we're way down the line here.
4 The next step from here is losing product for
5 commerce and clients, so we want to make sure
6 that there isn't some kind of false reading in
7 here that's causing --

8 MR. BROOKMAN: Are you suggesting
9 how the Department should do that?

10 MR. VERSHAW: Yes, I just did.
11 Yes, I think they ought to run -- I think up
12 gauge R&R on the test facility on those units
13 that they run through enforcement testing.

14 MR. BROOKMAN: Okay. Actually,
15 Harmon I think was first. Yes.

16 MR. LEWIS: I want to say amen to
17 the last couple of folks. One thing, are we
18 adopting the policy that you're guilty until
19 proven innocent, or you're going to be
20 innocent until proven guilty? Because it
21 sounds like we're the former, and that, to me,
22 doesn't sound right being an American.

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1 Second point, no ask, just
2 serious. I would suggest that you build into
3 the regulation that the manufacturer witness
4 the testing. Don't just send me test data,
5 because I'm like Mr. Ingersoll Rand there,
6 test data doesn't mean anything if the test is
7 set up wrong. So, let the people participate,
8 let us see it, because you're taking away
9 livelihood when you judge us guilty, so let us
10 prove innocence.

11 MR. BROOKMAN: Thank you. Andrew
12 DeLaski.

13 MR. DeLASKI: Andrew DeLaski,
14 Appliance Standards Awareness Project. One of
15 the themes that I've been hearing consistently
16 is this notion that there's variability, or
17 there's uncertainty in how to conduct the
18 test, that a given lab might not conduct the
19 test the way the manufacturer happens to
20 conduct it, as was said a moment ago, that the
21 manufacturers might tend to use the warm part
22 of the test method to give them the results

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1 that best -- they might test a bunch of units
2 and find which ones get them the best results.

3 They know how to do these test methods, and
4 they have found the ways that give them the
5 results that are within what their
6 interpretation of the regulation that is
7 consistent.

8 And what I'm hearing is a concern
9 that any given lab, talk about the Department,
10 might not do it the way they do it. So, I'm
11 not sure where this belongs in this
12 conversation, but it brings us back to the
13 very test method, itself; that if there is
14 this kind of uncertainty in the test method,
15 this is a trigger to the Department to open a
16 rulemaking and fix the test method so that
17 there's transparency in how testing is done.
18 And if a manufacturer has concern that an
19 enforcement proceeding could be triggered
20 around a test method that they're interpreting
21 in a way that is, perhaps, wrong, then they
22 ought to look for guidance before they're

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1 conducting that test in that fashion. So, I
2 think what we're seeing here is, over many,
3 many years, over decades that we have these
4 test methods, and there's lots of experience
5 in this room in independent labs, and how to
6 do them, but we need to be identifying where
7 is this uncertainty, so that there's
8 transparency, one, in how testing is
9 conducted; and, two, how do we fix it so that
10 we're getting results that are consistent. I
11 don't know how that fits into this overall
12 discussion, but we have to go back to the
13 methods, themselves, and their
14 interpretations.

15 MR. BROOKMAN: Thank you.

16 MS. ARMSTRONG: And just to follow
17 on that point, I mean that is the whole
18 premise behind our test procedure guidance
19 website. If there are areas for which
20 manufacturers, and/or labs, and/or any party
21 feels that there needs to be guidance, or an
22 interpretation made by the Department such

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1 that ambiguities can be further investigated,
2 that is the premise behind the test procedure
3 guidance website that is now available for all
4 products.

5 MR. DeLASKI: And just to follow
6 on, this is Andrew, again. I mean, it also
7 speaks to the basic fundamental issue of
8 fairness that was also just raised, that are
9 we providing -- is the government providing a
10 level playing field? If one manufacturer
11 found a way to make the test method work to
12 get a better result, then the others are
13 disadvantaged by that, and so is the public in
14 terms of, potentially, in terms of energy
15 savings. So, I think it's sort of a very
16 fundamental issue. I think the guidance issue
17 is a start, but so is also making sure that we
18 have a mechanism to -- for the industry to
19 come forward with these issues, and have them
20 addressed in a way that is proactive, not just
21 in a way which is here comes the fine.

22 MR. BROOKMAN: The speaker behind

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1 you is first. Yes.

2 MS. KAMMER: Yes. Claire Kammer
3 with Underwriters Laboratories, building on
4 make sure that the standards themselves are in
5 place in the guidance documents. There's been
6 a lot of talk about the technical competency
7 of labs making determinations, whether they be
8 the manufacturers' labs, first-person labs, or
9 third-party labs. All of that comes with
10 accreditations like 1702-5, so things like
11 gauge R&R are built into 1702-5. So, if
12 you're looking for some sort of metrics to
13 make sure that labs are performing in a
14 consistent way with the technical competency
15 specific to that standard, then accreditations
16 are the tool to be able to do that, and they
17 build in all of those aspects of best
18 practices across the industry.

19 MR. BROOKMAN: Thank you.

20 MS. BARHYDT: That, actually, leads
21 into the question I had listening to several
22 of you. Would -- lab accreditation is one of

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1 the things we have in mind for a future
2 rulemaking, and my question is, would having
3 lab accreditation in place and having
4 enforcement testing be done in those
5 accredited labs, would that alleviate a lot of
6 your concerns, some of you who have already --

7 MR. BROOKMAN: You're first in the
8 queue, go ahead.

9 MR. MALINOWSKI: John Malinowski,
10 Baldor Electric.

11 MR. BROOKMAN: For those of you
12 that are listening on the webinar, the reason
13 for the laugh was a bunch of individuals just
14 stood up. Go ahead.

15 MR. MALINOWSKI: John Malinowski,
16 Baldor Electric Company, and also NEMA member.

17 To your point on accreditation, first of all
18 to answer that question, several years ago we
19 did a round-robin motor test study, same motor
20 sent to seven or eight of our companies that
21 are all NAB Lab certified facilities. The
22 test deviation we got was about 10 percent, so

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1 your 5 percent really isn't going to work, so
2 that's a little bit tight.

3 The other question I have is, on
4 testing, besides motors, there's probably a
5 lot of these other products that are quite
6 large and not feasible to ship to a third-
7 party laboratory for testing. There's
8 companies like UL, CSA, other test companies
9 that, potentially, could come in and do a
10 witness test. Is that going to be considered
11 a third-party test, even though the
12 manufacturer is testing it in his own NAB Lab
13 Certified laboratory. You have a witness
14 there from a third-party organization that
15 would be overlooking the testing. Is that
16 third-party enough for DOE?

17 MR. VERSHAW: Jim Vershaw,
18 Ingersoll Rand.

19 MR. BROOKMAN: Jim, the Department
20 is deciding whether they want to respond to
21 this, or not.

22 MS. ARMSTRONG: His comment was

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1 specific to motors, but I think he's asking
2 more generally for products that it may be
3 applicable to, if I understood you correctly.

4 I don't think we -- I think it's fair to say
5 we could take it under consideration. At this
6 point, I don't think our regs are third-party
7 for enforcement testing. To the extent that
8 that is what you're suggesting, we could take
9 it into consideration.

10 MR. MALINOWSKI: There's going to
11 be labs that aren't going to be able to want
12 the test, large HVAC unit, or a walk-in
13 cooler, big motor.

14 MS. ARMSTRONG: Sure.

15 MR. MALINOWSKI: Volume is not
16 there.

17 MS. ARMSTRONG: Understand.

18 MR. BROOKMAN: Yes. Okay.

19 MS. ARMSTRONG: Thank you. Jim.

20 MR. VERSHAW: Yes. Jim Vershaw,
21 Ingersoll Rand. I don't want people to get
22 the impression that manufacturers learned how

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1 to tweak the test conditions in order to drive
2 efficiency numbers higher. That wasn't the
3 point I was trying to make. You know, in
4 terms of air conditioning, there's so many
5 different things in play in terms of the
6 indoor room temperature and humidity, the
7 outdoor room temperature. You've got three
8 different motors, you've got a compressor,
9 you've got two different fans, you have coils,
10 you have how much charge is put in the unit by
11 the person who installs it, so this isn't a
12 situation where we know how to magically make
13 the test work and the test labs don't. We,
14 actually, hold tighter challenges on energy
15 balance. We do certain things that we find
16 that when we do the third-party verification
17 testing, that the variation we're getting on
18 those are higher than what we get in our labs.

19 And if you dig into it, you find that well,
20 they couldn't quite set that one unit up
21 vertically because there wasn't room in that
22 test room, they had to lay it on its side, or

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1 they didn't have the thermal couplers right,
2 or they didn't quite get the charge right.
3 And, as a result, you get variation. And we
4 could live with that through the third-party
5 verification testing process, and
6 qualification process, but when we get into
7 enforcement testing, that's pretty serious,
8 and that's where you want to make sure that
9 you're not getting fined after four tests, and
10 there was a problem in the lab; which an ISO
11 verification says you've got processes that
12 have been verified, but doesn't mean you
13 follow them everyday, or that particular
14 technician that day was doing everything
15 correctly.

16 And I know that labs we work with
17 have labs different parts of the country, they
18 can't correlate their test rooms with one
19 piece of equipment yet. So, there's a lot in
20 there that has to be looked out for.

21 MR. BROOKMAN: Thank you. Daryl.
22 Actually, Daryl, Kelley is next.

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1 MS. KLINE: Kelley Kline, GE. I
2 was just going to actually agree, Andrew, with
3 what you were saying about the need for DOE to
4 really approach some of the test procedure
5 resolution of interpretation issues through
6 revisions to the test procedure, itself. I
7 think it's in everybody's interest to have
8 very real clear guidance.

9 And to pick up on something you
10 said, and what the last gentleman said, the
11 issue I was trying to highlight was not really
12 the differences between a manufacturer lab and
13 a third-party lab, was that even these
14 differences will exist between third-party
15 labs, where you'll see test procedure
16 interpretation issues, or just ways the labs
17 do it differently, showing different results.

18 And going back to the guidance,
19 the DOE guidance site, I think that's a really
20 great start. One thing I think that DOE needs
21 to be mindful of there, though, as guidance is
22 issued on some of these test procedure areas

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1 where there's not been a lot of clarity in the
2 past, at some points that may amount to really
3 new guidance, or a new set of interpretation,
4 or eyes on the test procedure where
5 manufacturers may not have been interpreting
6 it that way in the past. And I think in some
7 instances may need -- may beg for some period
8 of time for manufacturers to adjust plans for
9 existing product, and begin to look at the
10 test procedure the same way it's been
11 interpreted on the DOE website, so that's, I
12 think, a tension between the website and the
13 rulemaking process that would need to be
14 resolved.

15 MR. BROOKMAN: Thank you. Daryl.

16 MR. EARBS: Yes, I just wanted to
17 address the question --

18 MR. BROOKMAN: Excuse me, Daryl.
19 It seems we have an interpretation from GC.

20 MS. WEINER: Stephanie Weiner from
21 the Department of Energy. Kelley, I just
22 wanted to mention that as part of that test

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1 procedure guidance database, there will be in
2 most cases an opportunity for comments on the
3 guidance in which folks could weigh in on
4 issues that they feel will require time to
5 implement.

6 MR. BROOKMAN: Daryl. Thank you.

7 MR. EARBS: Okay, Daryl Earbs. I
8 just wanted to address a question on
9 accreditation as a solution, and we've spent a
10 lot of time looking into accreditation. It
11 was really driven by some of the proposed
12 changes around Energy Star, because that's one
13 of the areas that they've looked at. And I
14 think it's a perfectly valid solution for
15 companies that that makes sense for. It's not
16 a simple process, it's something that -- we've
17 gone through ISO accreditation against other
18 standards to do 17025 is no small undertaking.

19 There are a limited number of bodies that are
20 available to do those accreditations. There
21 are other solutions, some of which involve the
22 nationally recognized test laboratories.

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1 We follow all of those practices
2 today, but to go through a formal
3 accreditation requires a lot of paperwork, a
4 lot of people's time. And I'd just like to
5 make sure that we have other options that give
6 you equivalent confidence, and traceability to
7 calibration, and gauge R&R and all the other
8 things. So, as long as we don't view that as
9 the only solution, then I think it's fine to
10 include that. But if we limit the options,
11 then I think that's going to slow the process
12 down, and become more of a hardship for
13 manufacturers.

14 MR. BROOKMAN: Thank you. I believe
15 you were next. Do you want him to go first?
16 All right.

17 MR. DeMARCO: Pete DeMarco with
18 IAPMO Warranty. Perhaps I could provide a
19 little bit of a balanced perspective on this.

20 Prior to working for IAPMO, I worked for a
21 manufacturer for over 30 years, so I'm kind of
22 understanding of both sides of this equation a

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1 little bit. And, first of all, I agree with
2 the comments that were made by UL. And
3 requiring labs that are certified to ISO 17025
4 is an important criteria. It does indicate
5 the labs are competent to run these tests.
6 They interpret the standards properly, and run
7 these tests, as they are intended to be run.

8 Having said that, from a
9 manufacturer's perspective, I think it's also
10 important to point out that while the sampling
11 schemes that are in place for these particular
12 product segments do establish a particular
13 sampling scheme that has a confidence level
14 assigned to it, that those were assigned to
15 those particular product segments with the
16 understanding that those would be conducted in
17 the manufacturer's test facilities. Now, if
18 you're going to add to that, changing
19 laboratories, changing technicians, and the
20 possibility of perhaps labs that are
21 unfamiliar with the products, testing these
22 samples, now the error bars increase. And you

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1 may need to revisit, in some cases, those
2 confidence levels.

3 I, also, would like to point out
4 that the higher the complexity, or the more
5 variability that's inherent to a product,
6 either through the material, or the
7 components, sometimes it's even the opposite
8 of complexity, sometimes the simplicity of a
9 product. If you think about a toilet with a
10 simple flush valve that opens and closes, it
11 doesn't meter water by a hundredth of a
12 gallon. It meters water as good as it can for
13 its intended purpose. So, there's variability
14 that's inherent to these things, so trying to
15 revisit those, or to think that there may be a
16 opportunity to tighten those just because time
17 has gone on may not be appropriate. So, from
18 a manufacturer's standpoint that kind of
19 balances it out. But, certainly, 17025 is a
20 big cogent to this equation.

21 MR. BROOKMAN: Let me before you
22 leave, and for the others standing, and maybe

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1 there will be others that want to respond to
2 this, you'll recall that one issue that was
3 left on the table was whether testing with
4 witness, presumably a qualified witness should
5 qualify as a third-party, so if you've got
6 additional comments on that, I think the
7 Department would welcome those.

8 MR. DeMARCO: Are you addressing me
9 on that?

10 MR. BROOKMAN: If you wish to. I
11 think others will, as well.

12 MR. DeMARCO: Witness testing is
13 something that we at IAPMO do offer our
14 clients for certification to the plumbing
15 code. That may be different from different
16 from this enforcement testing. I would
17 encourage that we, on a case-by-case business,
18 that be considered. And I think for plumbing
19 products, it probably would be acceptable.

20 MR. BROOKMAN: Okay. Thank you.

21 MS. STERLING: Joan Sterling with
22 Intertek. I'd like to address a couple of

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1 issues. Let me take the one you just
2 mentioned first, supervised manufacturer
3 testing, or witness testing, which is a common
4 practice by many accredited labs and
5 certification bodies. And, in fact, the IACCB
6 scheme even has a whole set up to deal with
7 that, so it's very common, and it is based on
8 specific individual requirements, and the best
9 way that they can be satisfied. So, all those
10 checks and balances can be built into an
11 accreditation requirement, whether it's 17025
12 or Guide 65, which is in the process of being
13 revised by ISO for certification bodies. So
14 there's, essentially, two levels of
15 accreditation; of course, one for
16 laboratories, and then one for certification
17 bodies that takes it to another level.

18 The issue with test standards, and
19 product standards is significant, and if a
20 standard is written properly, everybody should
21 be able to test the same way to that standard.

22 There are issues that do need to be

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1 addressed, and addressing them initially on
2 your website is one thing, but the bigger
3 picture is that those standards need to be
4 taken into account, and, potentially, revised
5 to produce reproducible results from all
6 qualified laboratories.

7 Accreditation in the big picture
8 there are a number of qualified bodies that
9 provide accreditation services, and from a
10 test lab standpoint, our preference for that
11 is to be able to choose a qualified
12 accreditation body, whether it's NAB Lab or
13 A2LA, or ANSI, or OSHA under the NRTL program
14 that provides certain things. But it is up to
15 DOE to write into their program what they need
16 and the confidence level from an accredited
17 organization from a test laboratory or a
18 certification body.

19 MR. BROOKMAN: Thank you. I
20 believe you are next, and then back to
21 Charlie.

22 MR. WAGNER: Greg Wagner, Morrison

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1 Products. To dovetail with what was just
2 said, even within the framework of accredited
3 labs that comply with those standards, you'll
4 find that there's variation beyond the 5
5 percent as recommended. And I can speak to
6 one, that's airflow measurement. AMCA, who is
7 a recognized leader in terms of airflow
8 measurement will tell you that it's greater
9 than 5 percent for measuring both airflow and
10 the power to drive the fan system.

11 MR. BROOKMAN: Would you recommend
12 a threshold, would you give a number for DOE's
13 consideration?

14 MR. WAGNER: I think that would
15 have to go case-by-case, depending upon what
16 you're measuring, what you're trying to
17 accomplish. Certainly, airflow goes into air
18 conditioning systems and other products like
19 that. You're going to have variations
20 associated with that air moving measurement in
21 and of itself that's greater than the 5
22 percent tolerance you talked about.

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1 MR. BROOKMAN: Okay.

2 MR. WAGNER: I think there are many
3 studies that cover these things to measure how
4 much variation is in a given appliance, and
5 then you can establish confidence levels based
6 upon that evaluation, but it needs to be more
7 in depth than just saying 5 percent across the
8 board.

9 MR. BROOKMAN: Thank you.

10 MR. HON: Charlie Hon, True
11 Manufacturing, but I'm going to be speaking
12 now from a different perspective. I'm also
13 Chairman of the ASHRAE 72 Test Standard, which
14 is the test standard used for commercial
15 refrigeration. We have received, and I want
16 to compliment DOE and several other
17 organizations, because we've received a lot of
18 activity recently from DOE-associated groups,
19 like the National Testing Labs, Northwest
20 National Testing Labs, and several others,
21 actively pursuing tightening these test
22 standards. They're working very closely with

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1 us on that, and they are really drawing a
2 great amount of information before they come
3 to us and try and just make some ridiculous
4 remark. They're coming with sound engineering
5 judgments at this time, so I want to thank you
6 for that. And they are heavily involved
7 trying to get where they can guarantee that
8 that 5 percent could be met.

9 MR. BROOKMAN: Thank you. Okay.
10 Paul.

11 MR. DOPPEL: Paul Doppel,
12 Mitsubishi Electric. Just a quick point of
13 clarification. I failed to mention that the
14 compressor, defective compressor example I
15 gave was with a company I used to work for,
16 not with Mitsubishi Electric. We make our own
17 compressors, and we have no problems.

18 MR. BROOKMAN: We welcome these
19 clarifications. So, I think that that's the
20 final commenting on this enforcement testing.
21 We're going to move on then to adjudication.

22 MS. BARHYDT: Okay. So, we're only

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1 proposing slight changes to the current
2 adjudication process. However, currently, if
3 you look at the adjudication regulations,
4 there is not much there, so a lot of what
5 we're doing is actually trying to clarify the
6 process and make it transparent to everyone
7 about what they could expect if they were to
8 become involved in an enforcement action.

9 First of all, we're clarifying the
10 different types of actions that are violations
11 of the regulations, and those include improper
12 certification, failure to test, and
13 distribution in commerce after we've made a
14 determination of non-compliance. There are
15 many more, like failure to certify, and
16 failure to meet the standard, but those are
17 some that we've clarified explicitly in the
18 proposal. In addition, knowing
19 misrepresentation, and we're proposing to make
20 it explicit that making a representation about
21 the efficiency of a product is a violation.

22 With regard to civil penalties,

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1 each unit of a covered product or covered
2 equipment found to be in violation of a
3 prohibited act, such as failure to meet an
4 applicable conservation standard, constitutes
5 a separate violation. For the certification
6 requirements, the penalty is calculated for
7 each day a manufacturer distributes each basic
8 model in commerce without having submitted a
9 certification report. That's by the statute.

10 That is the way that that is calculated, and
11 those penalties can get very high.

12 What we have done is, we have
13 issued penalty guidance saying that we will
14 consider a number of factors when assessing
15 civil penalties, including the nature and
16 scope of the violation, the provision that's
17 been violated, the violator's history of
18 compliance, the size of the business, and the
19 ability to pay, timely self-reporting, and any
20 self-initiated corrective actions that were
21 taken. So, the statutory calculation is the
22 maximum penalty, and we do take a lot of

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1 factors into consideration when determining an
2 appropriate penalty.

3 Another provision that we have
4 proposed is that in addition to assessing a
5 civil penalty, where we feel that a
6 manufacturer has been making the -- submitting
7 a certification that it meets the standard,
8 and we've determined that that is, in fact,
9 not true, and that they are selling products
10 that don't meet the standard, we're proposing
11 that we may require independent third-party
12 testing for certification. So, as opposed to
13 requiring everyone to have independent third-
14 party testing, we're saying that as a result
15 of an enforcement action, we may impose that
16 as a requirement for future certifications.

17 In addition, there's already a
18 provision in the statute, and in our current
19 regulations saying that DOE may compromise, or
20 settle a penalty amount, and that provision we
21 have retained. We've added a few more
22 paragraphs to make it a little more clear

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1 about how that works, but the basic part of
2 that has not changed.

3 Any questions on adjudication?

4 MS. KAMMER: I just have something
5 very quickly that wasn't addressed, but it's
6 kind of adjudication-related.

7 MR. BROOKMAN: State your name
8 again, please.

9 MS. KAMMER: Oh, Claire Kammer
10 with Underwriters Laboratories. You mentioned
11 in the notice that you would remove
12 certification bodies from recognition if there
13 were incidents of poor reporting, or slow
14 reporting, or different criteria like that.
15 We just urge DOE to look, and actually outline
16 that criteria very explicitly, because similar
17 to what's being talked about for
18 manufacturers, certification bodies,
19 themselves, have to have parameters to make
20 sure that they're working within your
21 expectations and guidelines, versus just
22 making that an arbitrary statement that we

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1 could do it, just put in print kind of the
2 finite details around that.

3 MR. BROOKMAN: Jim.

4 MR. VERSHAW: Jim Vershaw,
5 Ingersoll Rand, again. Back to Slide 33, it
6 says, "DOE may initiate enforcement testing
7 without written information from a third-
8 party."

9 MS. BARHYDT: Yes.

10 MR. VERSHAW: Okay. So, what are
11 the rules and processes that you're going to
12 do to initiate an enforcement test?

13 MS. BARHYDT: Okay. So,
14 enforcement testing would be initiated when --
15 under the proposal, we may initiate
16 enforcement testing at any time. It's pretty
17 straightforward that --

18 MR. VERSHAW: Well, it sounds like
19 you can just wake up one morning and decide
20 okay, I'm going to enforcement test these guys
21 over here. Is there some criteria that you
22 have to go through to say this has to happen,

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1 or this has to happen, this has to happen.
2 And if all those things happen, then we will
3 initiate enforcement action, some internal
4 rules that you follow, or is it just whatever?

5 MR. McCABE: This is Michael
6 McCabe. That's one that if you had some
7 language to offer, I would appreciate it.
8 However, we have not been able to come up with
9 anything, because it's really on a case-by-
10 case basis. We do not anticipate doing C
11 just randomly selecting units for the purposes
12 of testing for verification, but we do see
13 that we could end up doing that. But, for the
14 most part, it's going to be that there's going
15 to be some reason why we would initiate that.

16 There could be some exchange with another
17 agency, could be another program, the research
18 activity where they've torn down a unit. It's
19 impossible -- we have found it so far
20 impossible to identify it. But, principally,
21 we'd see that there would be some reason that
22 we would do it. We also are leaving it open

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1 that we may, particularly when you look at
2 what's happened with the Energy Star testing,
3 that there has been -- roughly, 20 percent of
4 the units have failed to achieve that, that
5 that may influence in itself us to go out and
6 do some random testing. So, it's what the
7 situation, conditions with that product could
8 dictate whether or not we're going to --

9 MR. VERSHAW: That says that you
10 may test something, decide to test something,
11 and then find a problem, as opposed to --

12 MR. McCABE: There could be --

13 MR. VERSHAW: -- some sort of
14 internal process --

15 MR. McCABE: There could be that
16 case, but for the most part, initially, we'd
17 expect that we would find -- there would be
18 some reason, some problem that would lead us
19 to take that action. But, as I said, just
20 with the Energy Star verification testing, we
21 have found some questions which could, in
22 itself, lead us to decide maybe we should be

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1 doing random testing for determining
2 compliance with the standard.

3 MR. VERSHAW: So, would you use an
4 independent third-party lab for that testing?

5 MR. McCABE: At this point in time,
6 the plan is yes.

7 MR. VERSHAW: Okay.

8 MR. BROOKMAN: Harmon.

9 MR. LEWIS: Harmon Lewis with
10 American Panel. I think you ought to do the
11 testing random, and start with the Zs and work
12 your way back to American Panel at A.

13 (Laughter.)

14 MR. LEWIS: I'd also like to turn
15 in all my competitors first, test them, and
16 then come find me. There's got to be, in
17 seriousness, there's got to be a reason for
18 that testing not just that you distrust the
19 whole world. In all seriousness, these are
20 extreme costs to most of us in the room, and
21 we're almost all of us small manufacturers
22 with very limited pockets, and the consumer is

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1 going to be the one at fault. Almost all of
2 us, if not all of us, try to follow all the
3 rules, all the procedures, will do anything
4 that's lined out, we appreciate that we're
5 part of the process, but there's also got to
6 be some protection from frivolous turn-in,
7 because I can just pick any one of them and
8 say, you know, I think he's doing wrong. But
9 if he's doing right, the people that say
10 they're doing wrong ought to be bearing the
11 expense, just like frivolous lawsuits. And
12 there's got to be some adequate ways to
13 protect yourself.

14 MR. BROOKMAN: Tim Ballo.

15 MR. BALLO: Tim Ballo with
16 Earthjustice. This is just a suggestion. On
17 Slide 44, you list a whole bunch of different
18 factors you will look at for assessing civil
19 penalties. And I realize the Department has
20 some discretion here. It seems to me, though,
21 that the more factors you put in makes it sort
22 of a judgment call to decide how much the

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1 penalties will be. You know, that might not,
2 necessarily, be the most fair thing, if
3 certain manufacturers have a better
4 relationship with folks at DOE than others. It
5 seems to me that you calculate in developing
6 the Energy Conservation Standards, the
7 manufacturer's markup across the industry for
8 a product. It seems to me that you can use
9 that type of data to relatively, within a
10 certain degree of accuracy, figure out how
11 much the manufacturer has actually benefitted
12 from selling a product that may not comply,
13 and maybe that should be sort of your starting
14 point for developing the penalty amount.

15 MR. BROOKMAN: Thank you. Charlie
16 Stephens.

17 MR. STEPHENS: Charlie Stephens,
18 Northwest Energy Efficiency Alliance. We're a
19 party that actually has done a fair amount of,
20 I guess what I would call based on what I've
21 heard today, verification testing. We can use
22 the same methodologies that DOE uses, and use

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1 the same statistical analysis to come up with
2 the same results. And, as a side note, we've
3 actually been pretty pleased to see that most
4 of the time we get what the manufacturers are
5 telling us we should expect, defect parts
6 notwithstanding.

7 But I think in that case, if we
8 find something in our own verification
9 testing, and we're using DOE's methodologies
10 to do this, we're not just going to sit there,
11 I suspect. We'll probably let somebody know
12 that our verification testing has
13 statistically highlighted an issue. Now, I
14 don't know whether DOE would act on that basis
15 alone, or not, but it would -- to me,
16 enforcement testing would likely come out of
17 verification testing that went badly, or
18 something along those lines, or at least that
19 would be a logical thing to expect. And we
20 would hope that if we reported that through
21 our own verification testing, that something
22 would happen. Am I wrong?

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1 MS. BARHYDT: Right now, we do,
2 actually, have a place on our website where
3 people can report that sort of thing, where
4 they've done testing, and they found that a
5 product appears not to meet the standard. And
6 that is the sort of thing that we have been
7 using up until now as the basis for our
8 enforcement actions.

9 I understand the concerns with the
10 open-ended language, but as Michael said,
11 there are a lot of different factors that go
12 into it, and we have limited resources. We're
13 not looking to just bring cases against
14 everyone. We're looking to bring cases
15 against people that we believe are in
16 violation. So, it's not the sort of thing
17 where we're picking names out of a hat.

18 MR. BROOKMAN: You're next.

19 MR. COMBS: Steve Combs, ICS. I
20 have a question on Slide 45, the last bullet
21 point, goes into compromise and settlement.
22 You say that DOE will outline the steps to be

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1 taken by both parties once a settlement offer
2 has been made. It sounds like we've gone from
3 trying to bring a product into compliance to a
4 lawsuit there. Who is the other party that we
5 would be settling with?

6 MS. BARHYDT: Okay. So, when we
7 bring a civil penalty action against a
8 manufacturer for failure to comply, if we are
9 able to reach an agreement where the -- say
10 the non-compliant products are no longer on
11 the shelf, and they've been pulled off the
12 shelf, and the product is now being produced
13 in such a way that it complies, and we've been
14 able to verify that, we may settle the case
15 for some agreed upon amount, and based on
16 those terms. The statute actually requires
17 all cases to go to an Administrative Law
18 Judge, so settlement means we're not going
19 through that process.

20 MR. COMBS: So, the two parties
21 would be the manufacturer --

22 MS. BARHYDT: And the Department of

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1 Energy.

2 MR. COMBS: And the Department of
3 Energy. Thank you.

4 MR. BROOKMAN: Ellis.

5 MR. CRAIG: Ellis Craig, Craig
6 Industries. You know, I appreciate the
7 Department of Energy's desire to not having
8 strings attached. With our company, I kind of
9 wish we didn't have all these strings attached
10 that we seem to be adding on. But to
11 arbitrarily leave this open without any
12 specification on what brings forth a complaint
13 to the Department of Energy lends for abuse,
14 maybe not this group, but somebody down in the
15 future, because it's a blank check.

16 MS. BARHYDT: Do you have criteria
17 that you would suggest?

18 MR. CRAIG: I would suggest that
19 whatever criteria you're going to use to make
20 a decision as to who you call in for testing,
21 that you itemize that decision making process,
22 and publish it, at least so that we can be

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1 assured that there is a process going that's
2 consistent with all parties involved. It
3 seems like a logical approach. Yes, it
4 probably will lend itself to not giving you
5 the flexibility you want, but I would like to
6 have a blank check to be able to make any kind
7 of walk-in I want without having to worry
8 about the DOE telling me how to do it, but
9 that isn't the way it works out. I think the
10 DOE has some responsibility to us to at least
11 let us know how these decisions are being
12 made, or the process that you go through to
13 make it. Okay? Thank you.

14 MR. BROOKMAN: Thank you. Okay.
15 Other comments on adjudication? Ashley
16 Armstrong.

17 MS. ARMSTRONG: Hi, everyone.
18 Okay. So, this is more an interactive thing.
19 We're going to talk about the potential for
20 DOE to create a verification program. We've
21 heard a lot about it today. We'd like to hear
22 more about it, so we're requesting

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1 information. We haven't made a determination
2 yet on the role of verification testing as it
3 relates to DOE's certification, compliance,
4 and enforcement efforts. We're seeking
5 additional comments from everyone here, as
6 well as additional comments from everyone on
7 the webinar in writing. So, some specific
8 proposals.

9 What should DOE consider as it's
10 thinking about a verification testing program?

11 Some examples could include considerations
12 for identification of products, the percentage
13 of basic models that should be tested on a per
14 product basis. What type of roles could
15 voluntary industry certifications have with
16 DOE's verification program? What sample size
17 should be tested for verification? Any
18 comments, any thoughts inside that scope,
19 outside that scope, we'd appreciate. This is
20 when you run to the microphone.

21 MR. BROOKMAN: Jennifer.

22 MS. CLEARY: Jennifer Cleary with

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1 AHAM. We, certainly, think that DOE should
2 leverage existing third-party verification
3 programs that are developed by industry trade
4 associations, such as AHAM. These
5 associations, I know AHAM considers all of the
6 issues that you just raised, and is happy to
7 discuss them with DOE, as we have with EPA,
8 for example. Such programs often provide the
9 most cost-effective use of limited lab testing
10 space, and can also provide a high level of
11 competency, which will yield the most accurate
12 oversight, which I believe is the goal here.
13 In fact, AHAM is currently developing and
14 revising existing programs expressly for this
15 purpose, as well as to help out with the
16 Energy Star enhanced testing.

17 MS. ARMSTRONG: Okay. So, a
18 follow-up question for you, and you don't have
19 to answer this on the spot here, but I would
20 be interested to know how you make these types
21 of decisions for your verification programs,
22 the percentage of units you guys plan to test,

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1 how do you determine which units should be
2 tested? I mean, this isn't applicable just to
3 AHAM, this goes to anyone that is involved in
4 any type of verification program, whether it
5 be industry, whether it be voluntary other
6 type.

7 MS. CLEARY: And we'll certainly
8 follow-up with that in our written comments.

9 MS. ARMSTRONG: That would be
10 great.

11 MR. McCABE: Michael McCabe.
12 Adding to that would be the elements of a
13 third-party verification program that DOE
14 could stipulate. Should a qualified program,
15 DOE qualified program be one that would
16 provide DOE access to witness testing, DOE
17 access to records? How open should the
18 program be to DOE's inspection and comment,
19 would be examples of some issues we should be
20 interested in receiving some comment on.

21 MR. BROOKMAN: Claire.

22 MS. KAMMER: Yes, Claire Kammer

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1 with Underwriters Laboratories. To that
2 point, what's being put in place for
3 enhancement to Energy Star will actually give
4 you guys some of those tools to be able to do
5 some of that. One of the -- I actually got up
6 to speak a little bit to the concept that for
7 verification testing, you should recognize
8 programs are in existence for certification to
9 energy efficiency requirements, as they are
10 today. So, programs like UL had previously,
11 and many people know this from the safety
12 space, will have annual retesting, or four
13 times a year looking at products, for every
14 product, or every family of products. For
15 Energy Star and the enhancements there, our
16 Energy Star certification model is actually
17 going to go to the sample size dictated by
18 that program. So, there is some room to be
19 able to move within that, and that can be
20 calculated into a program.

21 I did want to call out, though,
22 that there should be recognition and

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1 encouragement for those products and those
2 manufacturers that choose to go to an
3 independent third-party certification scheme.

4 And, currently, in your motor program, and I
5 know motors are out now, but maybe harmonized
6 within, you guys actually have recognition of
7 products in the most case that are certified
8 by labs like Underwriters Laboratories, or
9 CSA. They're then exempt from a traditional
10 sample modeling, maybe run out of DOE, because
11 you recognize and are assured that that
12 verification sampling through the closed loop
13 system that's part of the Guide 65
14 requirements is in place, and it is happening,
15 and the reporting now goes into place. So,
16 for anything you do for the requirements for
17 mandatory efficiency requirements under the
18 Consumer Goods, you should recognize kind of
19 what you've done, and what's worked in that
20 motor space, and calculate that in to make
21 sure that that verification model is
22 recognized on the front end, and that

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1 manufacturers who choose to use independent
2 test labs aren't disincentivized from doing
3 so.

4 MR. BROOKMAN: Jim.

5 MR. VERSHAW: Jim Vershaw,
6 Ingersoll Rand. We've been using the AHRI
7 programs for residential and commercial HVAC
8 for quite a while, and we think those are the
9 type of attributes you ought to be looking for
10 in a third-party verification program for
11 HVAC.

12 The other thing is --

13 MS. ARMSTRONG: Could you explain
14 to me what some of those attributes might be?

15 MR. VERSHAW: Well, there's a basic
16 model group. They randomly select 30 percent
17 of the basic model groups to be tested every
18 year, and they have a criteria where it's
19 either they do it by random, they do it for
20 cause, they do it for new models. And they
21 run them through, actually, I think it's ITS
22 Labs do all the testing. There's a -- it's

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1 the same tolerances that are used for the DOE
2 program, 5 percent. And there's penalties if
3 you have too many failures. And, of course,
4 if you drop below the minimum, you've got to
5 discontinue models, and do all kinds of
6 things, so it's very similar to what the EPA
7 has been looking for in terms of their
8 verification programs, which leads to my next
9 statement.

10 Don't create a third-party
11 verification at DOE that's different than what
12 Energy Star is doing, such that we end up
13 doing double verification testing. We're
14 already doing -- I'm doing about 100 tests
15 right now on split systems, and another 30, or
16 40, or 50 on furnaces. That adds up to a lot
17 of equipment, a lot of time, and a lot of
18 money. And now if the EPA comes in and throw
19 in Energy Star verification testing from a
20 different subset, and we end up doubling that,
21 I mean, what's the value for us to be Energy
22 Star, that kind of thing? So, you guys need

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1 to work together. You have an understanding
2 put together between you guys and EPA on
3 Energy Star. They ought to have the same type
4 of program in here, and use those results for
5 both.

6 MR. BROOKMAN: Christina.

7 MS. CHANG: Christine Chang,
8 Natural Resources Defense Council. I just
9 wanted to list a few aspects of a verification
10 program that we think should be put in place.

11 The first is that there should be a clear and
12 published protocol that requires off-the-shelf
13 testing, where possible, and establishes
14 alternative protocols for products with
15 special considerations, where off-the-shelf
16 testing isn't feasible.

17 The second is that testing should
18 be done by independent accredited labs, and I
19 think accreditation will help to ameliorate a
20 lot of the concerns that parties here have
21 raised about consistency of laboratory
22 testing.

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1 Product selection for verification
2 should be done based on a combination of, one,
3 random selection, and, two, more targeted
4 selection of products for verification testing
5 based on direct input from DOE, and other
6 stakeholders.

7 And last, just as with
8 certification testing, verification testing
9 data, including individual model results,
10 should be made publicly available in some sort
11 of public database or website. Thank you.

12 MR. BROOKMAN: Thank you. Karim.

13 MR. AMRANE: Karim Amrane, AHRI.
14 Well, we know AHRI has been running
15 verification programs, as you call it, we call
16 it certification program for over 50 years,
17 and I thought that those were known to you,
18 but, apparently, they are not.

19 MS. ARMSTRONG: We have to ask you
20 on the record. Right?

21 MR. AMRANE: All of our programs
22 are available online, so you can look at the

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1 documents. We'll be more than happy to share
2 them with you. So, we don't want the DOE to
3 reinvent the wheel here, if you can leverage
4 those programs already in place that were
5 established, and have proven themselves for
6 the last 50 years, or so.

7 However, in establishing those
8 programs, if it becomes a requirement, we want
9 to make sure that the DOE doesn't lower the
10 bar. Okay? So, we're talking a lot about
11 Energy Star, but Energy Star, if you look at
12 what they've done at this point for equipment,
13 their requirements are less stringent than
14 what we have currently in our program. So,
15 again, make sure that there's a level playing
16 field here, that what the industry has been
17 doing for the last 50 years is not lost in --

18 MS. ARMSTRONG: To the extent you
19 can provide examples of how the proposed, or
20 the potential Energy Star verification program
21 is different than yours, and where you think
22 differences should be rectified, that would be

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1 great.

2 MR. AMRANE: Sure, we will do that.

3 MS. ARMSTRONG: Great.

4 MR. BROOKMAN: Pete.

5 MR. DeMARCO: Thank you. Pete
6 DeMarco, IAPMO, and I certainly encourage the
7 Department to -- we certainly encourage the
8 Department to take advantage of existing
9 certification processes that are already in
10 place for industries. As part of our
11 certification process, and our continuous
12 compliance process, we send inspectors to the
13 point of manufacture, each plant that a
14 manufacturer has unannounced and select
15 product from packed inventory. That selection
16 process is as good, and as valid as taking
17 product from a distributor, or from a
18 retailer, and certainly less costly and
19 disruptive to the marketplace. And we
20 encourage the consideration of that practice
21 going forward for this verification program.

22 And as I mentioned earlier, the

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1 plumbing industry is pretty well regulated,
2 and manufacturers are doing their due
3 diligence every day, the good actors, anyway,
4 are, and we encourage that the DOE take
5 advantage of these processes that are in
6 place, and are working for these
7 manufacturers.

8 In cases where products may not be
9 part of a recognized third-party certification
10 program, and that could be evidenced by a lack
11 of market conformity on a product, in that
12 case, then we do suggest that products be
13 selected out of retail, or out of point of
14 distribution, and testing be conducted on
15 those products due to a lack of evidence of a
16 independence compliance process.

17 MR. BROOKMAN: Thank you. Paul.

18 MR. DOPPEL: Paul DOPPEL,
19 Mitsubishi Electric. One of the things that I
20 think is important for DOE to keep in mind is
21 the fact that all this testing costs a lot of
22 money to manufacturers, especially if you have

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1 larger commercial equipment, especially the
2 variable refrigerant flow type systems. Some
3 of our systems with the cost of the equipment
4 and the cost of the testing is like \$50-70,000
5 per test. And it gets to a point where you're
6 spending so much money on testing that it
7 starts affecting the bottom line, and it
8 becomes a disincentive.

9 In developing the BRF testing
10 program at AHRI, one of the things we looked
11 at, and this is speaking for Mitsubishi, not
12 AHRI perspective, one of the things we looked
13 at was balancing between doing enough testing
14 so that people will be part of the program,
15 the certification, voluntary certification
16 program, and not testing so much that it costs
17 the company too much money, and people may not
18 want to participate, and try to do a self-
19 certification.

20 So, there's a -- while we
21 encourage DOE to do this, we also want to keep
22 in mind that -- ask you to keep in mind that

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1 it is expensive for large commercial
2 manufacturers of HVAC.

3 MR. BROOKMAN: Okay. Thank you.

4 MS. ARMSTRONG: Okay.

5 MR. BROOKMAN: Go ahead.

6 MS. ARMSTRONG: Moving on. I'm
7 just going to mention a couple of product-
8 specific things, one that I know will get some
9 attention, in particular. So, as we noted
10 earlier, the Energy Independence and Security
11 Act of 2007 added prescriptive design
12 standards for walk-in coolers and freezers.
13 In this rulemaking, we are proposing to
14 clarify the entity responsible for certifying
15 compliance with the Department for walk-in
16 coolers and freezers. Currently, that
17 certification and our regulations are just for
18 those design standards. I understand that
19 test procedure rulemaking and energy
20 performance standard rulemaking is underway,
21 but as applicable here, it's only for
22 certifying compliance, if it is actually

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1 adopted in the final rule, only for certifying
2 compliance to those prescriptive standards on
3 the books currently.

4 So, you can read our proposed
5 definition of the entity responsible for
6 compliance for walk-ins, and I'm going to open
7 the floor, because I see there's a line
8 already.

9 MR. BROOKMAN: Ellis.

10 MR. CRAIG: Ellis Craig, Craig
11 Industries. I brought this up at the first of
12 the meeting, but I'd like to reinforce it a
13 little bit. This has been a point of
14 discussion since the first NOPR on this
15 definition, that the law was written in a way
16 that manufacturer wasn't defined, and that
17 leaves it open to interpretation, especially
18 in our industry, where we really make parts
19 and ship them to people, and people put the
20 parts together, and it becomes a walk-in
21 cooler with a whole system. So, it's very
22 complicated for the DOE to come up with a way

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1 to apply this like you would a refrigerator,
2 because it's not assembled.

3 MS. ARMSTRONG: Sure.

4 MR. CRAIG: From the definition of
5 this proposed compliance, I agree with the DOE
6 that it would be pretty hard to be doing
7 testing in the field where the part is
8 actually assembled, and to assure that
9 compliance is made by that person out there,
10 and do all this testing would be probably very
11 hard to do. But with the testing being done
12 by the people who make the parts that make up
13 the assembly in the field, the new proposal
14 here, or the proposal in this NOPR projects
15 that the installer is not included in this.
16 And I'm confused a little bit, and that was
17 the first thing that hit my mind because of
18 the definition that the DOE came up from legal
19 was that a person who manufactures, produces,
20 assembles, or imports a walk-in cooler
21 freezer. And assembles, to me, means who puts
22 it together, and yet we're one moment saying

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1 that's the definition of a manufacturer that
2 we're going to use, and then in the next
3 minute we say but we're not going to put
4 anybody in there that installs it, which is
5 the assembler. So, I'd like some
6 clarification on how the DOE is choosing to
7 let the installer not be a part of this, when
8 he's defined in the definition of the DOE on
9 who the manufacturer is.

10 MS. ARMSTRONG: All right. So, my
11 first response would be, to the extent that
12 you could provide revisions as to what you
13 would think the definition of entity
14 responsible, revision to the definition, we
15 would welcome. If you believe that the
16 definition of the assembler includes that of
17 the installer, I think from a certain
18 perspective, DOE is thinking assembler may
19 mean the person who spec'd out the machine, so
20 maybe not physically installs, but physically
21 specs out. But to the extent you agree, or
22 disagree, we would appreciate those comments

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1 in writing.

2 MR. CRAIG: Okay. We've submitted
3 those in writing.

4 MS. ARMSTRONG: Yes.

5 MR. CRAIG: But I really feel like
6 I have one other question, that if you're
7 enforcing these regulations, and we sell the
8 walk-in to a dealer, and only the walk-in, and
9 the dealer decides to buy refrigeration from
10 somebody else, and he puts that in the unit,
11 and then he goes out and he hires an installer
12 to install it, a refrigeration contractor, a
13 licensed refrigeration contractor to install
14 it, and the installer does it incorrectly
15 according to specifications, who's going to be
16 liable for the product not being compliant on
17 site?

18 MS. ARMSTRONG: I don't think I can
19 answer that right on the spot here, because
20 there's a lot of pathways, but I have to think
21 about it on a case-by-case basis. But we
22 could follow-up.

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1 MR. CRAIG: Okay. Thank you.

2 MR. BROOKMAN: Please.

3 MR. GRIFE: I'm David Grife from
4 Arctic Industries. I hope you do follow-up,
5 because probably that critical path is really
6 what we're all about. There are too many
7 critical paths to this. One of the things I'm
8 not sure is, are there multiple manufacturers?

9 Can there be more than one? For example, for
10 manufacturing the box, and the refrigeration
11 come from somebody else, and the glass door
12 comes from somebody else, and then somebody
13 else installs it, and there's a problem. Are
14 we responsible? Is every single person
15 responsible? Is there one manufacturer, or
16 can there multiple at the end of the day on
17 one product?

18 MS. ARMSTRONG: Okay.

19 MR. GRIFE: I'd like to really
20 understand that, because I'm trying to make
21 sure -- we also have to make sure you know, we
22 also have consultants out there who start when

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1 a cheesecake factory decides that they want to
2 open a restaurant, we get a spec, and they say
3 this is what we want. I am a food service
4 consultant, and this is what I want for my
5 restaurant, my hotel, my hospital. So, we're
6 not spec'ing that, we're making them make the
7 choice. Do I have to send them a waiver and
8 say please sign this and say that you are
9 responsible, not me, so now you're the
10 manufacturer, or do I have to now put together
11 a group of documents to kind of push along the
12 path of who is responsible?

13 MS. ARMSTRONG: So, to the extent -
14 - who do you feel should be responsible?

15 MR. GRIFE: The person who specs
16 it.

17 MS. ARMSTRONG: Okay.

18 MR. GRIFE: At times, they come to
19 us and say please provide us this information.

20 And you know what, we take responsibility now
21 because we're giving information based upon
22 our manufacturing process, our refrigeration,

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1 they send everything to us. If they break it
2 apart, I don't know what they do.

3 MS. ARMSTRONG: And to the extent
4 there's a clear way to differentiate who
5 spec'd out that, we'd appreciate that
6 information.

7 MR. GRIFE: Okay. We'll send you
8 some comments.

9 MS. ARMSTRONG: Thank you.

10 MR. BROOKMAN: Charlie.

11 MR. STEPHENS: Charlie Stephens,
12 Northwest Energy Efficiency Alliance. I'm a
13 little concerned about this particular
14 definition, and I do have a lot of written
15 comments that I have submitted, and I will
16 submit, but a year ago, based on your
17 definitions here in number four, I became a
18 walk-in manufacturer, me. So, I'm a little
19 concerned about a definition that would make
20 me a manufacturer of these things.

21 MS. ARMSTRONG: Okay.

22 MR. BROOKMAN: Daryl.

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1 MR. EARBS: Hi, Daryl Earbs. I
2 think at the beginning you prefaced it saying
3 that you really wanted to focus on how this
4 applies to the prescriptive regulations that
5 are currently in effect, and when I look at
6 this, and I will submit some written comments,
7 but today what we have are prescriptive
8 requirements that relate to the components of
9 the walk-in. They actually do not relate to
10 the entire assembly, so I'm not sure it's very
11 meaningful to talk about someone who does it
12 in its entirety, that could work, but it
13 really comes down to -- I think it's much more
14 manageable today, so the panel has to satisfy
15 a certain R value. Well, we know who made the
16 panel. I think the person who made the panel
17 is accountable that it satisfies that R value.

18 The fan motor has to be an ECM, or
19 brushless DC, or whatever we call it these
20 days. We know who put that fan motor inside
21 the unit cooler that went inside that walk-in.

22 And I don't see a big issue when you're at an

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1 individual component level that's fairly
2 concisely defined. I think there was
3 something about the infiltration reducing
4 meanings that were still a little bit
5 confusing, but a lot of them are pretty
6 straightforward.

7 I think you really have to think
8 about where we're headed, though, with the
9 performance standards. And if we continue
10 down the path of trying to define the total
11 energy consumption of the assembly, that all
12 these issues that are coming up, all of this
13 concern over who's going to be held
14 accountable, it's going to blow back up on us.

15 So, I, actually -- I'm more concerned about
16 us managing the performance standards effort,
17 so that we don't turn it into something that's
18 impossible to enforce.

19 I think by properly working on the
20 definition here, the current regulations can
21 actually be managed effectively. I don't know
22 how you're going to handle the certification

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1 and the actual, I mean talk about enforcement
2 nightmares, I mean, here you're going to have
3 a lot of people to chase down on every single
4 installation, so I think that's an issue for
5 you, but I think it's something that, from a
6 regulatory standpoint, is workable.

7 MS. ARMSTRONG: Okay. Thank you.

8 MR. BROOKMAN: Additional comments,
9 perhaps final comments on these walk-in cooler
10 and freezer issues? Okay.

11 MS. ARMSTRONG: Okay. This one is
12 pretty straightforward. We're just proposing
13 data submission and requirements for the
14 fluorescent lamp ballasts. They were
15 originally proposed as part of a ballast
16 rulemaking, they have subsequently been pulled
17 in this one, and this is just to make everyone
18 aware that the proposals do reside in the CC&E
19 rulemaking, and they're similar to those that
20 were proposed.

21 MR. BROOKMAN: Please.

22 MR. COOK: Keith Cook from Philips

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1 Lighting.

2 MS. ARMSTRONG: Okay.

3 MR. COOK: This may not be
4 possible, and, quite simply, it's because of
5 the fact that even though we do test all of
6 our ballasts through the manufacturing process
7 to these requirements, usually it's a go/no-
8 go. We're not, necessarily, collecting
9 specific data; and, yet, that's what's
10 required for this submission. So, there's
11 hundreds of basic models, and some of them we
12 only run every few months because they're low
13 volume applications. So, it may not be
14 possible to even do what you're asking in a
15 30-day period.

16 MS. ARMSTRONG: Okay. To the extent
17 you could explain why it's not possible,
18 either in writing, or here, that would be
19 helpful.

20 MR. BROOKMAN: Yes, so suggest to
21 the Department what they should do.

22 MR. COOK: Yes. Well, it's a

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1 matter of time.

2 MS. ARMSTRONG: Okay. So, another
3 topic that has been queued up for round two is
4 the certification, compliance, and enforcement
5 with respect to electric motors.

6 We have acknowledged that DOE
7 plans to consider similar provisions that
8 we've discussed today for electric motors in
9 the second round of rulemaking. And we might
10 also consider issues specific to electric
11 motors, including the certification
12 requirements, and the certification compliance
13 numbers as they relate to different types of
14 electric motors.

15 To the extent that you have
16 specific comments, ideas, proposals for those,
17 we welcome them in preparation for round two.

18 Don't feel the need to stand up, if you want
19 to. There we go.

20 MR. BASSO: I feel so honored. Dale
21 Basso, WEG. We've seen the issue about the
22 compliance number, and coming up with a new

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1 number. And, I guess, our thought process is
2 why do that? It's the same test standard.
3 It's just a higher level of efficiency. In
4 cases, in fact, it's kind of late in the
5 process, because of the fact that we're
6 already shipping compliant product. We're
7 already manufacturing compliant product for
8 EISA, so in changing the number, we'd have to
9 distinguish, tell customers why there's a new
10 number on this one, that's exactly the same as
11 this one. I'm not sure we understand the
12 benefit of that, but we will add the
13 additional numbers to the system on the
14 compliance, your online system. Which, by the
15 way, doesn't allow us to distinguish Type I
16 from Type II motors, but we'll just double up
17 the number we have.

18 MS. ARMSTRONG: Okay.

19 MR. McCABE: Before you sit down,
20 this is Michael McCabe. If I could ask, make
21 a request, the electric motors is the only
22 product for which we have -- DOE received

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1 applications from the manufacturers for
2 compliance number, and then we issue a
3 compliance number, which the manufacturer is
4 required to put on the product, whether or not
5 it's an imported product, or a product
6 manufactured, they're all treated the same.
7 The other industries that are here,
8 representatives of the other industries that
9 are here may not even be aware of that. And
10 if you could take a couple of minutes and
11 offer your perspective as to what its values
12 are, what its detriments are, what your
13 thoughts are as far as that, because it would
14 be useful to get a larger dialogue on the
15 subject of compliance numbers.

16 MR. BASSO: This is Dale Basso.
17 The compliance number, itself, has been
18 helpful from a standpoint of being able to
19 advise that we have a certified product,
20 especially when there's a lot of equipment
21 coming in from offshore, it's highlighted if
22 it was missing, that maybe it was not a

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1 compliant product. Although, enforcement was
2 rather lacking.

3 The downside of it is that we're
4 not sure what it means when you put it on. If
5 the compliance number says it's the minimum
6 efficiency product, but we've been selling
7 higher efficiency products with the same
8 number on it, so it really doesn't
9 distinguish. And there are products that are
10 exempt that are, for example, special shafts,
11 or special flanges that aren't exempt from the
12 certification at all, and sometimes it's on
13 there, sometimes it's not. So, in itself it
14 needs some tweaking as to the usefulness of
15 the number, itself. Having a certification
16 number for a manufacturer, which is what we
17 have, is just a way of distinguishing if you
18 put a third-party name plate on your motor,
19 you might have the same certification, so you
20 could tell who the manufacturer is. But it
21 doesn't drive it down to the basic model, or
22 anything, so I'm not sure how useful. I think

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1 I can go either way on it, to be honest. But
2 I think changing it, at this point, is going
3 to confuse the market more than help the
4 market, because compliant product that was
5 previously compliant before EISA has the old
6 number on it, and if you put a new number on
7 the product, the old product is still legal to
8 sell, so it could be in the market for a
9 couple of years, and there'll be confusion of
10 is this allowed, what does this mean, what's
11 the difference? So, I think that if we're
12 going to have a number, I don't really see an
13 advantage to changing it. I'm not sure what
14 it would tell us.

15 MR. BROOKMAN: Okay. Thank you.

16 MR. MALINOWSKI: John Malinowski,
17 Baldor Electric Company. We are unique in
18 that we have been doing this for quite a long
19 time, as far as putting the number on our
20 motors. We've expanded our program at NEMA
21 where we have our own internal verification
22 process, and testing of our motors to be

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1 certified under the NEMA Premium License, and
2 it is third-party testing up to the extent
3 that third-parties can test the motors, and
4 with the same problems that DOE would be
5 faced, should a 500 horsepower medium voltage
6 motor get chosen for testing, and lead time in
7 getting it, and so forth. So, we're doing a
8 pretty good job internally of the 14 members
9 of NEMA, which include some manufacturers that
10 build product overseas.

11 Where we're seeing the problem,
12 where motors are coming in under the radar, is
13 from the non-NEMA members, and in a larger
14 sense, motors coming in on OEM equipment that
15 just comes right through Customs without any
16 challenge as to compliance. So, how you would
17 tie whatever laws we already have in place
18 together with enough people in Customs that
19 would actually be able to look at the
20 products and verify them. I mean, we could
21 turn in -- I could turn in a list of 20
22 manufacturers today that are sending motors in

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1 that are not compliant with today's rules, and
2 have no chance in being compliant with the
3 rules that are coming up in December. I mean,
4 it's going to happen, but they're going to
5 come in because nothing is being challenged by
6 them as far as coming in through Customs.
7 People are putting motors on pumps or
8 compressors, or what have you in Europe, or in
9 China, or India, or South America, and they're
10 coming in, and it's making it uncompetitive
11 for our domestic manufacturers that are buying
12 motors domestically here, that are compliant
13 motors, and it puts them at a 30 percent or
14 larger disadvantage monetarily. So, we've got
15 some problems there, a lot of big challenges
16 that we don't have the Customs manpower,
17 probably, to do that. So, it's something our
18 industry has worked well with DOE in the past
19 to do, and we want to continue working with
20 you in the future.

21 MR. BROOKMAN: Thank you.

22 MR. LADONNE: Frank Ladonne,

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1 Underwriters Laboratories. I really wanted to
2 -- I really came with the intent of making one
3 comment, but my colleague prompted a couple of
4 other thoughts. One is that, to the last
5 point that he made, UL has been very
6 successful in partnering with Customs. And I
7 think Customs looks forward to people to
8 partner with them, so we've done that. In the
9 cases where manufacturers previously were
10 bringing in products with counterfeit UL
11 marks, we partnered with Customs, and that has
12 been very successful. And I would encourage
13 DOE to partner with Customs in a similar
14 fashion.

15 MS. BARHYDT: We are, actually,
16 actively -- this is Laura Barhydt. We are,
17 actually, actively working with Customs at
18 this time.

19 MR. LADONNE: Okay. The second
20 point is that in terms of the levels of
21 efficiency changing, this is something that we
22 encounter all the time, because, certainly,

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1 the levels of safety in our standards changes
2 all of the time. And the way we deal with it
3 is not through a number, or through a mark,
4 but it's through our public database, our LIS
5 database which has all the listings, today has
6 all of the motor energy efficiency numbers for
7 those motors that we test. Okay? So, that
8 information is readily available, so anyone
9 can look up and determine does it comply with
10 today's requirements, or does it comply with
11 yesterday's requirements? So, I think the
12 public database would go a long way to
13 addressing that issue.

14 MR. BROOKMAN: Thank you. Tim
15 Ballo.

16 MR. BALLO: Tim Ballo,
17 Earthjustice. No one has mentioned the small
18 motors yet, and my recollection is that DOE
19 was heading in the direction of not doing for
20 the small motors what it does for the integral
21 horsepower motors. I'm wondering if that
22 makes sense, either as a legal or policy

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1 matter, to have a separate regulatory regime
2 for compliance of the small motors? It
3 doesn't strike me that it does, but I don't
4 know if the manufacturers feel that way.

5 MS. ARMSTRONG: Okay. Thank you.

6 MR. BROOKMAN: Final comments on
7 motors? Okay.

8 MS. ARMSTRONG: Okay. Fairly good
9 segue, enforcement for imports and exports.
10 DOE is proposed to add a label on imported
11 products intended for export to say "NOT FOR
12 SALE IN THE UNITED STATES." However, DOE is
13 also interested in seeking comment from all of
14 you on how DOE could modify its CC&E
15 regulations to more effectively enforce at the
16 border. So, to the extent that anyone has
17 suggestions or experiences, that would be
18 great.

19 MR. LADONNE: Frank Ladonne,
20 Underwriters Laboratories. Just a fast
21 comment. Within the past several months, I
22 would say that DOE has been very effective in

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1 getting this message out. We're hearing from
2 motor manufacturers loud and clear in Asia and
3 Europe, who are just scrambling because
4 they're understanding now that DOE is getting
5 very serious in terms of enforcement. So, I
6 think that message is out loud and clear,
7 pretty much worldwide.

8 MR. BROOKMAN: Go ahead, Tim.

9 MR. BALLO: Tim Ballo,
10 Earthjustice. Just to follow-up, you all have
11 mentioned a couple of times that you've been
12 talking to the Customs Service, to Homeland
13 Security. I wonder if you can elaborate a
14 little bit, what have they been telling you?

15 MS. BARHYDT: I'm hesitant to put
16 words in Customs' mouth publicly. I think that
17 it would be inappropriate for me to speak to
18 that.

19 MR. BALLO: Okay.

20 MR. BROOKMAN: Okay.

21 MR. McCABE: Michael McCabe. I
22 think it would be fair to say that they are --

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1 the dialogues are continuing, they're open to
2 the discussion and the ideas as far as how to
3 make it work, so we're not facing any
4 roadblocks, or any reluctance on their part to
5 solve this issue. It's just working out the
6 details.

7 MR. COULTER: Greg Coulter, Prolec
8 General Electric. We are a large importer of
9 distribution transformers. We are a large
10 exporter of distribution transformers. We
11 kind of see both sides of this issue.

12 We would propose that you look at
13 having importers put some kind of statement on
14 all their products, maybe even a symbol that
15 says it meets the DOE efficiency requirements.

16 We have transformers coming to the U.S. that
17 have to meet them, we have transformers that
18 are coming to the U.S. that are going to be
19 consolidated for shipment outside the U.S.
20 Although they fall under DOE rules, as far as
21 kVAs and voltages, and everything you require,
22 they're not going to be used for sale in the

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1 United States, so we like them to be so
2 labeled as "NOT FOR SALE IN THE UNITED
3 STATES."

4 We have other ones that are going
5 to be for sale, and then we have some that are
6 just going to be consolidated for shipment,
7 and don't have to meet DOE rules. They look
8 like every other transformer, and we're
9 finding -- we're dealing with Customs on
10 thousands of units a day, that they would know
11 that this is not even included in the DOE
12 rules, even though it is just like every other
13 distribution transformer that they see, so
14 that it has really three classifications, and
15 that somehow they be noted on the product so
16 any importer would say hey, it is for sale in
17 the U.S., and it meets DOE, it must be DOE.
18 Coming to the U.S., and it's not going to be
19 used in the U.S. for later export, and then
20 the third category is it's coming it, but it
21 doesn't have to meet DOE. And maybe if we
22 could have this pre-done, it would help us

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1 with Customs, although we haven't run into
2 problems yet. We're dealing so much, and
3 we're dealing with Customs all the time, we
4 know that could be an issue. We give them
5 reams of paper now to get units into the U.S.

6 It would be -- we don't think it would be
7 that hard to add this to the unit. Matter of
8 fact, we'd like to see some kind of symbol on
9 these transformers saying they are DOE
10 compliant.

11 MS. BARHYDT: So, a lot of consumer
12 products are subject to the Federal Trade
13 Commission labeling requirements. Are you
14 suggesting that we adopt some sort of a
15 labeling requirement for commercial products
16 that would explicitly state that it was
17 compliant with the Energy Efficiency
18 regulations?

19 MR. COULTER: Yes. We have
20 customers asking for that, and we're afraid
21 they're going to come up with their own set of
22 requirements now. It would nice to have a

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1 common requirement.

2 What we would like not to see on
3 the transformer is have us do like motors, and
4 put the efficiency on it. The reason being,
5 we sell a heck of a lot of transformers that
6 are much more efficient than what the DOE
7 requirements are, and it's kind of like down-
8 selling your product. We would like people to
9 know that they're much more efficient than
10 maybe what DOE requires, when we do that.

11 (Off the record comment.)

12 MR. COULTER: We would like not to
13 get into that at all, because what that
14 requires is yet another level of stuff we have
15 to put on it. We'd like to just say hey, it's
16 DOE -- meets DOE efficiency, or whatever words
17 we could agree on. We'd kind of like a
18 symbol, or something like that, and then go
19 from there.

20 MS. BARHYDT: What was your third
21 category? There were the products imported
22 for sale in the U.S., products imported for

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1 export, and what was the third category?

2 MR. COULTER: Products imported to
3 U.S. that don't have to meet DOE efficiency.

4 MS. BARHYDT: So, they're just not
5 regulated?

6 MR. COULTER: That's right. They
7 fall outside the category.

8 MS. BARHYDT: Okay.

9 MR. COULTER: For instance, you
10 have voltage -- has to fit in with certain
11 voltages. We could sell a transformer outside
12 that voltage. It looks just like every other
13 transformer, but doesn't have to meet DOE.

14 MS. BARHYDT: Okay.

15 MR. BROOKMAN: You're next.

16 MS. CHISOLM: Hi. Kelly-Ann
17 Chisolm, Office of Energy Efficiency, Natural
18 Sources Canada. We currently have a program
19 in place since 1995, and as you can
20 appreciate, our market is highly imports that
21 come in, so we have an extensive amount of
22 experience with imports. And what we do, and

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1 I don't know if DOE is planning on doing this,
2 or they're currently doing this, but we
3 require the dealer to provide NRCAN with five
4 data elements as they import the product, or
5 before the product is imported, so there's
6 items like -- information, such as model
7 number, type of product, brand name, address
8 of dealer, and one of the items is purpose of
9 import. And as the gentleman just before me
10 explained, there could be three types of
11 purposes of import. One is for sale or lease
12 in Canada, one is doesn't meet the current
13 standards, but will be modified, I'm not sure
14 of the current terminology, or it doesn't meet
15 the standard, has a reason for export. For
16 instance, it's going to be included in a
17 product that's going to be assembled in
18 Canada, and exported out of the country.

19 So, I'm not sure if your
20 discussions with Customs included that. We
21 work very closely with the Canadian Border
22 Services Agency, and they administer part of

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1 our legislation at the border for us. We,
2 actually, have the ability to stop product at
3 the border that doesn't meet the requirements.

4 MR. BROOKMAN: You're next.

5 MR. MALINOWSKI: John Malinowski,
6 Baldor Electric Company. I just -- the "NOT
7 FOR SALE IN THE UNITED STATES," wording is
8 just something that I guess not really
9 comfortable with. We have cases where, as
10 motor manufacturers, we sell non-compliant
11 motors to OEMs domestically, that they put
12 with a pump, or a compressor, or a machine, or
13 something intended for export, so it's really
14 for sale in the U.S., but not for use in the
15 U.S. So, if it, perhaps, would say "NOT FOR
16 USE IN THE U.S.," that might work better, as a
17 clarification.

18 MR. BROOKMAN: Thank you.

19 MR. MALINOWSKI: And to add to the
20 comments about NRCAN, the motor regulations
21 between what's required here and in Canada
22 have been harmonized since, about since

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1 forever. Reporting is very similar. There
2 was a new form introduced by NRCAN where they
3 wanted more data than the basic data, and we
4 were hesitant to do that, because of
5 additional reporting. It's something that DOE
6 suggested we might do, as far as adding not
7 only horsepower speed, enclosure and such, if
8 we were to add mounting, and some other
9 attributes. If that were something that would
10 be more useable to make it easier for Customs
11 to control motors coming in, it would be
12 something that, perhaps, we would open up a
13 dialogue and talk more about. If it's not
14 going to be used by Customs, if it doesn't
15 serve a purpose, it wouldn't really be
16 something we would be interested in doing the
17 extra work, because what that would mean is a
18 company like Baldor, instead of reporting a
19 couple of hundred model identifiers, as we
20 would under EISA, we've got 150,000 motors,
21 and it would be this business where we'd be
22 adding hundreds of motors a week to that

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1 database as we would design new, unique model
2 numbers for custom applications. We would be
3 willing to consider doing that, if it's
4 actually going to get used, and we could close
5 the door with Customs, and keep non-compliant
6 product out of the U.S. Thank you.

7 MR. BROOKMAN: Thank you.
8 Additional comments here?

9 MS. ARMSTRONG: Are there
10 additional comments all together?

11 MR. BROOKMAN: Yes. So, now is an
12 opportunity for anybody that wishes to do so,
13 to make additional comments, issues that have
14 not been covered fully, issues that haven't
15 been covered at all, issues that are germane
16 to this subject matter, as succinctly, as
17 possible. Frank Stanonik.

18 MR. STANONIK: Frank Stanonik,
19 AHRI. This is an issue that hasn't been
20 covered, and, admittedly, is, perhaps, a finer
21 point, but in the enforcement regulations for
22 commercial industrial equipment, particularly

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1 the one ofs, the build-to-order models, the
2 proposed rules acknowledge that DOE in an
3 enforcement proceeding may test more -- I'm
4 sorry, less than two units, and less than two
5 would be one, okay? And, yet, when you get
6 further down in reading the rules, it tells
7 you that the determination of compliance of
8 this one unit will be based on the sampling
9 plan in Appendix B. You can't apply sampling
10 statistics to a test of one unit. And I'll
11 tell you, I've read it more than once trying
12 to see what's there, so I think there's
13 something that needs to be added to better
14 address, hopefully, that very rare
15 circumstance where you are testing,
16 enforcement testing a model that is,
17 basically, built-to-order, and you've only got
18 one sample to test, and how the decision will
19 be made.

20 MS. ARMSTRONG: Okay.

21 MR. BROOKMAN: Thank you. Fred.

22 MR. MINELLI: Fred Minelli, Kaiser

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1 Panel. Just wanted to add one more comment, or
2 a question really on Slide 50. The last
3 meeting, or the meeting before, there was
4 discussion of manufacturers, component
5 manufacturers would provide component data
6 points for their product, and all of this
7 information would go to this entity, whoever
8 this person would be. And that they would
9 input the data into a DOE assembled computer
10 program, or website. And that that's the way
11 the system was going to be handled, since
12 there's so many different components, and
13 manufacturers involved in this overall
14 process. Just wondered, it doesn't seem that
15 that is part of what we're discussing today.
16 Has that whole process changed?

17 MS. ARMSTRONG: I don't know what
18 was discussed at the previous meeting, so I
19 can't speak to that. But, as far as what's
20 being proposed today, it's an entity that is
21 going to be responsible for the compliance of
22 walk-ins, and that entity would provide the

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1 data to DOE through the -- with the proposal
2 through the CCMS online system.

3 MR. MINELLI: Okay. That's the way
4 I understood it.

5 MS. ARMSTRONG: Okay.

6 MR. BROOKMAN: Paul.

7 MR. DOPPEL: Paul DOPPEL,
8 Mitsubishi Electric. On Slide 25 is where you
9 had the definition for distributing to
10 commerce, and I think it would be good, just
11 so you understand exactly the phrase that is
12 causing issues.

13 MS. ARMSTRONG: I'll get there,
14 eventually. You can keep going, if you'd like.

15 MR. DOPPEL: Okay. It is the part
16 that says, that's the bottom, last bullet.
17 "To introduce or deliver for introduction into
18 commerce." That is the part that is just so
19 wide open that, again, it's causing us concern
20 about, if we have to certify before we can do
21 that activity, which is unknown, so we don't
22 want to put ourselves in situations where

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1 we're trying to provide information to our
2 distribution base, because of the long-term it
3 takes to get the product specified and
4 installed, or we're in violation of something
5 that we think is okay, but could be
6 interpreted many different ways in there.

7 MS. ARMSTRONG: Okay.

8 MR. BROOKMAN: Do you have the
9 words for that? Okay.

10 MR. DOPPEL: Well, we could just --
11 I mean, our suggestion would be to de-link
12 certification with distribute into commerce,
13 because it's just -- it's too encumbering.

14 MR. BROOKMAN: Charlie.

15 MR. STEPHENS: Charlie Stephens,
16 Northwest Energy Efficiency Alliance. I have
17 two comments, one in response to Mitsubishi's
18 comment here. I agree with what he's saying,
19 in part, from a selfish reason. Part of what
20 we do is, we look for emerging technologies,
21 and opportunities for large savings in the
22 near term. We frequently partner with

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1 manufacturers of various things to bring demo
2 systems in, and actually install them to find
3 out if they're even going to be compatible
4 with other systems, with our buildings, with
5 other components that we're promoting before
6 they're actually willing to bring that stuff
7 in on a long-term basis. We may get 10 units
8 brought in just to demonstrate, as
9 experimental, you might say. And, as I read
10 your regulations as they're written, that
11 would trigger certification, as well. And, in
12 some cases, it's before the manufacturer even
13 makes a decision to bring them here.

14 MS. BARHYDT: If these are new
15 technologies, are they covered products?

16 MR. STEPHENS: That would be C in
17 one case I can think of right off the top of
18 my head, they may not be, but they might be,
19 but no determination has been made. It's one
20 of those things that would probably end up
21 getting a waiver.

22 MS. BARHYDT: Okay.

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1 MR. STEPHENS: But they would have
2 to apply for the waiver at some point to get
3 it. I mean, so there's this -- DOE has
4 processes, but sometimes the manufacturer
5 wants to know if they even want to try it,
6 given the cost, and whether or not there's a
7 market for it, will it fly? And they may
8 decide never to, at least for now, bring it
9 in. That's happened. But it would trigger
10 your certification requirement, I think, under
11 those circumstances.

12 MR. McCABE: This is Michael
13 McCabe. I think the key is treading into the
14 law and engineering background didn't prepare
15 me for that, even though I claim it does, as
16 to what is the definition of distributed into
17 commerce. In answer to your question, there
18 are products which manufacturers, for example,
19 field test before they offer it for sale. And
20 what you're describing, Charlie, sounds very
21 similar to a manufacturer field testing a
22 product before they're offering it for sale.

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1 And distributing it in commerce, I've always
2 understood that as being offered for sale, but
3 there are products which are not offered for
4 sale, but are field tested that have --

5 MR. STEPHENS: The word "introduce"
6 doesn't have that same connotation about
7 commerce, in my mind. So, anyway, I think
8 there's some work that could be -- I agree,
9 there could be some work on the language.

10 The other thing I wanted to note
11 here today is that this is probably the most
12 important rulemaking for my constituency that
13 we've seen from DOE right now, because I have
14 assembled here a collection of manufacturers
15 of things that represents my constituency's
16 interest, which is anything that uses
17 electricity. I participate in a lot of
18 rulemakings here that's a very narrow subset
19 of what uses electricity one at a time, and I
20 think everybody sees these things from a very
21 narrow perspective of this is one product that
22 uses a small amount of electricity in the

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1 United States. It's 3 percent of industrial
2 electricity use, or whatever it is. What
3 we're seeing here today is a collection of
4 people who build things that could comprise an
5 enormous fraction of the electricity used in
6 the United States, and DOE's own rulemakings
7 have showed us how big some of those numbers
8 can be. And I would suggest that what we're
9 interested in from this rulemaking is that
10 when we go through all the trouble to analyze
11 these things in these other rulemakings, and
12 try to understand how much energy they use,
13 and why they use it, and how they use it, and
14 what it costs to get it to use less, that what
15 we end up with in the economy of the United
16 States mostly resembles that. It's pretty
17 close to that, because if isn't, the
18 alternative is that my constituency, 139
19 utilities, electric utilities in the
20 Northwest, have to misallocate an enormous of
21 resources to generate the electricity to make
22 up for that failure. And I would suggest to

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1 you that that is a huge misallocation of
2 resources. And that the resources would could
3 allocate simply to make this all work better
4 are much smaller than that misallocation of
5 resources. So, I'm really pleased to see this
6 going on, and will help however we can. Thank
7 you.

8 MR. BROOKMAN: Thank you. Ellis.

9 MR. CRAIG: Ellis Craig, Craig
10 Industries. I just have one question.
11 Realizing that the proposal and the definition
12 of the person responsible for this, what is --
13 and I've asked in writing about four months
14 ago, and I still haven't gotten any results
15 from it. What is the definition of a
16 manufacturer as concern to the EISA law that's
17 presently in effect today? Who is the
18 manufacturer?

19 MS. ARMSTRONG: This is our
20 proposal of who that entity is.

21 MR. CRAIG: I know it's a proposal,
22 but to enforce it, you have to have something

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1 in place today, surely, or you can't enforce
2 the law. Am I right on that? I mean, you
3 have -- if I called somebody and said hey,
4 this guy is messing up out there. You,
5 evidently, have to know whether he's the
6 manufacturer, or not, wouldn't you?
7 Otherwise, it's not being enforced.

8 MS. WEINER: This is Stephanie
9 Weiner from the General Counsel's office. As
10 I understand what's being described here, is
11 putting in place a service location
12 requirement for that design standard. At this
13 point, were the Department to initiate an
14 investigation of walk-in cooler and freezer
15 that did not comply with the prescriptive
16 standards that are in place, we would need to
17 make a determination, this is where we are now
18 on the definition in this notice of proposed
19 rulemaking. So, if you have comments on that
20 as you have expressed today, we encourage you
21 to put them in the record.

22 MR. CRAIG: Is there a definition

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1 of manufacturer on file today?

2 MS. WEINER: There is the
3 definition in the statute. That is what we
4 would use.

5 MR. CRAIG: And what is it?

6 MS. WEINER: I believe it was on
7 one of the earlier slides.

8 MR. CRAIG: It's the one where the
9 assembler, the manufacturer --

10 MS. WEINER: The definition in the
11 statute, as it would in any event, would
12 control.

13 MR. CRAIG: So, it's up to
14 interpretation what that means.

15 MS. WEINER: Yes. And this is our
16 notice of proposed rulemaking today for the
17 certification requirement, the proposal that
18 we have discussed already is the Department's
19 proposed tentative conclusion as to its
20 interpretation of how that statutory
21 definition would apply in this context.

22 MR. CRAIG: Would the Department of

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1 Energy's judicial people be able to, if I
2 brought you somebody and said this person is
3 selling walk-ins out there that are not
4 compliant, could you make that interpretation
5 today?

6 MS. WEINER: We would encourage
7 you, if you do want to identify someone, I
8 believe it was mentioned we have a place on
9 our website to report that alleged violation,
10 and then we would follow-up with you. And, of
11 course, we would want to know all of the
12 information that you had on which you based
13 your conclusion.

14 MR. CRAIG: So, you do have a
15 definition of --

16 MS. WEINER: We have the definition
17 in the statute.

18 MR. CRAIG: All right. Thank you.

19 MR. BROOKMAN: Yes.

20 MR. NICHOLAS: Okay. Three closing
21 items. Jeff Nichols from Johnson Controls.
22 The reason I think Paul and I probably keep

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1 coming back to distributed in commerce is on
2 page 44 of the presentation under
3 "Adjudication," it's saying from each day from
4 when we distribute it in commerce there will
5 be a penalty, so really we want to make sure
6 it's clear to everybody what that means,
7 because there's civil penalties that are
8 associated with that.

9 Number two, minor detail, but on
10 the enforcement testing, number of days going
11 from five to two, where you have to ship the
12 equipment, two days, a lot of manufacturers
13 just because of the significant cost of doing
14 an enforcement program, your shipping in two
15 days is going to require that people often
16 have to pay for special shipping and expedite
17 product.

18 MS. BARHYDT: It's not that it has
19 to be delivered to the destination in two
20 days, it's that it needs to actually be picked
21 up and in the mail, so to speak, in two days.

22 MR. NICHOLAS: Okay. So, then along

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1 with that, just processing the paperwork
2 through an internal system, people are going
3 to have to step outside their normal -- the
4 business isn't going to work the way the
5 business normally flows. You're going to have
6 to do expediting activities. I don't know
7 that anything is being gained by going from
8 five to two.

9 And then the last thing is, just
10 for my clarification on basic groups on page
11 14, for split systems, residential splits,
12 it's saying "Manufacturers treat models that
13 have, essentially basic, essentially identical
14 energy or water consumption characteristics is
15 a basic model." Are you all seeing that as
16 the entire system, indoor and outdoor
17 together, or are they outdoor units by itself?

18 MR. McCABE: This is Michael
19 McCabe. With split system central air
20 conditioners, as the whole body of the
21 regulation is written for the highest sales
22 combination to be the tested unit, we would be

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1 looking at the outdoor unit, focusing on the
2 outdoor unit for testing.

3 MR. NICHOLAS: Okay. Thank you.

4 MR. BROOKMAN: Thank you. Please.

5 MS. REMEDIOS: Thank you. Sally
6 Remedios with Delta Faucet Company. I'll make
7 one comment, and I have one question. The
8 comment reiterates something that was said
9 earlier today about the requirement that when
10 you make any change, you have to renumber your
11 model. For our particular industry, that's a
12 huge task, and it's certainly not what the
13 retail industry wants, either. They would
14 like to keep model numbers similar, even
15 though you do make a slight change, so we'd
16 like to reiterate that that would be one of
17 our comments back.

18 My second is a question, and that
19 is, for the last several years, we've been
20 trying to get information about our industry,
21 how many people are actually submitting
22 certification reports? Will that information

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1 be more available now under the new rule, that
2 we will be able to find out how many
3 manufacturers are submitting reports to the
4 Department?

5 MS. BARHYDT: The final rule is
6 anticipated to be issued in December. I
7 wouldn't say that it would be immediately
8 available, but definitely in the next six to
9 eight months. After that, I would expect that
10 a lot more information will be publicly
11 available.

12 MS. REMEDIOS: Thank you.

13 MR. McCABE: This is Michael
14 McCabe. Adding to what Laura said, this is
15 actually part of a process so that the
16 electronics reporting system that has been
17 discussed, the CCMS, will facilitate our being
18 able to answer questions such as that. The
19 paper system that we've had heretofore, has
20 made much of that very difficult.

21 MR. BROOKMAN: Jim.

22 MR. VERSHAW: Jim Vershaw,

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1 Ingersoll Rand. I guess to summarize what I
2 heard today, for our standpoint, if the basic
3 model group definition for split system air
4 conditioners doesn't change from what it is
5 today, we're in good shape on that. If it is
6 changing, this could be problematic. We do,
7 as Jeff said, we do need to define the "put
8 into commerce" in such a way that we can let
9 our distribution know that we have products
10 coming. We may not have the actual ratings in
11 there yet for what the energy is, but at least
12 they know we have a new air handler coming, we
13 have a new outdoor unit coming, we have a new
14 furnace coming. We have to let our people
15 know in advance, and you don't have the final
16 tests done at that point, because it's too
17 early. It's just a matter of putting it all
18 together.

19 And the only one is the
20 enforcement testing. How you get into
21 enforcement testing, have a better definition
22 of what will trigger a need for enforcement

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1 testing, and then to make sure that when that
2 enforcement testing is done, that it's done to
3 the point where it's fair for all sides.

4 MR. BROOKMAN: Thank you. A final
5 comment.

6 MS. REMEDIOS: Sally Remedios,
7 Delta Faucet. One more quick question.
8 There's an indication in this rulemaking that
9 you are going to try to work with FTC, with
10 respect to us being able to have one report
11 for both bodies. Is that feasible? Is it
12 about to be done? What's the time frame?

13 MS. BARHYDT: We're still working
14 with the Federal Trade Commission, and it
15 would not be immediately following this rule.
16 I would anticipate that it would be probably
17 more along the -- in conjunction with the
18 following rulemaking, because it would also
19 require changes from the Federal Trade
20 Commission, and so I can't speak to what their
21 time frame would be. But I would expect that
22 it would be with the next rulemaking, not as

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1 part of this one, but we are working with the
2 Federal Trade Commission.

3 MS. REMEDIOS: Thank you.

4 MS. BARHYDT: I have a question
5 related to, a number of people have commented
6 that the -- our suggestion that renumbering
7 models when there was a basic model change, or
8 a change in energy efficiency, is problematic,
9 both from the marketing retail side, as well
10 as from the manufacturing marketing materials.

11 Would -- and I don't, necessarily, expect
12 everyone to jump up because this isn't
13 something that we had put out there before.

14 But in the conversations today, would it
15 simplify the process if you were reporting say
16 the initial serial number when that change
17 occurred, rather than creating some sort of
18 artificial model number scheme? So,
19 certainly, you don't have to comment on it
20 right now, but if in your written comments, if
21 maybe you could think about that, and address
22 whether that might be a solution, or if you

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1 have other suggestions for how we might deal
2 with that.

3 Our goal is to be able to track
4 when energy efficiency changes are happening,
5 and being able to tie that back to a
6 particular product in the marketplace. What
7 we've seen is that we can pull five units that
8 were manufactured over the course of a year,
9 and they all have the same model number on
10 them, but they don't all have the same
11 efficiency. And for enforcement purposes,
12 that creates a real problem. We need to be
13 able to know that we're actually testing the
14 same basic, when we pull things that have the
15 same model number. So, if there are other
16 ways for us to get at that information, that
17 is what we're trying to find.

18 MS. JAKOBS: Hi, I'm Diane Jakobs
19 from Rheem Manufacturing. And when I
20 submitted -- when we submitted written
21 comments before, one of the situations we had
22 is a furnace or air conditioner has a number

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1 of components from different manufacturers,
2 and different vendors. And it could be in our
3 Bill of Material that we have a certain
4 component from two different vendors, and it
5 could affect the efficiency, which one you
6 use, so we would list the equipment with the
7 lower efficiency, but somehow in procurement,
8 or based on pricing, we might purchase a more
9 efficient one. And that can change day to
10 day, week to week, so that would be something
11 that would be difficult to document. So, your
12 de minimus, whatever that word was, that would
13 have an effect. If you're talking about 10
14 percent, that won't happen. If you're talking
15 about small efficiency changes, it's possible
16 just from the selection of components we put
17 together.

18 MR. BROOKMAN: Final comments?
19 That's it for my part, I'll turn it back to
20 the DOE folks. I'd just like to thank all of
21 you. It's been a very, very productive day.
22 I really appreciate the spirit of openness and

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1 ready exchange of information. It's very
2 helpful to the Department, and I'll turn it
3 back to Ashley, and Laura, and Michael.

4 MS. BARHYDT: Actually, I think
5 Stephanie wanted to --

6 MS. WEINER: I just wanted to say,
7 as is evident, and as was said earlier today,
8 the Department takes energy efficiency
9 seriously, and as is clear, we are taking the
10 enforcement of our energy efficiency
11 regulations seriously, as well. And that's
12 not only because it's our obligation under the
13 statute to do so, but, also, because it's
14 central to the mission of the Department.

15 That said, the comments today have
16 been very helpful to us as we work through the
17 proposals that we've put forth. And from the
18 General Counsel's office, we welcome after
19 today, if folks want to come in as part of the
20 ex parte process to meet with us to discuss
21 particular things in more detail, there's
22 guidance about how to do that on our website,

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1 but we would encourage people to come in to
2 talk to us further, if they feel as though
3 there are issues particular to their products,
4 or issues that they feel were not sort of
5 fully addressed, or would like to have more of
6 a dialogue on. Thank you.

7 MS. ARMSTRONG: Do you want to say
8 anything?

9 MR. McCABE: This is your
10 rulemaking. This is --

11 MS. ARMSTRONG: Great, thanks.

12 MR. McCABE: Our working together
13 at times, don't know which one is which, but
14 this is yours.

15 MS. ARMSTRONG: Okay. So, pretty
16 straightforward how to submit comments. I'll
17 remind you that they close by October 18th, so
18 any that you wish to submit early, we always
19 appreciate that. Most of you know how to get
20 a hold of me, if you have any questions. If
21 not, my name is on the website, along with my
22 contact information.

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1 We appreciate you coming today,
2 and all the comments that we have received.
3 To the extent you have additional questions
4 that we can help work through, I encourage you
5 to reach out. Safe travels home.

6 (Applause.)

7 (Whereupon, the proceedings went
8 off the record at 3:59 p.m.)

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