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DEPARTMENT OF ENERGY

10 CFR Part 429

[Docket Number: EERE–2010–BT–CE–0014]

RIN 1904–AC23

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

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

ACTION: Final rule.

SUMMARY: The U.S. Department of Energy (DOE or the ''Department'') is adopting amendments to the compliance dates for manufacturers to submit certification reports for the certification provisions for commercial refrigeration equipment; commercial heating, ventilating, air-conditioning (HVAC) equipment; commercial water heating (WH) equipment; and automatic commercial ice makers, which are covered under the Energy Policy and Conservation Act of 1975, as amended (EPCA or the ''Act''). Manufacturers of these products will be required to submit certification reports no later than December 31, 2012.

DATES: This rule is effective July 5, 2011.

ADDRESSES: This rulemaking can be identified by docket number EERE–2010–BT–CE–0014 and/or RIN number 1904–AC23.

Docket: The docket is available for review at *http://www.regulations.gov,* including **Federal Register** notices, public meetings attendee lists, transcripts, comments, and other supporting documents/materials. All documents in the docket are listed in the *http://www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

For further information on how to review public comments or view hard copies of the docket in the Resource Room, contact Ms. Brenda Edwards at (202) 586–2945 or e-mail: *Brenda.Edwards@ee.doe.gov.*

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SUPPLEMENTARY INFORMATION:

I. Introduction

A. Authority

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

Sections 6299–6305, and 6316 of EPCA authorize DOE to enforce compliance with the energy and water conservation standards (all non-product specific references herein referring to energy use and consumption include water use and consumption; all references to energy efficiency include water efficiency) established for certain consumer products and commercial equipment. (42 U.S.C. 6299–6305 (consumer products), 6316 (commercial equipment)) DOE has promulgated enforcement regulations that include specific certification and compliance requirements. *See* 10 CFR part 429; 10 CFR part 431, subparts B, U, and V.

B. Background

On March 7, 2011, DOE published a final rule in the **Federal Register** that, among other things, modified the requirements regarding manufacturer submission of compliance statements and certification reports to DOE (March 2011 final rule). 76 FR 12421. This rule was largely procedural in nature; it did not amend pre-existing sampling provisions, test procedures, or conservation standard levels for any covered products or equipment. It did, however, impose new or revised reporting requirements for some types of covered products and equipment, including a requirement that manufacturers submit annual reports to the Department certifying compliance of their basic models with applicable standards. Finally, the Department emphasized that manufacturers could use their discretion in grouping individual models as a ''basic model'' such that the certified rating for the basic model matched the represented rating for all included models. *See* 76 FR 12428–12429 for more information. This reflected a basic requirement of the Department's longstanding self-certification compliance regime—that efficiency certifications and representations must be supported by either testing or an approved alternative method of estimating efficiency.

Since the publication of the March 2011 final rule, certain manufacturers of particular types of commercial and industrial equipment have stated that they would be unable to meet the July 5th deadline for complying with the certification requirements. In particular, manufacturers of commercial refrigeration equipment; commercial HVAC equipment; commercial WH equipment; walk-in coolers; walk-in freezers; and automatic commercial ice makers (as defined in 10 CFR part 431) contend that certifying supported basic model ratings under the revised provisions would require a cost-prohibitive amount of additional testing and take far longer than the time allowed. Some commercial manufacturers also expressed concern over DOE's regulations for alternative efficiency determination methods (AEDMs), which are intended to reduce testing burdens by allowing

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

manufacturers to use computer simulations, mathematical models, and other alternative methods to determine the amount of energy used or efficiency by a particular basic model. These manufacturers suggested that the AEDM provisions are too restrictive, overly burdensome, and unavailable for some products that would benefit from them and, as a result, do not permit the viable alternative to testing intended by the Department.

The Department responded in part to these concerns by taking two immediate steps. On April 8, 2011, DOE issued a request for information (RFI) (available at *http://www.eere.energy.gov/buildings/appliance_standards/pdfs/arm_aedms_rfi.pdf*) seeking comment on, among other things, the use of such alternative methods for determining the efficiency of commercial and industrial equipment. 76 FR 21673 (April 18, 2011). As the RFI explained, the Department intends to use this information to propose revisions and expansions, as necessary, to the existing AEDM provisions in a future rulemaking. The Department expects that addressing manufacturers' concerns with the AEDM provisions may alleviate some of industry's estimated burden of complying with DOE's existing testing regulations and allow the development of the data necessary to file the certifications and compliance reports as required by the March 2011 final rule.

Given the testing burdens reported by certain commercial manufacturers and the Department's recent RFI on alternative ways to estimate efficiency in lieu of testing, on April 19, 2011, DOE published in the **Federal Register**, a notice of proposed rulemaking regarding the compliance date for certification of certain commercial and industrial equipment (April 2011 NOPR). 76 FR 21813. In the April 2011 NOPR, DOE proposed an 18-month extension to the compliance date for the certification provisions for commercial refrigeration equipment; commercial HVAC equipment; commercial WH equipment; walk-in coolers; walk-in freezers; and automatic commercial ice makers. In the April 2011 NOPR, the Department sought comment on whether a limited reporting requirement should be required of manufacturers of these types of commercial equipment during an interim 18-month period. Additionally, the Department noted it was considering extending the compliance date for the certification provisions for other commercial equipment based on comments from interested parties. *Id.*

II. Discussion of Comments

The Department received comments on the April 2011 NOPR from a number of interested commenters, including various manufacturers, trade associations, and advocacy groups. The comments and DOE's responses to them are generally discussed below.

A. Extension of Certification Deadline for Commercial Refrigeration Equipment; HVAC Equipment; Commercial WH Equipment; and Automatic Commercial Ice Makers

As stated above, DOE proposed a tentative 18-month extension to the compliance date for filing complete certification reports for manufacturers of commercial refrigeration equipment; commercial HVAC equipment; commercial WH equipment; walk-in coolers; walk-in freezers; and automatic commercial ice makers in the April 2011 NOPR. 76 FR 21815. Most commenters were in support of such an extension, including the Air-Conditioning, Heating, and Refrigeration Institute (AHRI), Traulsen, International Cold Storage (ICS), Crown Tonka, ThermalRite (ICS, Crown Tonka and ThermalRite hereafter referred to as ''Joint Manufacturers''), Carrier Corporation (Carrier), National Automatic Merchandising Association (NAMA), AAON, Inc. (AAON), Lennox International Inc. (Lennox), Heatcraft Refrigeration Products LLC (Heatcraft), Hill Phoenix Walk-Ins (Hill Phoenix), Royal Vendors, Inc., Appliance Standards Awareness Project (ASAP), American Council for an Energy-Efficient Economy (ACEE), and the Natural Resources Defense Council (NRDC) (ASAP, ACEEE, and NRDC hereafter referred to as ''Joint Advocacy Comments''). (AHRI, No. 113.1 at p. 1; Traulsen, No. 111.1 at p. 1; Joint Manufacturers, No. 115.1 at p. 1; Carrier, No. 114.1 at p. 1; NAMA, No. 116.1 at p. 2; AAON, No. 118.1 at p. 1; Lennox, No. 119.1 at p. 1; Heatcraft, No. 124.1 at p. 1; Hill Phoenix, No. 121.1 at p. 1; Royal Vendors, Inc., No. 123.1 at p. 1; Joint Advocacy Comments, No. 125.1 at p. 1) For example, Traulsen commented that the proposed extension should provide a significant time frame required to review and adjust the open issues such as sample size, tolerances, and base models. (Traulsen, No. 111.1 at p. 1) Carrier additionally commented that the proposed 18-month extension is warranted to revise the AEDM procedures to reduce the envisioned testing burden. (Carrier, No. 114.1 at p. 2) Carrier further requested that DOE amend the confidence level to be used for calculating energy efficiency levels for commercial HVAC equipment, noting an inconsistency in the confidence levels used for commercial HVAC equipment and residential central air conditioners and heat pumps in the March 2011 final rule. (Carrier, No. 114.1 at p. 2) The Joint Advocacy Comments noted their support of DOE's proposal to extend the certification deadline, and also suggested DOE consider whether a blanket 18-month extension is needed for all products and requirements. (Joint Advocacy Comments, No. 125.1 at p. 1)

Some of the commenters were in favor of increasing the proposed compliance timeline. In particular, the Joint Manufacturers recommended that the extension be increased to 24 months for walk-in coolers and walk-in freezers, given the inherent cost burden and logistical challenges of the physical testing that must be absorbed by smaller manufacturers. (Joint Manufacturers, No. 115.1 at p. 1) AHRI suggested a further extension of time may be necessary depending on the extent to which DOE modifies its AEDM/Alternate Rating Method (ARM) provisions and validation requirements. (AHRI, No. 113.1 at p. 2) Along these lines, Zero Zone, Inc. (Zero Zone) commented that, with the current definition of the basic model in the March 2011 final rule and the exclusion of AEDM methods, 18 months is not enough time to comply with the regulations. (Zero Zone, No. 127.1 at p. 1) Moreover, Zero Zone asserted that the compliance regulations in the March 2011 final rule are new for the commercial refrigeration industry and burdensome. *Id.*

AAON reported that the AEDM validation test tolerance stated in the March 2011 final rule is less than the current level of repeatability achievable in independent test laboratories making this validation impossible to achieve. Until these issues can be resolved and made clear, AAON stated it could not comment on the time required to comply with new testing burdens or AEDM requirement. (AAON, No. 118.1 at p. 1)

While many commenters supported the certification extension for certain commercial equipment, Earth Justice was the sole commenter arguing against the proposed 18-month extension, noting that any delay would undermine the energy savings achieved by the standards-setting process. (Earth Justice, No. 120.1 at p. 1) Instead, Earth Justice suggested DOE consider an alternative approach that would maintain some certification requirements for these products but make those requirements

less onerous for the first 18 months that the rule is effective. *Id.*

The Department appreciates Earth Justice's concern but declines to adopt interim certification requirements in this final rule. Although today's rule delays the reporting requirements for some products distributed in commerce, such products must still meet all prescribed energy conservation standards under DOE's regulations. As DOE has previously made clear, the existing energy conservation standards, test procedures, and sampling provisions are not affected by this rule. While the Department believes the certification reporting requirements are a good monitoring tool, their impact on energy savings should not be wholly undermined by a delay because the energy conservation standards themselves will still be enforced. Based on the volume of questions DOE has received since the issuance of the March 2011 final rule, the Department believes that a phased-in certification requirement is likely to result in industry confusion that would more than offset any benefit. The Department believes that industry should focus its efforts on developing a basis for future regulatory compliance.

In light of most of the comments above, DOE is extending the compliance date for the certification provisions for commercial refrigeration equipment; commercial warm air furnaces, commercial packaged boilers, and commercial air conditioners and heat pumps (collectively referred to as commercial HVAC equipment); commercial water heaters, commercial hot water supply boilers, and unfired hot water storage tanks (collectively referred to as commercial WH equipment); and automatic commercial ice makers to 18 months from the publication of this final rule. Thus, the certification compliance date for these products will now be December 31, 2012. DOE believes 18 months is a reasonable extension to provide manufacturers with the time necessary to develop the data and supporting documentation needed to populate the certification reports and certify compliance with DOE's regulations, including the existing testing and sampling procedures.

Manufacturer responses, however, indicate that numerous manufacturers for certain types of commercial equipment have been making representations of efficiency and determining compliance with the applicable energy conservation standards without testing products in accordance with all of the provisions of the DOE test procedures, which include sampling plans and certification testing tolerances. As such, it is apparent from the comments and concerns expressed to the Department that a subset of manufacturers of commercial equipment now require additional time to comply with testing and sampling requirements. In addition, manufacturer comments have demonstrated to DOE that the existing AEDM provisions need to be carefully reviewed and modified, as necessary, in order to permit manufacturers to determine compliance without undue test burden. DOE is committed to reviewing the AEDM provisions quickly and to enable manufacturers to determine compliance through approved methodologies. To that end, any comments regarding the AEDM provisions, such as Carrier's request to amend the confidence levels for calculating energy efficiency, will be addressed in the current ARM/AEDM rulemaking.

DOE emphasizes that the testing and sampling requirements for commercial refrigeration equipment; commercial HVAC equipment; commercial WH equipment; and automatic commercial ice makers were not adopted or revised in the March 2011 final rule and are unchanged by this extension. These regulations can be found on a per product basis in Subpart B to Part 429 (sampling plans for testing) and 431.64, 431.76, 431.86, 431.96, 431.106, and 431.134 (uniform test methods). Those provisions were previously finalized in various product-specific rulemakings after being subject to notice and comment.

While AAON stated its support for the proposed 18-month extension, it requested clarification from DOE on how the March 2011 final rule indicates that ''manufacturers could use their discretion in grouping individual models as a certified basic model such that the certified rating for the basic model matched the represented rating for all included models'' as stated in the April 2011 NOPR. (AAON, No. 118.1 at p. 1) DOE provided clarification of its basic model definition in the March 2011 final rule. See 76 FR 12428–12429 for more information.

B. Extension of Certification Deadline for Walk-In Coolers and Freezers

In the April 2011 NOPR, DOE initially proposed an 18-month extension for manufacturers of walk-in coolers and freezers to certify compliance. As noted above, AHRI, ICS, Crown Tonka, the Joint Manufacturers, and Hill Phoenix all supported the certification extension for these products. Additionally, the Joint Manufacturers commented in support of an interim reporting requirement, suggesting mandatory registration with the Department's CCMS system for all walk-in coolers and walk-in freezers (WICFs) manufacturers based on published ratings and operating characteristics of components and materials used in construction of these products. (Joint Manufacturers, No. 115.1 at p. 1) The Joint Manufacturers clarified that this mandatory filing should be delayed until January 1, 2012, to allow all parties time to become acclimated to the system and to prevent an influx of errors and subsequent delays in completion of the filing. *Id.*

Although the Department tentatively proposed an extension to the certification compliance date for WICFs in the April 2011 NOPR, upon further consideration, DOE has determined that an 18-month extension for these products is not warranted. The current Federal energy conservation standards for walk-in coolers and freezers are design requirements prescribed under section 312(b) of the Energy Independence and Security Act of 2007 (EISA 2007), subsequently codified in 10 CFR 431.306. Manufacturers of WICFs are not currently required to comply with a performance-based standard, which could require extensive testing to determine the efficiency of each WICF and/or WICF component. Instead, EISA 2007 prescribed a number of design requirements, only one of which requires the use of a testing procedure. Because determining compliance with the design standard does not require extensive, time-consuming testing, DOE believes an 18-month delay to certify compliance with the EISA 2007 design standards is unwarranted.

WICFs that did not meet the EISA 2007 design requirements could not be distributed in commerce in the United States since January 1, 2009. As DOE clarified in the March 2011 final rule, EISA 2007 provided the framework for a component-based approach since each design standard is based on the performance of a given component of the WICF. Accordingly, DOE believes manufacturers of WICF components should be able to attest and demonstrate their products meet the design requirements without any additional time. Based on manufacturers' request for additional time, however, DOE will delay the certification compliance date to October 1, 2011, in order to provide manufacturers with sufficient time and notice to certify compliance to the Department. The new certification deadline is after the annual submission deadline for WICFs eliminating the need for manufacturers to submit two

complete certification reports this year and provides for a little extra time for component manufacturers to certify compliance to the design standards.

C. Extension of Certification Deadline for Other Types of Commercial or Industrial Equipment

Several commenters requested that the Department extend the compliance date for filing certification reports to other types of commercial or industrial equipment, such as beverage vending machines, distribution transformers and metal halide lamp ballasts and fixtures. A discussion of the comments and DOE response is presented below by product.

For instance, Royal Vendors, Inc., NAMA and Automated Merchandising Systems Inc. (AMS) all asserted that DOE should provide an 18-month extension for beverage vending machines for compliance with the certification provisions. Specifically, NAMA noted that manufacturers of beverage vending machines will be impacted by increased costs relating to compliance and testing; and operators will be impacted by increased prices for beverage vending machines, due to passed-along costs from manufacturers. (NAMA, No. 116.1 at p. 1) NAMA further stated that if the ''July 5, 2011 compliance date is allowed to stand, operators could also be impacted by a reduced number of compliant and certified vending machine models available for sale if manufacturers cannot bring their designs into compliance and obtain certification in this very short time.'' *Id.* Additionally, Royal Vendors, Inc. reported that, because it offers such a proliferation of product models, the quantity of testing required to verify compliance to the DOE 2012 requirement is quite extensive and costly to achieve in the timeline required. (Royal Vendors, Inc., No. 123.1 at p. 1) AMS similarly commented that the lead times for testing and the costs involved necessitate additional time to obtain the necessary certifications. (AMS, No. 128.1 at pp. 1–2)

The Department is clarifying that covered bottled or canned beverage vending machines are not required to be certified until the compliance date for the applicable energy conservation standards, which is August 31, 2012. 10 CFR 431.296. Irrespective of certification provisions, all manufacturers must bring their designs into compliance by that compliance date to continue distributing them in commerce. While many of the commenters suggested that the certification burden is large due to the compliance and testing costs, DOE considered these costs in the test procedure and energy conservation standards rulemakings for this product. See 71 FR 71340 (December 8, 2006) and 74 FR 74 44914 (August 31, 2009), respectively. Manufacturers of bottled and canned beverage vending machines should have the required information readily available by August 31, 2012. Additionally, DOE notes that it uses a self-certification process, where a manufacturer is attesting to the compliance of its products upon submission of the templates in CCMS; manufacturers are not required to obtain a third-party testing facility's certification.

With regard to distribution transformers, the National Electrical Manufacturers Association (NEMA) Transformers Products Section requested that DOE delay the compliance date for certification until 120 days from May 13, 2011, the day the Compliance Certification Management System (CCMS) templates for distribution transformers were published. (NEMA, No. 117.1 at p. 2) NEMA commented that such a 120 day delay is justified, reasonable and absolutely necessary, as any reporting represents a significant effort, both in time and labor; initial reporting even more so. *Id.* at pp 1–2. Similarly, NEMA requested DOE delay the enforcement of compliance reporting for metal halide lamp ballasts and fixtures until a date no earlier than September 1, 2012, because of the breadth of basic models covered and ballast testing requirements. (NEMA, No. 122.1 at pp. 1–2) NEMA noted this date coincides with the annual reporting date, minimizing the burden of multiple reports within the same year. *Id.* at p. 2.

DOE acknowledges that both distribution transformers and metal halide lamp ballasts and fixtures are unique markets. DOE understands, as noted by NEMA, that the distribution transformer market contains a great deal of customization, where many models are built-to-order. This can result in a large number of models requiring certification to DOE before distribution in commerce. DOE also understands it is common in the distribution transformer market to maintain many legacy models that were custom built for a given client instead of discontinuing them. DOE believes that manufacturers of distribution transformers will need sufficient time to review their records for legacy models to make sure that all models currently distributed in commerce are properly certified with the Department. As such, a large number of basic models may need to be certified in the initial certification report.

Metal halide lamp ballasts and fixtures are also a unique market since the manufacturer of the metal halide lamp fixture is responsible for compliance and certification to the Department, but the standards are based on the ballast (i.e., one component of the fixture). While the testing procedures and standards for these products are already effective and any representations of the efficiency must be made using the existing test procedure, DOE believes manufacturers of metal halide fixtures may require additional time to submit the certification reports. Many of these manufacturers will need to gather data on the ballasts from their component suppliers before the certification reports can be completed.

Rather than adopting a compliance date mid-month, DOE is delaying the compliance date for certification of distribution transformers and metal halide lamp ballasts and fixtures until October 1, 2011. This date provides slightly more time to allow for sufficient notice, data gathering, and certifying compliance, and addresses the concerns voiced by the manufacturers that they would be required to submit an annual certification report just a few months after the initial certification was due.

D. Reporting Requirement During Interim Period

In the April 2011 NOPR, the Department sought comment on whether a limited reporting requirement should be established for manufacturers receiving a compliance date extension for the certification reporting provisions. In response, numerous commenters stated their opposition to any such type of interim reporting requirement. AHRI asserted that DOE should not require registration with CCMS and the reporting of efficiency ratings before reasonable testing requirements and AEDM/ARM authorization and validation requirements have been clearly established, and manufacturers have been provided adequate time for compliance. (AHRI, No. 113.1 at p. 2) Hill Phoenix, NAMA, Lennox and Heatcraft were also opposed to reporting in the interim period. (Hill Phoenix, No. 121.1 at p. 1; NAMA, No. 116.1 at p. 3; Lennox, No. 119.1 at p. 2; Heatcraft, No. 124.1 at p. 2)

AHRI further stated that manufacturers should not have to worry about being prosecuted for inaccurate ratings or reporting errors while DOE has yet to determine what product rating methods and procedures will be deemed acceptable. (AHRI, No. 113.1 at

p. 2) Lennox and Heatcraft noted that the new certification requirements already impose an additional significant reporting burden on manufacturers, and DOE should not impose still another reporting obligation on an interim basis. (Lennox, No. 119.1 at p. 2; Heatcraft, No. 124.1 at p. 2) Instead, manufacturers should be able to simply maintain in their files, accessible on request by DOE, records demonstrating that covered equipment is in compliance with applicable conservation standards. *Id.* NAMA argued that adding limited reporting requirements will complicate testing, cost valuable staff time and could slow accurate conclusion of testing procedures. (NAMA, No. 116.1 at p. 3)

In response to these commenters, DOE desires to clarify that all products distributed in commerce must comply with the applicable energy conservation standards. Today's rule delays the reporting requirements only; existing energy conservation standards, test procedures and sampling provisions are not affected by this rule. Therefore, during the interim period before compliance is required for compliance certification, manufacturers must maintain records to demonstrate that covered equipment meet the applicable conservation standards—even if the manufacturers' determination of compliance was not made in accordance with DOE testing and sampling requirements.

E. Timing of Annual Filing Deadline

The March 2011 final rule added an annual certification requirement for all covered products and covered equipment currently subject to standards. The annual reporting requirement covers: (1) All discontinued basic models previously certified that have not previously been reported as discontinued (marked as discontinued); (2) all previously certified basic models that are still in distribution in commerce that are unchanged (marked as carryover); (3) all previously certified basic models that are still in distribution in commerce but for which the manufacturer needs to report new or changed information (marked as modified/revised) (e.g., new brand info, new or different model numbers, modified rating); and (4) any new models a manufacturer anticipates offering for distribution in commerce (marked as new). Lennox and Heatcraft requested DOE clarify the timing of the annual filing deadline of certification-related information (pursuant to 10 CFR 429.12(d)) and the 18-month extension. (Lennox, No. 119.1 at p. 2; Heatcraft, No. 124.1 at p. 2) These commenters suggested that the first certification reports for covered equipment should not be due until the DOE-specified month following the expiry of the 18-month extension (and any requirement for submitting a certification report before distributing relevant covered equipment in commerce should also be deferred until that date). *Id.* Lennox and Heatcraft believe this approach would preserve DOE's rolling submittal approach for annual reports and also clarify that a manufacturer is not required to submit a certification report twice in the first year that these reports are due. *Id.* With regard to timing, Carrier urged DOE to establish, once the AEDM procedures are amended, a subsequent effective date to actually conduct any required tests under the amended procedures. (Carrier, No. 114.1 at p. 2)

As discussed above, DOE is delaying the compliance date for the submittal of certification reports for certain commercial equipment. The annual certification requirement does not apply until the initial certification requirements are required. As an example, the earliest annual reporting deadline for commercial WH equipment will be May 1, 2013.

F. Compliance and Enforcement

DOE emphasizes that all covered equipment must meet the applicable energy conservation standard. Furthermore, all testing procedures and sampling provisions are unaffected by this final rule. DOE is adopting a delayed compliance date only for the reporting requirements in the March 2011 final rule and only for the equipment types discussed above.

DOE has also received questions regarding the compliance date for covered products and covered equipment, where compliance with the standards are not yet required, like general service incandescent lamps (GSILs). Covered products and covered equipment are not required to be certified until the compliance date of an applicable standard, so equipment such as GSILs and beverage vending machines are not required to be certified until the compliance date of the applicable energy conservation standard. Further, DOE is adopting clarifying language in today's final rule, which makes it clear that certification is required by the compliance date of the initial set of applicable energy conservation standards.

DOE encourages manufacturers to become familiar with the CCMS prior to the certification deadline. The CCMS requires users to apply to use the system by filling out a registration form, signing a compliance statement, and receiving a personal password. The CCMS has templates for all covered products and covered equipment available for manufacturers to use when submitting certification data to DOE. The Department encourages manufacturers, to the extent possible, to fill out these templates in advance of the compliance date in case questions arise.

G. Technical Amendments

DOE is modifying the regulatory text for cast-iron sectional boilers and hot water boilers (429.18), vented hearth heaters (429.22), general service incandescent lamps (429.27), and refrigerated bottled or canned beverage vending machines (429.52) to remove the reference to the conservation standards compliance date. Because DOE has added new regulatory text in section 429.12 explicitly stating for all product categories that certification is not required until compliance with a standard is required, the product-specific regulatory text is now redundant.

DOE is also deleting the regulatory text in section 429.35 requiring reporting and record retention relating to production dates for compact fluorescent lamps. That requirement was inadvertently added in the March 2011 final rule. Because there is no sampling requirement related to dates for compact fluorescent lamps, there is no purpose to this information.

III. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

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

B. Administrative Procedure Act

DOE has determined, pursuant to authority at 5 U.S.C. 553(b)(B), that there is good cause to waive the requirement to provide prior notice and an opportunity for comment concerning two technical amendments described in section G above as such procedures would be unnecessary. Both technical amendments merely conform the existing text to previously existing or newly added regulatory text without adding any new substantive requirements. These amendments are of a type in which the public would not be particularly interested or for which an

opportunity for comment would serve any purpose.

DOE has determined, pursuant to authority at 5 U.S.C. 553(d)(1), that this final rule is not subject to a 30-day effective date because this rule extending the compliance date for requirement relieves a restriction.

C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (IFRA) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's Web site: *http://www.gc.doe.gov.*

DOE reviewed this rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. This rule merely extends the compliance date of a rulemaking already promulgated. To the extent such action has any economic impact it would be positive in that it would allow regulated parties additional time to come into compliance. DOE did undertake a full regulatory flexibility analysis of the original Certification, Compliance, and Enforcement for Consumer Products and Commercial and Industrial Equipment rulemaking. That analysis considered the impacts of that rulemaking on small entities. As a result, DOE certifies that this rule will not have a significant economic impact on a substantial number of small entities.

D. Review Under the National Environmental Policy Act

DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, this rule amends an existing rule without changing its environmental effect and, therefore, is covered by the Categorical Exclusion in 10 CFR part 1021, subpart D, paragraph A5. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

IV. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of today's final rule.

List of Subjects in 10 CFR Part 429

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

Issued in Washington, DC, on June 21, 2011.

Kathleen Hogan,

Deputy Assistant Secretary for Energy Efficiency, Office of Technology Development, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, DOE amends part 429 of chapter II of Title 10 of the Code of Federal Regulations to read as follows:

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

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

Authority: 42 U.S.C. 6291–6317.

■ 2. Revise § 429.12 by adding a new paragraph (i) to read as follows:

§ 429.12 General requirements applicable to certification reports.

* * * * *

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

(1) Commercial refrigeration equipment, December 31, 2012;

(2) Commercial heating, ventilating, and air-conditioning equipment, December 31, 2012;

(3) Commercial water heating equipment, December 31, 2012;

(4) Walk-in coolers and freezers, October 1, 2011;

(5) Distribution transformers, October 1, 2011; and

(6) Metal halide lamp ballasts and fixtures, October 1, 2011.

§ 429.18 [Amended]

■ 3. Amend § 429.18(b)(2)(ii) and (b)(3) by removing the words, ''no later than September 1, 2012''.

§ 429.22 [Amended]

■ 4. Amend § 429.22(b)(2) by removing the last sentence.

§ 429.27 [Amended]

■ 5. Amend § 429.27(b)(2)(iii) by removing the phrase, ''On or after the effective dates specified in § 430.32,''.

§ 429.35 [Amended]

■ 6. Section 429.35 is amended:

■ a. In paragraph (b)(1) by removing ''bare of'' and adding in its place ''bare or'';

■ b. In paragraph (b)(2) by removing the text, ''production dates for the units tested,''; and

■ c. By removing paragraph (c).

■ 7. Revise § 429.42(b)(2)(iii) to read as follows:

§ 429.42 Commercial refrigerators, freezers, and refrigerator-freezers.

* * * * *

(b) * * *

(2) * * *

(iii) Remote condensing commercial refrigerators, freezers, and refrigerator-freezers, self-contained commercial refrigerators, freezers, and refrigerator-freezers without doors, commercial ice-cream freezers, and commercial refrigeration equipment with two or more compartments (i.e., hybrid refrigerators, hybrid freezers, hybrid refrigerator-freezers, and non-hybrid refrigerator-freezers): The maximum daily energy consumption in kilowatt hours per day (kWh/day), the total display area (TDA) in feet squared (ft^2) or the chilled volume in cubic feet (ft^3) as necessary to demonstrate compliance with the standards set forth in § 431.66, the rating temperature in degrees Fahrenheit (°F), the operating temperature range in degrees Fahrenheit (*e.g.,* ≥32 °F, <32 °F, and ≤ − 5 °F), the equipment family designation as described in § 431.66, and the condensing unit configuration.

■ 8. Revise § 429.52(b)(2) to read as follows:

§ 429.52 Refrigerated bottled or canned beverage vending machines.

* * * * *

(b) * * *

(2) Pursuant to § 429.12(b)(13), a certification report shall include the following public product-specific information: The maximum average daily energy consumption in kilowatt

hours per day (kWh/day), the refrigerated volume (V) in cubic feet (ft^3) used to demonstrate compliance with standards set forth in § 431.296, the ambient temperature in degrees Fahrenheit (°F), and the ambient relative humidity in percent (%) during the test.

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–64748; File No. S7–03–10]

RIN 3235–AK53

Risk Management Controls for Brokers or Dealers With Market Access

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; limited extension of compliance date for certain requirements.

SUMMARY: The Commission is extending the compliance date for certain recently adopted requirements of Rule 15c3–5 under the Securities Exchange Act of 1934 (''Exchange Act''). Specifically, the Commission is extending the compliance date, until November 30, 2011, for all of the requirements of Rule 15c3–5 for fixed income securities, and the requirements of Rule 15c3–5(c)(1)(i) for all securities. The compliance date remains July 14, 2011 for all provisions of Rule 15c3–5 not subject to this limited extension. Among other things, Rule 15c3–5 requires broker-dealers with access to trading securities directly on an exchange or alternative trading system (''ATS''), including those providing sponsored or direct market access to customers or other persons, and broker-dealer operators of an ATS that provide access to trading securities directly on their ATS to a person other than a broker-dealer, to establish, document, and maintain a system of risk management controls and supervisory procedures that, among other things, is reasonably designed to systematically limit the financial exposure of the broker-dealer that could arise as a result of market access, and ensure compliance with all regulatory requirements that are applicable in connection with market access.

The Commission is extending the compliance date for all of the requirements of Rule 15c3–5 for fixed income securities, and the requirements of Rule 15c3–5(c)(1)(i) for all securities to give broker-dealers with market access additional time to develop, test, and implement the relevant risk management controls and supervisory procedures required under the Rule.

DATES: The effective date for this release is June 30, 2011. The effective date for Rule 15c3–5 remains January 14, 2011. The compliance date is extended to November 30, 2011, for all of the requirements of Rule 15c3–5 for fixed income securities, and the requirements of Rule 15c3–5(c)(1)(i) for all securities. The compliance date remains July 14, 2011, for all provisions of Rule 15c3–5 not subject to the limited extension.

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SUPPLEMENTARY INFORMATION:

I. Introduction

On November 3, 2010, the Commission adopted Rule 15c3–5 under the Exchange Act.[1] Among other things, Rule 15c3–5 requires each broker-dealer with access to trading securities [2] directly on an exchange or ATS, including a broker-dealer providing sponsored or direct market access to customers or other persons, and each broker-dealer operator of an ATS that provides access to trading securities directly on their ATS to a person other than a broker-dealer, to establish, document, and maintain a system of risk management controls and supervisory procedures that, among other things, is reasonably designed to (1) systematically limit the financial exposure of the broker-dealer that could arise as a result of market access,[3] and (2) ensure compliance with all regulatory requirements that are applicable in connection with market access.[4] The required financial risk management controls and supervisory procedures must be reasonably designed to prevent the entry of orders that exceed appropriate pre-set credit or capital thresholds,[5] or that appear to be erroneous.[6] The regulatory risk management controls and supervisory procedures must also be reasonably designed to prevent the entry of orders unless there has been compliance with all regulatory requirements that must be satisfied on a pre-order entry basis,[7] prevent the entry of orders that the broker-dealers or customer is restricted from trading,[8] restrict market access technology and systems to authorized persons,[9] and assure appropriate surveillance personnel receive immediate post-trade execution reports.[10]

The Commission understands that, as broker-dealers with market access have worked to meet the July 14, 2011 compliance date, some have determined that additional time is needed to implement effective policies and procedures and complete the systems changes necessary to comply with certain requirements of Rule 15c3–5. The Financial Information Forum (''FIF''), the Securities Industry and Financial Markets Association (''SIFMA''), and the Wholesale Market Brokers' Association (''WMBA'') have submitted letters requesting that the Commission extend the compliance date for those requirements.[11] Specifically, FIF, SIFMA, and WMBA have indicated that more time is needed to comply with Rule 15c3–5(c)(1)(i), which requires the implementation of risk management controls and supervisory procedures that are reasonably designed to prevent the entry of orders that exceed appropriate pre-set credit or capital thresholds, because the type of controls required by the Rule are not currently in place at many broker-dealers, and developing and implementing appropriate controls in this area can be a complex exercise.[12] In addition, they have indicated that more time is needed generally to comply with the requirements under Rule 15c3–5 with respect to fixed income securities, because the type of pre-trade controls required by the Rule have generally not been used in the fixed income market, and developing and implementing controls that appropriately account for the differences in fixed income trading

[1] *See* Exchange Act Release No. 63241 (Nov. 3, 2010), 75 FR 69792 (Nov. 15, 2010) (''Rule 15c3–5 Adopting Release'').

[2] Rule 15c3–5 applies to trading in all securities on an exchange or ATS. *Id.* at 69765.

[3] *See* 17 CFR 240.15c3–5(c)(1).

[4] *See* 17 CFR 240.15c3–5(c)(2).

[5] *See* 17 CFR 240.15c3–5(c)(1)(i).

[6] *See* 17 CFR 240.15c3–5(c)(1)(ii).

[7] *See* 17 CFR 240.15c3–5(c)(2)(i).

[8] *See* 17 CFR 240.15c3–5(c)(2)(ii).

[9] *See* 17 CFR 240.15c3–5(c)(2)(iii).

[10] *See* 17 CFR 240.15c3–5(c)(2)(iv).

[11] *See* letter from Manisha Kimmel, Executive Director, Financial Information Forum, to David Shillman, Associate Director, Division of Trading and Markets (''Division''), Commission, dated April 15, 2011; *see also* letters from Sean Davy, Managing Director, *et al.*, Securities Industry and Financial Markets Association, to Robert Cook, Director, Division, Commission, dated April 21, 2011; and Stephen Merkel, Chairman, Wholesale Markets Brokers' Association, Americas, to Robert Cook, Director, Division, Commission, dated May 31, 2011.

[12] *Id.*