

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

[Docket No. EE-RM/TP-97-600]

RIN 1904-AA71

Energy Conservation Program for Consumer Products: Test Procedures and Certification and Enforcement Requirements for Plumbing Products; and Certification and Enforcement Requirements for Residential Appliances

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

ACTION: Final rule

SUMMARY: The Energy Policy and Conservation Act, as amended (EPCA), requires the Department of Energy (DOE or the Department) to administer an energy and water conservation program for certain major household appliances and commercial equipment, including certain plumbing products. This final rule codifies in Part 430 of Title 10 of the Code of Federal Regulations water conservation standards established in EPCA for showerheads, water closets and urinals; establishes, as directed by EPCA, water conservation standards for faucets and test procedures for faucets, showerheads, water closets and urinals by reference to revised American Society of Mechanical Engineers/American National Standards Institute (ASME/ANSI) standards; and provides certification and enforcement requirements for plumbing products. This final rule also clarifies and extends the certification and enforcement requirements to all residential covered products.

DATES: This rule is effective April 17, 1998 except for §§ 430.62(a)(4)(vii), 430.62(a)(4)(xiv), 430.62(a)(4)(xv) and 430.62(a)(4)(xvi) which become effective March 18, 1999. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 17, 1998. In addition, as prescribed in Section 323(c)(2) of EPCA, beginning on September 14, 1998 no manufacturer, distributor, retailer, or private labeler may make representations with respect to water use covered plumbing products, except as reflected in tests conducted according to DOE test procedure found in this rule.

ADDRESSES: The Department is incorporating by reference test

standards from ASME/ANSI. These standards (which contain both test procedures and water usage standards) are listed below:

1. American Society of Mechanical Engineers/American National Standards Institute Standard A112.19.6-1995, "Hydraulic Requirements for Water Closets and Urinals," Section 7.1.2, subsections 7.1.2.1, 7.1.2.2 and 7.1.2.3; Section 7.1.6; Section 8.2, subsections 8.2.1, 8.2.2, 8.2.3; and Section 8.5.

2. American Society of Mechanical Engineers/American National Standards Institute Standard A112.18.1M-1996, "Plumbing Fixture Fittings," Section 6.5.

Copies of these standards may be viewed at the Department of Energy Freedom of Information Reading Room, Forrestal Building, Room 1E-190, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586-3142 between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Copies of the ASME/ANSI Standards may also be obtained by request from the American Society of Mechanical Engineers, Service Center, 22 Law Drive, P.O. Box 2900, Fairfield, NJ 07007, or the American National Standards Institute, 1430 Broadway, New York, NY 10018.

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I. Introduction**A. Authority**

Part B of Title III of the Energy Policy and Conservation Act of 1975, as amended (EPCA), created the Energy Conservation Program for Consumer Products other than Automobiles (Program). The products covered under this program include faucets, showerheads, water closets, and urinals—the subjects of today's final rule.

This program consists essentially of three parts: testing, labeling, and energy and water conservation standards. In the case of faucets, showerheads, water closets, and urinals, the test procedures

measure water use or estimated annual operating cost of these covered products during a representative average use cycle or period of use, as determined by the Secretary, and shall not be unduly burdensome to conduct. EPCA, § 323(b)(3), 42 U.S.C. § 6293(b)(3).

One hundred and eighty days after a test procedure for a product is prescribed or established, no manufacturer, distributor, retailer, or private labeler may make representations with respect to energy use, efficiency, or the cost of energy consumed by products by this rule, except as reflected in tests conducted according to the new or amended DOE test procedure and such representations fairly disclose the results of such tests. Section 323(c)(2) of EPCA, 42 U.S.C. 6293(c)(2). Thus, beginning on [insert date 180 days from the date of publication], representations with respect to the products covered by this rule must be consistent with this amended test procedure.

EPCA states that the procedures for testing and measuring the water use of faucets and showerheads, and water closets and urinals, shall be ASME/ANSI Standards A112.18.1M-1989, and A112.19.6-1990, respectively, but that if ASME/ANSI revises these requirements, the Secretary shall adopt such revisions unless the Secretary determines by rule that the revised test procedures are not satisfactory for determining water use of the covered plumbing products or they are unduly burdensome to conduct. EPCA, § 323(b)(7) and 323(b)(8), 42 U.S.C. § 6293(b)(7) and § 6293(b)(8).

EPCA prescribes water conservation standards for faucets, showerheads, water closets and urinals. It further provides that if the requirements of ASME/ANSI Standard A112.18.1M-1989 or ASME/ANSI Standard A112.19.6-1990 are amended to improve the efficiency of water use, the Secretary shall publish a final rule establishing an amended uniform national standard unless the Secretary determines that adoption of such a standard at the level specified is not (i) technologically feasible and economically justified, (ii) consistent with the maintenance of public health and safety; or (iii) consistent with the purposes of this Act. EPCA, § 325(j) and 325(k), 42 U.S.C. § 6295(j) and § 6295(k).

B. Background

On February 20, 1997, the Department published in the **Federal Register** a Notice of Proposed Rulemaking regarding Test Procedures and Certification Requirements for Plumbing Products; and Certification Reporting Requirements for Residential

Appliances. 62 FR 7834. A public hearing was held in Washington, DC, on April 1, 1997. The comment period for written submissions was closed on May 6, 1997.

The notice proposed to codify into the Code of Federal Regulations statutory requirements with respect to plumbing products (water conservation standards, test procedures, and definitions); provide regulations for certification and enforcement requirements for plumbing products; and to clarify and extend the certification and enforcement requirements to all residential covered products.

II. Discussion of Comments

A. Test Procedures

(1) Faucets and Showerheads

In the proposed rule, the Department proposed to incorporate by reference, section 6.5, "Flow Capacity Test," in ASME/ANSI Standard A112.18.1M-1994, for testing faucets and showerheads. On May 29, 1996, the test procedure requirements for faucets and showerheads in ASME/ANSI Standard A112.18.1M-1994 were revised and issued as ASME/ANSI Standard A112.18.1M-1996.

The Plumbing Manufacturers Institute (PMI), Moen Incorporated (Moen), and Kohler Company (Kohler) commented that the test requirements for measuring water consumption remained unchanged and urged that DOE incorporate instead ASME/ANSI Standard A112.18.1M-1996. (PMI, Transcript, at 20; Moen, Transcript, at 22; and Kohler, Transcript, at 23). No additional comments were received. The Department is incorporating by reference section 6.5 in ASME/ANSI Standard A112.18.1M-1996 in today's final rule.

(2) Water Closets and Urinals

In the proposed rule, DOE proposed to incorporate by reference, section 7.1.2, "Test Apparatus and General Instructions," and subsections 7.1.2.1, 7.1.2.2, 7.1.2.3, and 7.1.6, "Water Consumption and Hydraulic Characteristics," in ASME/ANSI Standard A112.19.6-1990, for testing water closets. In the same ASME/ANSI Standard, the Department also proposed to incorporate by reference, section 8.2, "Test Apparatus and General Instructions," subsections 8.2.1, 8.2.2, 8.2.3, and section 8.5, "Water Consumption," for testing urinals. On April 19, 1996, the test procedure requirements for water closets and urinals in ASME/ANSI Standard A112.19.6-1990 were revised and

issued as ASME Standard A112.19.6-1995.

American Standard Inc. (American Standard) stated that test procedure requirements for water closets and urinals in both versions of ASME/ANSI Standard A112.19.6 are identical, and recommended that DOE incorporate instead ASME Standard A112.19.6-1995. (American Standard Inc., Transcript, at 95). No additional comments were received. The Department is incorporating by reference sections 7.1.2, 7.1.2.1, 7.1.2.2, 7.1.2.3, 7.1.6, 8.2, 8.2.1, 8.2.2, 8.2.3, and 8.5 in ASME Standard A112.19.6-1995 in today's final rule.

B. Water Conservation Standards

(1) Faucets

In the proposed rule, the Department proposed, in response to industry's request for conformity with a single standard, to adopt the faucet standard (2.2 gallons per minutes (gpm) at 60 pounds per square inch (psig)) contained in ASME/ANSI Standard A112.18.1M-1994. The American Water Works Association (AWWA), the California Energy Commission (CEC), PMI, and the International Association of Plumbing and Mechanical Officials (IAPMO) supported the standard for faucets in ASME/ANSI Standard A112.18.1M-1994 (2.2 gpm at 60 psig). (AWWA, No. 1, at 2; CEC, Transcript, at 18; PMI, Transcript, at 20; and IAPMO, Transcript, at 21).

As discussed above, ASME/ANSI Standard A112.18.1M-1994 was revised and issued as ASME/ANSI Standard A112.18.1M-1996; however, the standard for faucets remained the same as in ASME/ANSI Standard A112.18.1M-1994. No other comments were received. Based on the above considerations, the Department is incorporating the faucet standard in ASME/ANSI Standard A112.18.1M-1996 in today's final rule.

(2) Showerheads

In the proposed rule, the Department proposed to codify the statutory standard for showerheads (2.5 gpm at 80 psig) and incorporate by reference the tamper proofing requirement in section 7.4.4(a) of ASME/ANSI Standard A112.18.1M-1994. This requirement specifies that if a flow control insert is used as a component part of a showerhead, then it must be manufactured such that a pushing or pulling force of 36 Newtons (8 lbf) or more is required to remove the insert.

As previously mentioned, ASME/ANSI Standard A112.18.1M-1994 was revised and issued as ASME/ANSI

Standard A112.18.1M-1996. The standard for showerheads in both ASME/ANSI Standard A112.18.1M-1994 and ASME/ANSI Standard A112.18.1M-1996, is the same as the level prescribed in EPCA. DOE is codifying the statutory standard for showerheads and incorporating by reference Section 7.4.4(a) of ASME/ANSI Standard A112.18.1M-1996, in today's final rule.

(3) Water Closets and Urinals

In the proposed rule, DOE proposed to codify the statutory standards for water closets and urinals. The maximum water use allowed is 1.6 gallons per flush (gpf) for gravity tank-type toilets, flushometer tank toilets, and electromechanical hydraulic toilets, if manufactured after January 1, 1994; and for flushometer valve toilets and commercial gravity tank-type 2 piece toilets, if manufactured after January 1, 1997. The maximum water use allowed for blowout toilets is 3.5 gpf, if manufactured after January 1, 1994. The maximum water use for any urinal is 1.0 gpf, if manufactured after January 1, 1997.

As previously mentioned, ASME/ANSI Standard A112.19.6-1990 was revised and issued as ASME/ANSI A112.19.6-1995. The standards for toilets and urinals, which remained unchanged in the updated ASME/ANSI Standard, are also at the levels prescribed in EPCA. The Department is codifying the statutory standards for toilets and urinals in today's final rule.

C. Definitions

In the proposed rule, the Department proposed definitions for the terms "consumer product," "energy conservation standard," "estimated annual operating cost," "ANSI," "ASME," "blowout," "faucet," "flushometer tank," "flushometer valve," "low consumption," "showerhead," "urinal," "water closet," and "water use" drawn from EPCA § 321. No comments were requested or required for incorporation of these statutory definitions. DOE is incorporating these statutory definitions in today's final rule.

D. Definition of "Basic Model"

In the proposed rule, DOE proposed to establish definitions of "basic model" for plumbing products. These definitions allow models that exhibit essentially identical characteristics to be categorized into a family, where only representative samples within that family would need to be tested for certification purposes.

For faucets and showerheads, the Department proposed that "basic model" be defined by either the flow control mechanism attached to or installed with the fixture fittings, or the models that have identical water-passage design features that use the same path of water in the highest flow mode. For water closets and urinals, the Department proposed that "basic model" be defined as units which have hydraulic characteristics that are essentially identical, and which do not have any differing physical or functional characteristics that affect consumption. No comments on this issue were received. The Department is adopting these definitions as proposed in today's final rule.

E. Definition of "Electromechanical Hydraulic Toilet"

In the proposed rule, DOE proposed to define "electromechanical hydraulic toilet," as "any water closet that utilizes electrically operated devices, such as, but not limited to, air compressors, pumps, solenoids, motors, or macerators in place of, or to aid, gravity in evacuating waste from the toilet bowl." No comments on this proposal were received. The Department is adopting the definition as proposed in today's final rule.

F. Statistical Sampling Plans for Certification Testing

In the proposed rule, DOE proposed statistical sampling plans for faucets, showerheads, water closets, and urinals based on the current approach used for residential appliances. The purpose of sampling plans is to minimize the test burden while ensuring that the true mean performance of the product being manufactured and sold meets or conforms to the statutory water usage standard.

DOE proposed a statistical sampling plan at 95 percent confidence limits with a 1.05 divisor for faucets and showerheads, and at 90 percent confidence limits with a 1.10 divisor for water closets and urinals. AWWA supported the statistical sampling plans at the levels proposed. (AWWA, No. 1, at 2; and Transcript, at 25). No other comments were received on this issue. The Department is adopting the statistical plans as proposed in today's final rule.

G. Certification Reporting Requirements for Plumbing Products

(1) Types of Information To Be Submitted

In the proposed rule, DOE proposed that each basic model of a covered

product to be certified include the following information: the product type, product class, manufacturer's name, private labeler name(s), if applicable, the manufacturer's model number(s), and the water usage. IAPMO supported DOE's proposal. (IAPMO, Transcript, No. 38). No additional comments on this proposal were received. DOE is adopting this provision in today's final rule.

(2) Precision Level of Reported Test Results

In the proposed rule, DOE noted that statutory standards for faucets, showerheads, water closets, and urinals are specified in terms of a tenth of a gallon, or in the case of metering faucets, a hundredth of a gallon, and proposed that these levels be observed in certification and enforcement. No comments on this proposal were received. The Department is adopting this provision in today's final rule.

(3) Mathematical Rounding Rules

In the proposed rule, the Department proposed that reported test results conform to precision levels established in EPCA and that they be converted from test data utilizing the following mathematical rounding rules: Five and above round up, and less than five, round down. DOE also specified that such rounding rules are to be applied after the final result is calculated.

American Standard stated that there is confusion in the industry on whether to apply rounding rules to conform with specified precision levels at each step of the calculation or only once after the final result is calculated. American Standard claimed that different test results may be generated and requested that DOE clarify the application of the proposed rounding rules. (American Standard, Transcript, at 35). The California Energy Commission (CEC) and AWWA also supported clarification. (CEC, Transcript, at 35; and AWWA, No. 1, at 2-3).

The Department believes that rounding at each step of the calculation or rounding once after the final result is calculated may generate different reported test results. Therefore, today's final rule clarifies the application of the proposed rounding rules by specifying that measurements are to be recorded at the resolution of the test instrumentation and that at each step in the measurement and calculation procedure, the results are to be rounded off to the same number of significant digits as the previous step. The final water consumption value shall be rounded to one decimal place for water closets, urinals, and shower heads and

non-metered faucets, or two decimal places for metered faucets.

(4) Effective Date for Initial Certification Submissions

In the proposed rule, DOE proposed plumbing manufacturers be provided one year to comply with the certification requirements of sections 430.62(a)(4) (vii), (xiv–xvi) of this rule. No comments on this proposal were received. The Department is adopting this provision in today's final rule.

H. Modifications to Existing Language To Include Plumbing Products in the Code of Federal Regulations

In the proposed rule, DOE proposed to amend sections 430.27, 430.31–430.33, 430.40, 430.41, 430.47, 430.49, 430.50, 430.60, 430.61, 430.63, 430.70(a)(1), 430.70(a)(3), 430.70(a)(6) and 430.73 of Title 10 of the CFR by modifying existing language to include plumbing products covered by EPCA.

AWWA's proposed amendment to section 430.33 would allow States to set more restrictive water conservation standards and preempt States from setting less restrictive standards than the Federal standard. Section 327(c) of EPCA, however, specifies that when a Federal standard is in effect with respect to water use for faucets, showerheads, water closets and urinals, any State regulation concerning the water use of these covered products is preempted, regardless of whether it is more or less restrictive than the Federal standard, subject to six limited exceptions. (Two of the exceptions related specifically to water use standards of New York, Rhode Island, and Georgia in effect on the date of enactment of the Energy Policy Act of 1992.) Under current law, DOE is without authority to make the change requested by AWWA. While Congress preempted State standards, at the same time it showed a desire to allow State standards upon certain findings [327(d)]. Congress recognized that circumstances can exist where States will be permitted to establish or maintain standards, and EPCA established procedures for the Secretary to review the propriety of the State's exercise of regulatory authority.

The Association of Home Appliance Manufacturers (AHAM) commented that provisions in sections 430.27, 430.41, and 430.70, which DOE proposed to amend to include plumbing products by adding the term "water," could mistakenly subject certain AHAM products (i.e., clothes washers and dishwashers) to water consumption requirements that only need to meet minimum energy conservation

standards. To alleviate potential confusion, AHAM requested that DOE either cross reference the term "water" to plumbing products or create separate paragraphs for products required to meet minimum energy or maximum permissible water conservation standards. (AHAM, No. 4, at 1–2). The Department agrees that it is appropriate to clarify to which products water consumption requirements are applicable. DOE is revising sections 430.27, 430.41, 430.70, and other sections as necessary by cross referencing the term "water" to apply only to faucets, showerheads, water closets, and urinals in today's final rule.

I. Faucet Standards for Multiple-User Sprayheads

(1) Application of Faucet Standards to Sprayheads With Independently-Controlled Orifices

In the proposed rule, the Department proposed that each orifice of a sprayhead with independently-controlled orifices, depending on its mode of actuation, shall not exceed the maximum flow rate for a lavatory or metering faucet. No comments on this proposal were received. The Department is adopting this provision in today's final rule.

(2) Application of Faucet Standards to Sprayheads With Collectively-Controlled Orifices

In the proposed rule, the Department proposed that the maximum flow rate of a manually-activated sprayhead with collectively-controlled orifices shall be the product of the maximum flow rate for a lavatory faucet and the number of component lavatories (rim space of the lavatory in inches (millimeters) divided by 20 inches (508 millimeters)). DOE also proposed that the maximum flow rate of a metered-activated sprayhead shall be the product of the maximum flow rate for a metering faucet and the number of component lavatories (rim space of the lavatory in inches (millimeters) divided by 20 inches (508 millimeters)).

CEC and the Building Officials and Code Administrators International (BOCA) supported DOE's proposal. (CEC, Transcript, at 83; and BOCA, Transcript, at 88). IAPMO objected and instead recommended that prorating be based on 24 inches and 18 inches, for sprayheads that are installed in a lineal and circular lavatory, respectively. (IAPMO, Transcript, at 89). Bradley Corporation (Bradley) claimed that lavatories to which sprayheads are mounted are generally circular or semicircular rather than lineal.

Moreover, Bradley added that 18 and 20 inches are the two capacity criteria generally used for lavatories, that 20 inches is totally appropriate and is also more conservative than 18 inches. (Bradley, Transcript, at 89). The Department agrees with Bradley's comment regarding the appropriateness of prorating using 20 inches and is adopting the provision as proposed in today's final rule.

J. Urinal Standard for Trough-Type Urinals

On February 7, 1997, Kohler submitted a letter to DOE regarding trough-type urinals. Kohler stated that trough-type urinals, which are produced in sizes of 36 inches, 48 inches, 60 inches, and 72 inches, are fixtures designed for multiple-users and are generally installed in places of high density. Kohler believed these products are covered under EPCA and requested that it be allowed to satisfy compliance with the standard by prorating maximum water use based upon 16 inches per individual. In a March 24, 1997 letter to Kohler, the Department agreed that Kohler's proposal seemed reasonable but that it intends to seek additional input. This proposal was discussed at the April 2, 1997, public hearing for plumbing products.

Both IAPMO and CEC supported Kohler's proposal. (IAPMO, Transcript, at 66; and CEC, Transcript, at 83). Kohler claimed that Eljer Industries, Inc. also supported its proposal. (Kohler, Transcript, at 72). No additional comments on this proposal were received. The Department is adopting the provision in today's final rule to read as follows:

"430.32(r) *Urinals*. The maximum water use allowed for any urinals manufactured after January 1, 1994, shall be 1.0 gallons per flush (3.8 liters per flush).¹

¹ The maximum water use allowed for a trough-type urinal shall be the product of (a) the maximum flow rate for a urinal and (b) the length of the trough-type urinal in inches (meters) divided by 16 inches (0.406 meters)."

K. Enforcement

In the proposed rule, the Department proposed to extend its enforcement policies to include plumbing products. DOE believes that its existing enforcement procedures are adequate for deterring would-be violators.

The New York State Department of Environmental Conservation (NYSDEC) claimed that it is necessary for DOE to establish a product or manufacturer listing program to protect consumers

from non-complying manufacturers. (NYSDEC, No. 5, at 2).

Presently, the Department is not aware of any manufacturers who are producing non-compliant products for distribution. Furthermore, DOE believes that the enforcement mechanisms it proposed to extend to plumbing products in the proposed rule are adequate. Therefore, in today's final rule, the Department is establishing enforcement provisions for plumbing products as proposed.

L. Clarification of Certification Reporting Requirements for Residential Appliances

In the proposed rule, DOE proposed to redesignate, revise existing language, and add new language and paragraphs in section 430.62, and Appendices A and B to Subpart F of the CFR as necessary regarding certification and enforcement requirements for all residential appliances, including plumbing products. The proposed modifications for which DOE received no comments are incorporated in today's final rule. The proposed modifications for which comments were received are discussed below:

(1) Means of Certification

Section 430.62 of the CFR presently allows a manufacturer or private labeler to directly certify covered products to DOE or authorize a third party to certify on its behalf. In the proposed rule, DOE proposed to extend this coverage to plumbing products. Both IAPMO and AWWA questioned the integrity of self-certification by manufacturers and suggested that DOE revise its rule to allow only third-party certification. (IAPMO, Transcript, at 40; and AWWA, Transcript, at 57). PMI, CEC, Kohler, American Standard, Bradley, Delta Faucets (Delta) and the National Voluntary Laboratory Accreditation Program (NVLAP) argued that enforcement provisions presently exist to deter would-be violators, and that eliminating the option of self-certification would impose a logistic or financial burden on manufacturers. (PMI, Transcript, at 51; CEC, Transcript, at 55; Kohler, Transcript, at 56; American Standard, Transcript, at 60; Bradley, Transcript, at 62; Delta, Transcript, at 62; and NVLAP, Transcript, at 63).

The Department agrees with the comments by PMI, CEC, Kohler, American Standard, Bradley, Delta Faucets (Delta) and NVLAP that current enforcement provisions are adequate. DOE also believes it necessary to maintain flexibility in the certification of products to DOE by manufacturers

and private labelers. Based on the above considerations, the Department does not believe the revision suggested by IAPMO and AWWA is justified for inclusion in today's final rule.

(2) Discontinued Model

Section 430.62(c) of the CFR presently requires that "discontinued models" be reported in writing to DOE. In the proposed rule, DOE proposed to clarify the section by defining "discontinued model" as "a basic model which has ceased production," specifying the type of information to be submitted, and requiring that such models be reported within six months of being discontinued.

AHAM claimed the proposed definition of "discontinued model" could cause confusion if applied to rebate models for which production has ceased but which may be sold for several years. (AHAM, No. 4, at 1-2). The Whirlpool Corporation (Whirlpool) added that the proposed six-month reporting period requirement would impose a logistic and financial burden on the manufacturers and requested that it be withdrawn. (Whirlpool, No. 6, at 4).

The Department agrees with AHAM that DOE's proposed definition of "discontinued model" needs to be clarified. DOE also agrees with Whirlpool that the proposed six-month reporting period requirement following discontinuance of models may impose an unnecessary burden on the industry. Based on the above considerations, DOE is revising the section in question to read as follows:

430.62(c) Discontinued model. A basic model is discontinued when its production has ceased and is no longer being distributed. Such models shall be reported, by certified mail, to: Department of Energy, Office of Energy Efficiency and Renewable Energy, Office of Codes and Standards, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585-012. For each basic model, this report shall include: product type, product class, the manufacturer's name, the private labeler name(s), if applicable, and the manufacturer's model number. If the reporting of discontinued models coincides with the submittal of a certification report, such models can be included in the certification report.

(3) Amendment of Information

In the proposed rule, DOE proposed to add a new section: 430.62(f), "Amendment of Information," which would require a manufacturer or his representative to submit, by certified mail, a statement of compliance or

certification report with the revised information if any information previously submitted has changed.

Both the Air-Conditioning & Refrigeration Institute (ARI) and AHAM asserted that such information would be submitted anyway in the course of new submissions and requested that the proposal be withdrawn. (ARI, No. 3, at 1; and AHAM, No. 4, at 2). DOE agrees with the suggestion by ARI and AHAM and is withdrawing this proposal in today's final rule.

(4) Submission of Annual Energy Use for Kitchen Ranges, Ovens, and Microwave Ovens

In the proposed rule, DOE proposed to require submissions of annual energy use on a per model basis for kitchen ranges, ovens, and microwave ovens.

Both AHAM and Whirlpool noted that there are presently no minimum energy efficiency reporting requirements for kitchen ranges, ovens, and microwave ovens, that it would create an unnecessary test burden on manufacturers, and recommended that the proposal be withdrawn. Section 323(a)(1)(B) that the Secretary may prescribe test procedures for a consumer product classified as covered product. Even without minimum efficiency standards for a covered product this information could be used to assist consumers in purchasing more efficient products. However, DOE does recognize that testing and reporting of efficiency data does place an added burden on manufacturers and therefore is withdrawing this requirement for kitchen ranges, ovens, and microwave ovens at this time.

M. Metric Equivalents

In the proposed rule, DOE proposed that along with English measurements (*i.e.*, gallons per minutes (gpm), gallons per cycle (gal/cycle), or gallons per flush (gpf)), metric equivalents (*i.e.* liters per minute (L/min), liters per cycle (L/cycle), or liters per flush (Lpf)) shall be required in certification reports submitted to the Department.

American Standard stated such requirement would impose a paperwork burden and requested that DOE select only one measurement system (*i.e.*, English or metric). (American Standard, Transcript, at 116). However, the Department does not believe the provision would unduly burden the industry. Only one certification report containing both English and metric units will be required rather than dual certification reports. Based on the above considerations, the Department rejects American Standard's request to select one measurement system for

certification submission and instead will finalize in today's rule the provision as proposed.

Mr. Lawrence J. Stempnik recommended that metric units be listed first, followed by the English conversion as supplementary units on certification reports to DOE. Also, he recommended that a statement be added to allow reports to be submitted in metric units only. In addition, Mr. Stempnik argued that the acronym "Lpf" (liter per flush) is not a metric unit, that it would confuse consumers, and recommended that "L" (liter) be used instead. (Lawrence J. Stempnik, No. 2, at 3-5). DOE believes that since the unit of liters per flush (Lpf) is well-accepted in the plumbing standards and literature, and adequately defines the water consumption on the basis of usage, it should not prove confusing for consumers. Therefore, the Department rejects Mr. Stempnik's request to replace the acronym "Lpf" with "L" in today's final rule. The Department also believes that because the standards are written in English units, the English units should be listed first in certification reports, followed by the metric equivalents in parentheses.

N. Other Issues

The following is a discussion of issues raised by other commenters:

(1) Establishment of an E-mail Address

Mr. Lawrence J. Stempnik requested that submissions of information via e-mail from companies to the Department be allowed. (Lawrence J. Stempnik, No. 2, at 5). Mr. Stempnik claimed that this would facilitate electronic storage of the data and enable multi-user access to electronic databases instead of paper files.

The Department currently has no mechanism for maintaining electronic databases of covered products, and therefore requires paper copies of compliance statements and certification reports. It should be noted that electronic copies would only be considered for certification reports, and not for compliance statements, which require an original signature. Although the Department declines to add e-mail as an official option for submitting certification reports in today's final rule, it will begin to evaluate the possibility of using electronic submittals for certification reports in the future. The Department would therefore appreciate manufacturers or their authorized representatives, at their option, submitting electronic files of their certification reports in addition to the required paper copies for DOE's

consideration. The submission of electronic files is strictly voluntary.

(2) Performance-Based Standard

Mr. Lawrence Stempnik suggested that in addition to water consumption, a performance-based requirement, based on the unit's capability to expel a certain mass in one flush, be included in the testing of water closets. (Lawrence J. Stempnik, No. 2, at 3).

The current ASME/ANSI standard for water closets (ASME/ANSI A112.19.6-1995) includes some performance tests, but they are considered by the ASME committee responsible for the standard to be inadequate for accurately assessing the ability of a water closet to remove solid waste from the bowl and transport it to the drain line. The ASME committee responsible for the standard has established a task force to develop and refine an effective bulk media removal test for inclusion in the next revision of the standard. The Department agrees with Mr. Stempnik's emphasis on the importance of producing toilets that perform successfully, and supports the continuing efforts by industry to develop more effective tests to measure the performance of water closets.

(3) Consumer Tampering

The AWWA commented that toilets should be designed such that water consumption cannot be increased through tampering. (AWWA, No. 1, at 3). The manufacturers of plumbing products currently have a task group investigating adjustability issues. However, EPCA only authorizes DOE to regulate requirements to restrict consumer tampering to alter the water consumption of covered plumbing products for showerheads. 42 U.S.C. § 6295(j)(1) Therefore, the Department declines AWWA's suggestion to require tamper-proofing of toilets in today's final rule. The Department encourages manufacturers to consider development of designs which discourage tampering.

(4) Product Listing

The New York State Department of Environmental Conservation commented that a directory or listing of plumbing products conforming to the Energy Policy and Conservation Act should be produced. (NYSDEC, No. 5, at 1). It believes that such a directory is necessary to aid State and local officials in determining which products are in conformance, and to help rid the marketplace of non-conforming products. AWWA questioned how consumers would be made aware of conforming plumbing products (AWWA, Transcript, at 109).

Currently, listings of complying energy-efficient products (i.e., refrigerators, clothes washers, dishwashers, water heaters, etc) are compiled by industry and consumer groups such as the ARI, the American Council for an Energy Efficient Economy, and Gas Appliance Manufacturers Association. DOE believes that similar organizations in the plumbing industry could equally provide such listings for complying plumbing products. Therefore, the Department declines to develop a product directory in today's final rule.

III. Procedural Requirements

A. Review Under the National Environmental Policy Act of 1969

In this rule, the Department codifies statutorily mandated water conservation standards and test procedures for faucets, showerheads, water closets, and urinals. Implementation of this rule will not result in environmental impacts apart from the effects of the water conservation standards established by Congress in EPCA and incorporated in today's rule. The test procedures for measuring water consumption in this rule are mandated by EPCA and are already in general use in the industry. The Department has therefore determined that this rule is covered under the Categorical Exclusion found at paragraph A.6 of appendix A to subpart D, 10 CFR Part 1021, which applies to "rulemakings that are strictly procedural," and which, therefore, have no environmental effect. By this final rule, the Department is following the direction of the Energy Policy Act and incorporating by reference test procedures that are already being used by industry, while adding sampling plans, certification reporting and labeling requirements, definitions, and clarifications of ambiguous issues and of the existing certification reporting requirements for residential appliances. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

B. Review Under Executive Order 12866, "Regulatory Planning and Review"

This regulatory action is not a significant regulatory action under Executive Order 12866, "Regulatory Planning and Review," October 4, 1993. Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs.

C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. §§ 601–612, requires the preparation of an initial regulatory flexibility analysis for every rule which 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. In the NOPR, DOE invited public comment on its conclusion that the proposed rule, if promulgated, would not have a significant economic impact on a substantial number of small entities. The NOPR presented detailed information on the number of small manufacturers of plumbing fixtures and fittings that would be affected by the rule, and it discussed the statutory basis for standards and test procedures incorporated in the rule and steps DOE has taken to minimize the economic impact on covered firms. As explained in the NOPR, this rule includes water conservation standards that are prescribed by EPCA and updated test procedures that EPCA requires DOE to adopt. The test procedures which are incorporated in this rule (ASME/ANSI Standards A112.18.1M–1996 and A112.19.6–1995) are already in general use in the industry. The rule also revises certification and enforcement requirements in 10 CFR Part 430 that apply to all manufacturers of covered products (see discussion under “Review Under the Paperwork Reduction Act” in this **SUPPLEMENTARY INFORMATION** section). DOE received no public comments that specifically addressed the impact of the rule on small businesses.

DOE certifies that complying with this final rule (excluding the cost of compliance with the water conservation standards and test procedures directly imposed by EPCA) would not impose significant economic costs on a substantial number of small manufacturers.

D. Review Under Executive Order 12612, “Federalism”

Executive Order 12612, “Federalism,” 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effect on States, on the relationship between the National Government and States, or in the distribution of power and responsibilities among various levels of government. If there are substantial effects, then the Executive Order requires preparation of a federalism assessment to be used in all

decisions involved in promulgating and implementing a policy action.

The rule published today will not regulate the States. They will primarily affect the manner in which DOE promulgates residential appliance, commercial product, and water conservation standards; test procedures; and certification requirements, prescribed under the Energy Conservation and Policy Act. State regulation in this area is largely preempted by the Energy Policy and Conservation Act. The rule published today will not alter the distribution of authority and responsibility to regulate in this area. Accordingly, DOE has determined that preparation of a federalism assessment is unnecessary.

E. Review Under Executive Order 12630, “Governmental Actions and Interference With Constitutionally Protected Property Rights”

It has been determined pursuant to Executive Order 12630, “Governmental Actions and Interference with Constitutionally Protected Property Rights,” 52 FR 8859 (March 18, 1988), that this regulation will not result in any takings which might require compensation under the Fifth Amendment to the United States Constitution.

F. Review Under the Paperwork Reduction Act

Today’s final rule will revise certification and enforcement requirements applicable to manufacturers of covered consumer products. Appendix A to Subpart F of part 430, “Compliance Statement and Certification Report,” was previously approved by OMB and assigned OMB Control No. 1910–1400. The final rule will revise this form to cover certification of plumbing products; facilitate use of the form by third party representatives of covered product manufacturers; and, in an attachment, specify the format of the certification report that manufacturers currently are required to submit to DOE by 10 CFR part 430.62(a)(2). OMB has approved the revised “Compliance Statement and Certification Report” and extended its effectiveness until June 30, 2000. An agency may not conduct or sponsor a collection of information unless the collection displays a currently valid OMB control number. (See 5 CFR § 1320.5(b)).

The final rule will require manufacturers of plumbing products to maintain records concerning their determinations of the water consumption of faucets, showerheads, water closets and urinals. DOE has

concluded that this record keeping requirement is necessary for implementing and monitoring compliance with the water conservation standards, testing and certification requirements for residential and commercial faucets, showerheads, water closets and urinals mandated by EPCA. The final rule also requires manufacturers to submit initial certification reports for basic models of covered faucets, showerheads, water closets and urinals within 12 months after the publication of a final rule in the **Federal Register**. The initial certification reports will be a one-time submission stating that the manufacturer has determined by employing actual testing that the basic model of faucet, showerhead, water closet or urinal meets the applicable water conservation standard. After the first year, manufacturers of plumbing products will have to submit a certification report for each new basic model, or to certify compliance with a new or amended standard, before the model will be allowed to be distributed in commerce.

G. Review Under Executive Order 12988, “Civil Justice Reform”

With respect to the review of existing regulations and the promulgation of new regulations, Section 3(a) of Executive Order 12988, “Civil Justice Reform,” 61 FR 4729 (February 7, 1996), imposes on executive agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by Section 3(a), Section 3(b) of the Executive Order specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provide a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of the Executive Order requires Executive agencies to review regulations in light of applicable standards Section 3(a) and Section 3(b) to determine whether they are met or it is unreasonable to meet one or more of

them. DOE reviewed today's final rule under the standards of Section 3 of the Executive Order and determined that, to the extent permitted by law, they meet the requirements of those standards.

H. Review Under Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act") requires that the Department prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. The budgetary impact statement must include: (i) identification of the federal law under which the rule is promulgated; (ii) a qualitative and quantitative assessment of anticipated costs and benefits of the federal mandate and an analysis of the extent to which such costs to state, local, and tribal governments may be paid with federal financial assistance; (iii) if feasible, estimates of the future compliance costs and of any disproportionate budgetary effects the mandate has on particular regions, communities, non-federal units of government, or sectors of the economy; (iv) if feasible, estimates of the effect on the national economy; and (v) a description of the Department's prior consultation with elected representatives of state, local, and tribal governments and a summary and evaluation of the comments and concerns presented.

The Department has determined that the action proposed today does not include a federal mandate that may result in estimated costs of \$100 million or more to state, local or to tribal governments in the aggregate or to the private sector. Therefore, the requirements of Sections 203 and 204 of the Unfunded Mandates Act do not apply to this action.

I. Review Under the Small Business Regulatory Enforcement Fairness Act of 1996

Prior to the effective date of this regulatory action, set forth above, DOE will submit a report to Congress containing the rule and other information, as required by 5 U.S.C. 801(a)(1)(A). The report will state that the rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Energy conservation,

Household appliances, Incorporation by reference.

Issued in Washington, DC, on March 13, 1998.

Dan W. Reicher,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, Part 430 of Chapter II of Title 10, Code of Federal Regulations, is amended as follows.

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

1. The authority citation for Part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309.

2. Section 430.2 of Subpart A is amended by revising the definitions for "consumer product," and "energy conservation standard," adding new paragraphs (17) through (20) in the definition of "basic model," and adding new definitions for "ANSI," "ASME," "blowout," "electromechanical hydraulic toilet," "estimated annual operating cost," "faucet," "flushometer tank," "flushometer valve," "low consumption," "showerhead," "urinal," "water closet," and "water use" in alphabetical order, to read as follows:

Subpart A—General Provisions

§ 430.2 Definitions.

* * * * *

ANSI means the American National Standards Institute.

ASME means the American Society of Mechanical Engineers.

* * * * *

Basic model * * *

(17) With respect to faucets, which have the identical flow control mechanism attached to or installed within the fixture fittings, or the identical water-passage design features that use the same path of water in the highest-flow mode.

(18) With respect to showerheads, which have the identical flow control mechanism attached to or installed within the fixture fittings, or the identical water-passage design features that use the same path of water in the highest-flow mode.

(19) With respect to water closets, which have hydraulic characteristics that are essentially identical, and which do not have any differing physical or functional characteristics that affect water consumption.

(20) With respect to urinals, which have hydraulic characteristics that are essentially identical, and which do not have any differing physical or

functional characteristics that affect water consumption.

* * * * *

Blowout has the meaning given such a term in ASME A112.19.2M–1995. (see § 430.22)

* * * * *

Consumer product means any article (other than an automobile, as defined in Section 501(1) of the Motor Vehicle Information and Cost Savings Act):

(1) Of a type—

(i) Which in operation consumes, or is designed to consume, energy or, with respect to showerheads, faucets, water closets, and urinals, water; and

(ii) Which, to any significant extent, is distributed in commerce for personal use or consumption by individuals;

(2) Without regard to whether such article of such type is in fact distributed in commerce for personal use or consumption by an individual, except that such term includes fluorescent lamp ballasts, general service fluorescent lamps, incandescent reflector lamps, showerheads, faucets, water closets, and urinals distributed in commerce for personal or commercial use or consumption.

* * * * *

Electromechanical hydraulic toilet means any water closet that utilizes electrically operated devices, such as, but not limited to, air compressors, pumps, solenoids, motors, or macerators in place of or to aid gravity in evacuating waste from the toilet bowl.

Energy conservation standard means:

(1) A performance standard which prescribes a minimum level of energy efficiency or a maximum quantity of energy use, or, in the case of showerheads, faucets, water closets, and urinals, water use, for a covered product, determined in accordance with test procedures prescribed under Section 323 of EPCA (42 U.S.C. 6293); or

(2) A design requirement for the products specified in paragraphs (6), (7), (8), (10), (15), (16), (17), and (19) of Section 322(a) of EPCA (42 U.S.C. 6292(a)); and

(3) Includes any other requirements which the Secretary may prescribe under Section 325(r) of EPCA (42 U.S.C. 6295(r)).

Estimated annual operating cost means the aggregate retail cost of the energy which is likely to be consumed annually, and in the case of showerheads, faucets, water closets, and urinals, the aggregate retail cost of water and wastewater treatment services likely to be incurred annually, in representative use of a consumer

product, determined in accordance with Section 323 of EPCA (42 U.S.C. 6293).

* * * * *

Faucet means a lavatory faucet, kitchen faucet, metering faucet, or replacement aerator for a lavatory or kitchen faucet.

* * * * *

Flushometer tank means a device whose function is defined in flushometer valve, but integrated within an accumulator vessel affixed and adjacent to the fixture inlet so as to cause an effective enlargement of the supply line immediately before the unit.

Flushometer valve means a valve attached to a pressurized water supply pipe and so designed that when actuated, it opens the line for direct flow into the fixture at a rate and quantity to properly operate the fixture, and then gradually closes to provide trap reseal in the fixture in order to avoid water hammer. The pipe to which this device is connected is in itself of sufficient size, that when open, will allow the device to deliver water at a sufficient rate of flow for flushing purposes.

* * * * *

Low consumption has the meaning given such a term in ASME A112.19.2M-1995. (see § 430.22)

* * * * *

Showerhead means any showerhead (including a hand held showerhead), except a safety shower showerhead.

* * * * *

Urinal means a plumbing fixture which receives only liquid body waste and, on demand, conveys the waste through a trap seal into a gravity drainage system, except such term does not include fixtures designed for installations in prisons.

* * * * *

Water closet means a plumbing fixture that has a water-containing receptor which receives liquid and solid body waste, and upon actuation, conveys the waste through an exposed integral trap seal into a gravity drainage system, except such term does not include fixtures designed for installation in prisons.

* * * * *

Water use means the quantity of water flowing through a showerhead, faucet, water closet, or urinal at point of use, determined in accordance with test procedures under Appendices S and T of subpart B of this part.

* * * * *

3. Section 430.22 of subpart B is amended by adding paragraph (b)(6) to read as follows:

Subpart B—Test Procedures

§ 430.22 Reference Sources.

* * * * *

(b) * * *

(6) American Society of Mechanical Engineers (ASME). The ASME standards listed in this paragraph may be obtained from the American Society of Mechanical Engineers, Service Center, 22 Law Drive, P.O. Box 2900, Fairfield, NJ 07007.

1. ASME/ANSI Standard A112.18.1M-1996, "Plumbing Fixture Fittings."

2. ASME/ANSI Standard A112.19.6-1995, "Hydraulic Requirements for Water Closets and Urinals."

* * * * *

4. Section 430.23 of subpart B is amended by revising the section heading and adding new paragraphs (s), (t), (u), and (v), to read as follows:

§ 430.23 Test procedures for measures of energy and water consumption.

* * * * *

(s) *Faucets*. The maximum permissible water use allowed for lavatory faucets, lavatory replacement aerators, kitchen faucets, and kitchen replacement aerators, expressed in gallons and liters per minute (gpm and L/min), shall be measured in accordance to section 2(a) of Appendix S of this subpart. The maximum permissible water use allowed for metering faucets, expressed in gallons and liters per cycle (gal/cycle and L/cycle), shall be measured in accordance to section 2(a) of Appendix S of this subpart.

(t) *Showerheads*. The maximum permissible water use allowed for showerheads, expressed in gallons and liters per minute (gpm and L/min), shall be measured in accordance to section 2(b) of Appendix S of this subpart.

(u) *Water closets*. The maximum permissible water use allowed for water closets, expressed in gallons and liters per flush (gpf and Lpf), shall be measured in accordance to section 3(a) of Appendix T of this subpart.

(v) *Urinals*. The maximum permissible water use allowed for urinals, expressed in gallons and liters per flush (gpf and Lpf), shall be measured in accordance to section 3(b) of Appendix T of this subpart.

5. Section 430.24 of subpart B is amended by adding new paragraphs (s), (t), (u), and (v), to read as follows:

§ 430.24 Units to be tested.

* * * * *

(s) For each basic model of faucet,¹ a sample of sufficient size shall be tested

¹ Components of similar design may be substituted without requiring additional testing if

to ensure that any represented value of water consumption of a basic model for which consumers favor lower values shall be no less than the higher of:

- (1) The mean of the sample or
- (2) The upper 95 percent confidence limit of the true mean divided by 1.05.

(t) For each basic model¹ of showerhead, a sample of sufficient size shall be tested to ensure that any represented value of water consumption of a basic model for which consumers favor lower values shall be no less than the higher of:

- (1) The mean of the sample or
- (2) The upper 95 percent confidence limit of the true mean divided by 1.05.

(u) For each basic model¹ of water closet, a sample of sufficient size shall be tested to ensure that any represented value of water consumption of a basic model for which consumers favor lower values shall be no less than the higher of:

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

(v) For each basic model¹ of urinal, a sample of sufficient size shall be tested to ensure that any represented value of water consumption of a basic model for which consumers favor lower values shall be no less than the higher of:

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

§ 430.27 [Amended]

6. Section 430.27 of subpart B is amended by:

a. Adding the phrase " , or water consumption characteristics (in the case of faucets, showerheads, water closets, and urinals) after the phrase "energy consumption characteristics" in paragraphs: (a)(1), (b)(1)(iii), and (l) (first sentence); and

b. Revising the existing referenced section "§ 430.22" in paragraph (a)(1) to read as "§ 430.23".

7. Subpart B of Part 430 is amended by adding Appendix S and Appendix T, to read as follows:

Appendix S to Subpart B of Part 430—Uniform Test Method for Measuring the Water Consumption of Faucets and Showerheads

1. *Scope*: This Appendix covers the test requirements used to measure the hydraulic performance of faucets and showerheads.

2. *Flow Capacity Requirements*:

a. *Faucets*—The test procedures to measure the water flow rate for faucets, expressed in gallons per minute (gpm) and liters per minute (L/min), or gallons per cycle (gal/

the represented measures of energy or water consumption continue to satisfy the applicable sampling provision.

cycle) and liters per cycle (L/cycle), shall be conducted in accordance with the test requirements specified in section 6.5, Flow Capacity Test, of the ASME/ANSI Standard A112.18.1M-1996 (see § 430.22). Measurements shall be recorded at the resolution of the test instrumentation. Calculations shall be rounded off to the same number of significant digits as the previous step. The final water consumption value shall be rounded to one decimal place for non-metered faucets, or two decimal places for metered faucets.

b. Showerheads—The test conditions to measure the water flow rate for showerheads, expressed in gallons per minute (gpm) and liters per minute (L/min), shall be conducted in accordance with the test requirements specified in section 6.5, Flow Capacity Test, of the ASME/ANSI Standard A112.18.1M-1996 (see § 430.22). Measurements shall be recorded at the resolution of the test instrumentation. Calculations shall be rounded off to the same number of significant digits as the previous step. The final water consumption value shall be rounded to one decimal place.

Appendix T to Subpart B of Part 430—Uniform Test Method for Measuring the Water Consumption of Water Closets and Urinals

1. *Scope*: This Appendix covers the test requirements used to measure the hydraulic performances of water closets and urinals.

2. Test Apparatus and General Instructions:

a. The test apparatus and instructions for testing water closets shall conform to the requirements specified in section 7.1.2, Test Apparatus and General Requirements, subsections 7.1.2.1, 7.1.2.2, and 7.1.2.3 of the ASME/ANSI Standard A112.19.6-1995 (see § 430.22). Measurements shall be recorded at the resolution of the test instrumentation. Calculations shall be rounded off to the same number of significant digits as the previous step. The final water consumption value shall be rounded to one decimal place.

b. The test apparatus and instructions for testing urinals shall conform to the requirements specified in section 8.2, Test Apparatus and General Requirements, subsections 8.2.1, 8.2.2, and 8.2.3 of the ASME/ANSI Standard A112.19.6-1995 (see § 430.22). Measurements shall be recorded at the resolution of the test instrumentation. Calculations shall be rounded off to the same number of significant digits as the previous step. The final water consumption value shall be rounded to one decimal place.

3. Test Measurement:

a. Water closets—The measurement of the water flush volume for water closets, expressed in gallons per flush (gpf) and liters per flush (Lpf), shall be conducted in accordance with the test requirements specified in section 7.1.6, Water Consumption and Hydraulic Characteristics, of the ASME/ANSI Standard A112.19.6-1995 (see § 430.22).

b. Urinals—The measurement of water flush volume for urinals, expressed in gallons per flush (gpf) and liters per flush (Lpf), shall be conducted in accordance with the test requirements specified in section 8.5, Water

Consumption, of the ASME/ANSI Standard A112.19.6-1995 (see § 430.22).

8. The subpart heading for Subpart C is revised to read as follows:

Subpart C—Energy and Water Conservation Standards

9. Section 430.31 is revised to read as follows:

§ 430.31 Purpose and scope.

This subpart contains energy conservation standards and water conservation standards (in the case of faucets, showerheads, water closets, and urinals) for classes of covered products that are required to be administered by the Department of Energy pursuant to the Energy Conservation Program for Consumer Products Other Than Automobiles under the Energy Policy and Conservation Act, as amended (42 U.S.C. 6291 *et seq.*). Basic models of covered products manufactured before the date on which an amended energy conservation standard or water conservation standard (in the case of faucets, showerheads, water closets, and urinals) becomes effective (or revisions of such models that are manufactured after such date and have the same energy efficiency, energy use characteristics, or water use characteristics (in the case of faucets, showerheads, water closets, and urinals), that comply with the energy conservation standard or water conservation standard (in the case of faucets, showerheads, water closets, and urinals) applicable to such covered products on the day before such date shall be deemed to comply with the amended energy conservation standard or water conservation standard (in the case of faucets, showerheads, water closets, and urinals).

10. Section 430.32 of subpart C is amended by revising the section heading, revising the introductory paragraph, and adding paragraphs (o), (p), (q), and (r), to read as follows:

§ 430.32 Energy and water conservation standards and effective dates.

The energy and water (in the case of faucets, showerheads, water closets, and urinals) conservation standards for the covered product classes are:

* * * * *

(o) *Faucets*. The maximum water use allowed for any of the following faucets manufactured after January 1, 1994, when measured at a flowing water pressure of 60 pounds per square inch (414 kilopascals), shall be as follows:

Faucet type	Maximum flow rate (gpm (L/min)) or (gal/cycle (L/cycle))
Lavatory faucets	2.2 gpm (8.3 L/min) ^{1,2}
Lavatory replacement aerators.	2.2 gpm (8.3 L/min)
Kitchen faucets	2.2 gpm (8.3 L/min)
Kitchen replacement aerators.	2.2 gpm (8.3 L/min)
Metering faucets	0.25 gal/cycle (0.95 L/cycle) ^{3,4}

Note:

¹ Sprayheads with independently-controlled orifices and manual controls.

The maximum flow rate of each orifice that manually turns on or off shall not exceed the maximum flow rate for a lavatory faucet.

² Sprayheads with collectively controlled orifices and manual controls.

The maximum flow rate of a sprayhead that manually turns on or off shall be the product of (a) the maximum flow rate for a lavatory faucet and (b) the number of component lavatories (rim space of the lavatory in inches (millimeters) divided by 20 inches (508 millimeters)).

³ Sprayheads with independently controlled orifices and metered controls.

The maximum flow rate of each orifice that delivers a pre-set volume of water before gradually shutting itself off shall not exceed the maximum flow rate for a metering faucet.

⁴ Sprayheads with collectively-controlled orifices and metered controls.

The maximum flow rate of a sprayhead that delivers a pre-set volume of water before gradually shutting itself off shall be the product of (a) the maximum flow rate for a metering faucet and (b) the number of component lavatories (rim space of the lavatory in inches (millimeters) divided by 20 inches (508 millimeters)).

(p) *Showerheads*. The maximum water use allowed for any showerheads manufactured after January 1, 1994, shall be 2.5 gallons per minute (9.5 liters per minute) when measured at a flowing pressure of 80 pounds per square inch gage (552 kilopascals). Any such showerhead shall also meet the requirements of ASME/ANSI Standard A112.18.1M-1996, 7.4.4(a).

(q) *Water closets*. (1) The maximum water use allowed in gallons per flush for any of the following water closets manufactured after January 1, 1994, shall be as follows:

Water closet type	Maximum flush rate (gpf (Lpf))
Gravity tank-type toilets	1.6 (6.0)
Flushometer tank toilets	1.6 (6.0)
Electromechanical hydraulic toilets 1.6 (6.0).	
Blowout toilets	3.5 (13.2)

(2) The maximum water use allowed for flushometer valve toilets, other than blowout toilets, manufactured after January 1, 1997, shall be 1.6 gallons per flush (6.0 liters per flush).

(r) *Urinals*. The maximum water use allowed for any urinals manufactured

after January 1, 1994, shall be 1.0 gallons per flush (3.8 liters per flush). The maximum water use allowed for a trough-type urinal shall be the product of:

- (1) The maximum flow rate for a urinal and
- (2) The length of the trough-type urinal in inches (millimeter) divided by 16 inches (406 millimeters).

11. Section 430.33 of subpart C is revised to read as follow:

§ 430.33 Preemption of State regulations.

Any State regulation providing for any energy conservation standard, or water conservation standard (in the case of faucets, showerheads, water closets, and urinals), or other requirement with respect to the energy efficiency, energy use, or water use (in the case of faucets, showerheads, water closets, or urinals) of a covered product that is not identical to a Federal standard in effect under this subpart is preempted by that standard, except as provided for in sections 327 (b) and (c) of the Act.

Subpart D—Petitions to Exempt State Regulation From Preemption; Petitions To Withdraw Exemption of State Regulation

12. Section 430.40 of subpart D is revised to read as follow:

§ 430.40 Purpose and scope.

(a) This subpart prescribes the procedures to be followed in connection with petitions requesting a rule that a State regulation prescribing an energy conservation standard, water conservation standard (in the case of faucets, showerheads, water closets, and urinals), or other requirement respecting energy efficiency, energy use, or water use (in the case of faucets, showerheads, water closets, and urinals) of a type (or class) of covered product not be preempted.

(b) This subpart also prescribes the procedures to be followed in connection with petitions to withdraw a rule exempting a State regulation prescribing an energy conservation standard, water conservation standard (in the case of faucets, showerheads, water closets, and urinals), or other requirement respecting energy efficiency, energy use, or water use (in the case of faucets, showerheads, water closets, and urinals) of a type (or class) of covered product.

13. Section 430.41 of Subpart D is revised to read as follows:

§ 430.41 Prescriptions of a rule.

(a) *Criteria for exemption from preemption.* Upon petition by a State which has prescribed an energy conservation standard, water

conservation standard (in the case of faucets, showerheads, water closets, and urinals), or other requirement for a type or class of covered equipment for which a Federal energy conservation standard or water conservation standard is applicable, the Secretary shall prescribe a rule that such standard not be preempted if he determines that the State has established by a preponderance of evidence that such requirement is needed to meet unusual and compelling State or local energy interests or water interests. For the purposes of this section, the term "unusual and compelling State or local energy interests or water interests" means interests which are substantially different in nature or magnitude than those prevailing in the U.S. generally, and are such that when evaluated within the context of the State's energy plan and forecast, or water plan and forecast the costs, benefits, burdens, and reliability of energy savings or water savings resulting from the State regulation make such regulation preferable or necessary when measured against the costs, benefits, burdens, and reliability of alternative approaches to energy savings or water savings or production, including reliance on reasonably predictable market-induced improvements in efficiency of all equipment subject to the State regulation. The Secretary may not prescribe such a rule if he finds that interested persons have established, by a preponderance of the evidence, that the State's regulation will significantly burden manufacturing, marketing, distribution, sale or servicing of the covered equipment on a national basis. In determining whether to make such a finding, the Secretary shall evaluate all relevant factors including: the extent to which the State regulation will increase manufacturing or distribution costs of manufacturers, distributors, and others; the extent to which the State regulation will disadvantage smaller manufacturers, distributors, or dealers or lessen competition in the sale of the covered product in the State; the extent to which the State regulation would cause a burden to manufacturers to redesign and produce the covered product type (or class), taking into consideration the extent to which the regulation would result in a reduction in the current models, or in the projected availability of models, that could be shipped on the effective date of the regulation to the State and within the U.S., or in the current or projected sales volume of the covered product type (or class) in the State and the U.S.; and the extent to which the State

regulation is likely to contribute significantly to a proliferation of State appliance efficiency requirements and the cumulative impact such requirements would have. The Secretary may not prescribe such a rule if he finds that such a rule will result in the unavailability in the State of any covered product (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the State at the time of the Secretary's finding. The failure of some classes (or types) to meet this criterion shall not affect the Secretary's determination of whether to prescribe a rule for other classes (or types).

(1) *Requirements of petition for exemption from preemption.* A petition from a State for a rule for exemption from preemption shall include the information listed in paragraphs (a)(1)(i) through (a)(1)(vi) of this section. A petition for a rule and correspondence relating to such petition shall be available for public review except for confidential or proprietary information submitted in accordance with the Department of Energy's Freedom of Information Regulations set forth in 10 CFR part 1004:

- (i) The name, address, and telephone number of the petitioner;
- (ii) A copy of the State standard for which a rule exempting such standard is sought;
- (iii) A copy of the State's energy plan or water plan and forecast;
- (iv) Specification of each type or class of covered product for which a rule exempting a standard is sought;
- (v) Other information, if any, believed to be pertinent by the petitioner; and
- (vi) Such other information as the Secretary may require.

(2) [reserved]

(b) *Criteria for exemption from preemption when energy emergency conditions or water emergency conditions (in the case of faucets, showerheads, water closets, and urinals) exist within State.* Upon petition by a State which has prescribed an energy conservation standard or water conservation standard (in the case of faucets, showerheads, water closets, and urinals) or other requirement for a type or class of covered product for which a Federal energy conservation standard or water conservation standard is applicable, the Secretary may prescribe a rule, effective upon publication in the **Federal Register**, that such State regulation not be preempted if he determines that in addition to meeting the requirements of paragraph (a) of this section the State has established that: an

energy emergency condition or water emergency condition exists within the State that imperils the health, safety, and welfare of its residents because of the inability of the State or utilities within the State to provide adequate quantities of gas, electric energy, or water to its residents at less than prohibitive costs; and cannot be substantially alleviated by the importation of energy or water or the use of interconnection agreements; and the State regulation is necessary to alleviate substantially such condition.

(1) *Requirements of petition for exemption from preemption when energy emergency conditions or water emergency conditions (in the case of faucets, showerheads, water closets, and urinals) exist within a State.* A petition from a State for a rule for exemption from preemption when energy emergency conditions or water emergency conditions exist within a State shall include the information listed in paragraphs (a)(1)(i) through (a)(1)(vi) of this section. A petition shall also include the information prescribed in paragraphs (b)(1)(i) through (b)(1)(iv) of this section, and shall be available for public review except for confidential or proprietary information submitted in accordance with the Department of Energy's Freedom of Information Regulations set forth in 10 CFR part 1004:

(i) A description of the energy emergency condition or water emergency condition (in the case of faucets, showerheads, water closets, and urinals) which exists within the State, including causes and impacts.

(ii) A description of emergency response actions taken by the State and utilities within the State to alleviate the emergency condition;

(iii) An analysis of why the emergency condition cannot be alleviated substantially by importation of energy or water or the use of interconnection agreements; and

(iv) An analysis of how the State standard can alleviate substantially such emergency condition.

(2) [reserved]

(c) *Criteria for withdrawal of a rule exempting a State standard.* Any person subject to a State standard which, by rule, has been exempted from Federal preemption and which prescribes an energy conservation standard or water conservation standard (in the case of faucets, showerheads, water closets, and urinals) or other requirement for a type or class of a covered product, when the Federal energy conservation standard or water conservation standard (in the case of faucets, showerheads, water closets, and urinals) for such product

subsequently is amended, may petition the Secretary requesting that the exemption rule be withdrawn. The Secretary shall consider such petition in accordance with the requirements of paragraph (a) of this section, except that the burden shall be on the petitioner to demonstrate that the exemption rule received by the State should be withdrawn as a result of the amendment to the Federal standard. The Secretary shall withdraw such rule if he determines that the petitioner has shown the rule should be withdrawn.

(1) *Requirements of petition to withdraw a rule exempting a State standard.* A petition for a rule to withdraw a rule exempting a State standard shall include the information prescribed in paragraphs (c)(1)(i) through (c)(1)(vii) of this section, and shall be available for public review, except for confidential or proprietary information submitted in accordance with the Department of Energy's Freedom of Information Regulations set forth in 10 CFR part 1004:

(i) The name, address and telephone number of the petitioner;

(ii) A statement of the interest of the petitioner for which a rule withdrawing an exemption is sought;

(iii) A copy of the State standard for which a rule withdrawing an exemption is sought;

(iv) Specification of each type or class of covered product for which a rule withdrawing an exemption is sought;

(v) A discussion of the factors contained in paragraph (a) of this section;

(vi) Such other information, if any, believed to be pertinent by the petitioner; and

(vii) Such other information as the Secretary may require.

(2) [reserved]

§ 430.47 [Amended]

14. Section 430.47 of subpart D is amended in paragraph (a)(1), by revising the phrase "energy emergency condition" to read "energy emergency condition or water emergency condition (in the case of faucets, showerheads, water closets, and urinals)".

§ 430.49 [Amended]

15. Section 430.49 of subpart D is amended in paragraph (a), by adding the phrase ", water conservation standard (in the case of faucets, showerheads, water closets, and urinals)" after "energy conservation standard" in the first sentence.

Subpart E—Small Business Exemptions

§ 430.50 [Amended]

16. Section 430.50 of subpart E is amended by adding the phrase "or water conservation standards (in the case of faucets, showerheads, water closets, and urinals)." after "energy conservation standards" in paragraphs (a) and (b).

Subpart F—Certification and Enforcement

17. Section 430.60 of subpart F is revised to read as follows:

§ 430.60 Purpose and scope.

This subpart sets forth the procedures to be followed for certification and enforcement testing to determine whether a basic model of a covered product complies with the applicable energy conservation standard or water conservation standard (in the case of faucets, showerheads, water closets, and urinals) set forth in subpart C of this part. Energy conservation standards and water conservation standards (in the case of faucets, showerheads, water closets, and urinals) include minimum levels of efficiency and maximum levels of consumption (also referred to as performance standards), and prescriptive energy design requirements (also referred to as design standards).

§ 430.61 [Amended]

18. Section 430.61 of subpart F is amended in paragraph (a)(4), by adding the phrase "or water conservation standard (in the case of faucets, showerheads, water closets, and urinals)" after the words "energy efficiency standard" in the first sentence.

19. Section 430.62 of subpart F is revised as follows:

§ 430.62 Submission of data.

(a) *Certification.* (1) Except as provided in paragraph (a)(2) of this section, each manufacturer or private labeler before distributing in commerce any basic model of a covered product subject to the applicable energy conservation standard or water conservation standard (in the case of faucets, showerheads, water closets, and urinals) set forth in subpart C of this part shall certify by means of a compliance statement and a certification report that each basic model(s) meets the applicable energy conservation standard or water conservation standard (in the case of faucets, showerheads, water closets, and urinals) as prescribed in section 325 of the Act. The compliance statement, signed by the

company official submitting the statement, and the certification report(s) shall be sent by certified mail to: Department of Energy, Office of Energy Efficiency and Renewable Energy, Office of Codes and Standards, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585-0121.

(2) Each manufacturer or private labeler of a basic model of a covered clothes washer, clothes dryer, dishwasher, faucet, showerhead, water closet, or urinal shall file a compliance statement and a certification report to DOE before [date 1 year after publication of the Final Rule].

(3) The compliance statement shall include all information specified in the format set forth in appendix A of this subpart and shall certify that:

(i) The basic model(s) complies with the applicable energy conservation standard or water conservation standard (in the case of faucets, showerheads, water closets, and urinals);

(ii) All required testing has been conducted in conformance with the applicable test requirements prescribed in subpart B of this part;

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

(iv) The manufacturer or private labeler is aware of the penalties associated with violations of the Act, the regulations thereunder, and 18 U.S.C. 1001 which prohibits knowingly making false statements to the Federal Government.

(4) A certification report for all basic models of a covered product (a suggested format is set forth in appendix A of this subpart) shall be submitted to DOE. The certification report shall include for each basic model the product type, product class (as denoted in § 430.32), manufacturer's name, private labeler's name(s) (if applicable), the manufacturer's model number(s), and for:

(i) Central air conditioners, the seasonal energy efficiency ratio.

(ii) Central air conditioning heat pumps, the seasonal energy efficiency ratio and heating seasonal performance factor.

(iii) Clothes washers, the energy factor in $\text{ft}^3/\text{kWh}/\text{cycle}$ and capacity in ft^3 .

(iv) Clothes dryers, the energy factor in lbs/kWh , capacity in ft^3 , and voltage.

(v) Direct heating equipment, the annual fuel utilization efficiency in percent and capacity in Btu/hour .

(vi) Dishwashers, the energy factor in cycles/kWh and exterior width in inches.

(vii) Faucets, the maximum water use in gpm (L/min) or gal/cycle (L/cycle) for each faucet; or the maximum water use

in gpm (L/min) or gal/cycle (L/cycle) for each flow control mechanism, with a listing of accompanied faucets by manufacturer's model numbers.

(viii) Furnaces, the annual fuel utilization efficiency in percent.

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

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

(xi) Pool heaters, the thermal efficiency in percent.

(xii) Refrigerators, refrigerator-freezers, and freezers, the annual energy use in kWh/yr and total adjusted volume in ft^3 .

(xiii) Room air conditioners, the energy efficiency ratio and capacity in Btu/hour .

(xiv) Showerheads, the maximum water use in gpm (L/min) with a listing of accompanied showerheads by manufacturer's model numbers.

(xv) Urinals, the maximum water use in gpf (Lpf).

(xvi) Water closets, the maximum water use in gpf (Lpf).

(xvii) Water heaters, the energy factor and rated storage volume in gallons.

(5) Copies of reports to the Federal Trade Commission which include the information specified in paragraph (a)(4) could serve in lieu of the certification report.

(b) *Model Modifications.* (1) Any change to a basic model which affects energy consumption or water consumption (in the case of faucets, showerheads, water closets, and urinals) constitutes the addition of a new basic model. If such change reduces consumption, the new model shall be considered in compliance with the standard without any additional testing. If, however, such change increases consumption while still meeting the standard, all information required by paragraph (a)(4) of this section for the new basic model must be submitted, by certified mail, to: Department of Energy, Office of Energy Efficiency and Renewable Energy, Office of Codes and Standards, Forrestal Building, 1000

Independence Avenue, SW, Washington, DC 20585-0121.

(2) Prior to or concurrent with the distribution of a new model of general service fluorescent lamp or incandescent reflector lamp, each manufacturer and private labeler shall submit a statement signed by a company official stating how the manufacturer or private labeler determined that the lamp meets or exceeds the energy conservation standards, including a description of any testing or analysis the manufacturer or private labeler performed. This statement shall also list the model number or descriptor, lamp wattage and date of commencement of manufacture. Manufacturers and private labelers of general service fluorescent lamps and incandescent reflector lamps shall submit the certification report required by paragraph (a)(4) of this section within one year after the date manufacture of that new model commences.

(c) *Discontinued model.* When production of a basic model has ceased and it is no longer being distributed, this shall be reported, by certified mail, to: Department of Energy, Office of Energy Efficiency and Renewable Energy, Office of Codes and Standards, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585-0121. For each basic model, the report shall include: product type, product class, the manufacturer's name, the private labeler name(s), if applicable, and the manufacturer's model number. If the reporting of discontinued models coincides with the submittal of a certification report, such information can be included in the certification report.

(d) *Maintenance of records.* The manufacturer or private labeler of any covered product subject to any of the energy performance standards, water performance standards (in the case of faucets, showerheads, water closets, and urinals), or procedures prescribed in this part shall establish, maintain, and retain the records of the underlying test data for all certification testing. Such records shall be organized and indexed in a fashion which makes them readily accessible for review by DOE upon request. The records shall include the supporting test data associated with tests performed on any test units to satisfy the requirements of this subpart. The records shall be retained by the manufacturer (private labeler) for a period of two years from the date that production of the applicable model has ceased.

(e) *Third party representation.* A manufacturer or private labeler may elect to use a third party to submit the

certification report to DOE (for example a trade association or other authorized representative). Such certification reports shall include all the information specified in paragraph (a)(4) of this section. Third parties submitting certification reports shall include the names of the manufacturers or private labelers who authorized the submittal of the certification reports to DOE on their behalf. The third party representative also may submit discontinued model information on behalf of an authorizing manufacturer.

§ 430.63 [Amended]

20. Section 430.63 of subpart F is amended in paragraph (a), by adding the phrase "or water performance standard (in the case of faucets, showerheads, water closets, and urinals)" after "energy performance standard" and revising "§ 430.23" to read "§ 430.24".

21. Section 430.70 of subpart F is amended by revising paragraphs (a)(1) introductory text, (a)(3) and (a)(6)(i), to read as follows:

§ 430.70 Enforcement.

(a) *Performance standard*—(1) *Test notice*. Upon receiving information in writing concerning the energy performance or water performance (in the case of faucets, showerheads, water closets, and urinals) of a particular covered product of a particular manufacturer or private labeler which indicates that the covered product may not be in compliance with the applicable energy performance standard or water performance standard (in the case of faucets, showerheads, water closets, and urinals), the Secretary may conduct testing of that covered product under this subpart by means of a test notice addressed to the manufacturer in accordance with the following requirements:

* * * * *

(3) *Sampling*. The determination that a manufacturer's basic model complies with the applicable energy performance standard or water performance standard (in the case of faucets, showerheads, water closets, and urinals) shall be based on the testing conducted in accordance with the statistical sampling procedures set forth in appendix B of this subpart and the test procedures set forth in subpart B of this part.

* * * * *

(6) *Testing at manufacturer's option*. (i) If a manufacturer's basic model is determined to be in noncompliance with the applicable energy performance standard or water performance standard (in the case of faucets, showerheads, water closets, and urinals) at the conclusion of DOE testing in accordance

with the double sampling plan specified in appendix B of this subpart, the manufacturer may request that DOE conduct additional testing of the model according to procedures set forth in appendix B of this subpart.

* * * * *

§ 430.73 [Amended]

22. Section 430.73 of subpart F is amended by adding the phrase "or water conservation standard (in the case of faucets, showerheads, water closets, and urinals)" after "energy conservation standard" in the introductory paragraph.

23. Appendix A to subpart F of Part 430 is revised to read as follows:

Appendix A To Subpart F of Part 430—Compliance Statement and Certification Report

COMPLIANCE STATEMENT

Product: _____
Manufacturer's or Private Labeler's Name and Address: _____

This compliance statement and all certification reports submitted are in accordance with 10 CFR Part 430 (Energy or Water Conservation Program for Consumer Products) and the Energy Policy and Conservation Act, as amended. The compliance statement is signed by a responsible official of the above named company. The basic model(s) listed in certification reports comply with the applicable energy conservation standard or water (in the case of faucets, showerheads, water closets, and urinals) conservation standard. All testing on which the certification reports are based was conducted in conformance with applicable test requirements prescribed in 10 CFR part 430 subpart B. All information reported in the certification report(s) is true, accurate, and complete. The company is aware of the penalties associated with violations of the Act, the regulations thereunder, and is also aware of the provisions contained in 18 U.S.C. 1001, which prohibits knowingly making false statements to the Federal Government.

Name of Company Official: _____
Signature: _____
Title: _____
Firm or Organization: _____
Address: _____
Telephone Number: _____
Facsimile Number: _____
Date: _____

Third Party Representation (if applicable)

For certification reports prepared and submitted by a third party organization under the provisions of § 430.62 of 10 CFR part 430, the company official who authorized said third party representation is:

Name: _____
Title: _____
Address: _____

Telephone Number: _____
Facsimile Number: _____

The third party organization submitting the certification report on behalf of the company is:

Third Party Organization: _____
Address: _____
Telephone Number: _____
Facsimile Number: _____

CERTIFICATION REPORT

Date: _____
Product Type: _____
Product Class: _____
Manufacturer: _____
Private Labeler (if applicable): _____
Name: _____
Title: _____
Address: _____
Telephone Number: _____
Facsimile Number: _____

For Existing, New, or Modified Models ¹:

For Discontinued Models ²:

24. Appendix B to Subpart F of Part 430 is revised as follows:

Appendix B To Subpart F of Part 430—Sampling Plan For Enforcement Testing

Double Sampling

Step 1. The first sample size (n_1) must be four or more units.

Step 2. Compute the mean (\bar{x}_1) of the measured energy performance or water performance (in the case of faucets, showerheads, water closets, and urinals) of the n_1 units in the first sample as follows:

$$\bar{x}_1 = \frac{1}{n_1} \left(\sum_{i=1}^{n_1} x_i \right) \quad (1)$$

where (\bar{x}_1) is the measured energy efficiency, energy or water (in the case of faucets, showerheads, water closets, and urinals) consumption of unit I.

Step 3. Compute the standard deviation (s_1) of the measured energy or water performance of the (n_1) units in the first sample as follows:

$$s_1 = \sqrt{\frac{\sum_{i=1}^{n_1} (x_i - \bar{x}_1)^2}{n_1 - 1}} \quad (2)$$

Step 4. Compute the standard error ($S_{\bar{x}_1}$) of the measured energy or water performance of the n_1 units in the first sample as follows:

$$S_{\bar{x}_1} = \frac{s_1}{\sqrt{n_1}} \quad (3)$$

Step 5. Compute the upper control limit (UCL_1) and lower control limit (LCL_1) for the mean of the first sample using the applicable DOE energy or water performance standard (EPS) as the desired mean and a probability level of 95 percent (two-tailed test) as follows:

¹ Provide specific product information including, for each basic model, the manufacturer's model numbers and the information required in § 430.62(a)(4)(i) through (a)(4)(xvii).

² Provide manufacturer's model number.

$$LCL_1 = EPS - ts_{\bar{x}_1} \quad (4)$$

$$UCL_1 = EPS + ts_{\bar{x}_1} \quad (5)$$

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

Step 6(a). For an Energy Efficiency Standard, compare the mean of the first sample (\bar{x}_1) with the upper and lower control limits (UCL_1 and LCL_1) to determine one of the following:

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

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

(3) If the sample mean is equal to or greater than the lower control limit but less than the upper control limit, then no determination of compliance or noncompliance can be made and a second sample size is determined by Step 7(a).

Step 6(b). For an Energy or Water Consumption Standard, compare the mean of the first sample (\bar{x}_1) with the upper and lower control limits (UCL_1 and LCL_1) to determine one of the following:

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

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

(3) If the sample mean is equal to or less than the upper control limit but greater than the lower control limit, then no determination of compliance or noncompliance can be made and a second sample size is determined by Step 7(b).

Step 7(a). For an Energy Efficiency Standard, determine the second sample size (n_2) as follows:

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

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

(1) If the value of n_2 is less than or equal to zero and if the mean energy efficiency of the first sample (\bar{x}_1) is either equal to or greater than the lower control limit (LCL_1) or equal to or greater than 95 percent of the applicable energy efficiency standard (EES), whichever is greater, i.e., if $n_2 \leq 0$ and $\bar{x}_1 \geq$

$\max(LCL_1, 0.95 \text{ EES})$, the basic model is in compliance and testing is at an end.

(2) If the value of n_2 is less than or equal to zero and the mean energy efficiency of the first sample (\bar{x}_1) is less than the lower control limit (LCL_1) or less than 95 percent of the applicable energy efficiency standard (EES), whichever is greater, i.e., if $n_2 \leq 0$ and $\bar{x}_1 \geq \max(LCL_1, 0.95 \text{ EES})$, the basic model is in noncompliance and testing is at an end.

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

Step 7(b). For an Energy or Water Consumption Standard, determine the second sample size (n_2) as follows:

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

where s_1 and t have the values used in Steps 4 and 5, respectively. The term "0.05 EPS" is the difference between the applicable energy or water consumption standard and 105 percent of the standard, where 105 percent of the standard is taken as the upper control limit. This procedure yields a sufficient combined sample size ($n_1 + n_2$) to give an estimated 97.5 percent probability of obtaining a determination of compliance when the true mean consumption is equal to the applicable standard. Given the solution value of n_2 , determine one of the following:

(1) If the value of n_2 is less than or equal to zero and if the mean energy or water consumption of the first sample (\bar{x}_1) is either equal to or less than the upper control limit (UCL_1) or equal to or less than 105 percent of the applicable energy or water performance standard (EPS), whichever is less, i.e., if $n_2 \leq 0$ and $\bar{x}_1 \leq \min(UCL_1, 1.05 \text{ EPS})$, the basic model is in compliance and testing is at an end.

(2) If the value of n_2 is less than or equal to zero and the mean energy or water consumption of the first sample (\bar{x}_1) is greater than the upper control limit (UCL_1) or more than 105 percent of the applicable energy or water performance standard (EPS), whichever is less, i.e., if $n_2 \leq 0$ and $\bar{x}_1 > \min(UCL_1, 1.05 \text{ EPS})$, the basic model is in noncompliance and testing is at an end.

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

Step 8. Compute the combined mean (\bar{x}_2) of the measured energy or water performance of the n_1 and n_2 units of the combined first and second samples as follows:

$$\bar{x}_2 = \frac{1}{n_1 + n_2} \left(\sum_{i=1}^{n_1+n_2} x_i \right) \quad (7)$$

Step 9. Compute the standard error ($S_{\bar{x}_2}$) of the measured energy or water performance of the n_1 and n_2 units in the combined first and second samples as follows:

$$S_{\bar{x}_2} = \frac{s_1}{\sqrt{n_1 + n_2}} \quad (8)$$

Note: s_1 is the value obtained in Step 3.

Step 10(a). For an Energy Efficiency Standard, compute the lower control limit (LCL_2) for the mean of the combined first and second samples using the DOE energy efficiency standard (EES) as the desired mean and a one-tailed probability level of 97.5 percent (equivalent to the two-tailed probability level of 95 percent used in Step 5) as follows:

$$LCL_2 = EES - ts_{\bar{x}_2} \quad (9a)$$

where the t -statistic has the value obtained in Step 5.

Step 10(b). For an Energy or Water Consumption Standard, compute the upper control limit (UCL_2) for the mean of the combined first and second samples using the DOE energy or water performance standard (EPS) as the desired mean and a one-tailed probability level of 102.5 percent (equivalent to the two-tailed probability level of 95 percent used in Step 5) as follows:

$$UCL_2 = EPS + ts_{\bar{x}_2} \quad (9b)$$

where the t -statistic has the value obtained in Step 5.

Step 11(a). For an Energy Efficiency Standard, compare the combined sample mean (\bar{x}_2) to the lower control limit (LCL_2) to find one of the following:

(1) If the mean of the combined sample (\bar{x}_2) is less than the lower control limit (LCL_2) or 95 percent of the applicable energy efficiency standard (EES), whichever is greater, i.e., if $\bar{x}_2 < \max(LCL_2, 0.95 \text{ EES})$, the basic model is in noncompliance and testing is at an end.

(2) If the mean of the combined sample (\bar{x}_2) is equal to or greater than the lower control limit (LCL_2) or 95 percent of the applicable energy efficiency standard (EES), whichever is greater, i.e., if $\bar{x}_2 \geq \max(LCL_2, 0.95 \text{ EES})$, the basic model is in compliance and testing is at an end.

Step 11(b). For an Energy or Water Consumption Standard, compare the combined sample mean (\bar{x}_2) to the upper control limit (UCL_2) to find one of the following:

(1) If the mean of the combined sample (\bar{x}_2) is greater than the upper control limit (UCL_2) or 105 percent of the applicable energy or water performance standard (EPS), whichever is less, i.e., if $\bar{x}_2 > \min(UCL_2, 1.05 \text{ EPS})$, the basic model is in noncompliance and testing is at an end.

(2) If the mean of the combined sample (\bar{x}_2) is equal to or less than the upper control limit (UCL_2) or 105 percent of the applicable energy or water performance standard (EPS), whichever is less, i.e., if $\bar{x}_2 \leq \min(UCL_2, 1.05 \text{ EPS})$, the basic model is in compliance and testing is at an end.

Manufacturer-Option Testing

If a determination of non-compliance is made in Steps 6, 7 or 11, the manufacturer may request that additional testing be conducted, in accordance with the following procedures.

Step A. The manufacturer requests that an additional number, n_3 , of units be tested,

with n_3 chosen such that $n_1+n_2+n_3$ does not exceed 20.

Step B. Compute the mean energy or water performance, standard error, and lower or upper control limit of the new combined sample in accordance with the procedures prescribed in Steps 8, 9, and 10, above.

Step C. Compare the mean performance of the new combined sample to the revised lower or upper control limit to determine one of the following:

a.1. For an Energy Efficiency Standard, if the new combined sample mean is equal to or greater than the lower control limit or 95 percent of the applicable energy efficiency standard, whichever is greater, the basic

model is in compliance and testing is at an end.

a.2. For an Energy or Water Consumption Standard, if the new combined sample mean is equal to or less than the upper control limit or 105 percent of the applicable energy or water consumption standard, whichever is less, the basic model is in compliance and testing is at an end.

b.1. For an Energy Efficiency Standard, if the new combined sample mean is less than the lower control limit or 95 percent of the applicable energy efficiency standard, whichever is greater, and the value of $n_1+n_2+n_3$ is less than 20, the manufacturer may request that additional units be tested.

The total of all units tested may not exceed 20. Steps A, B, and C are then repeated.

b.2. For an Energy or Water Consumption Standard, if the new combined sample mean is greater than the upper control limit or 105 percent of the applicable energy or water consumption standard, whichever is less, and the value of $n_1+n_2+n_3$ is less than 20, the manufacturer may request that additional units be tested. The total of all units tested may not exceed 20. Steps A, B, and C are then repeated.

c. Otherwise, the basic model is determined to be in noncompliance.

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