

would otherwise occur would likely be passed on to consumers in the form of higher prices.

FSIS encourages meat and poultry companies to comply with new labeling regulations as soon as it is feasible. If companies initiate voluntary label changes, they should consider incorporating any new requirements that have been published as final regulations.

The new uniform compliance date will apply only to final FSIS regulations that require changes in the labeling of meat and poultry products and that are published after January 1, 2013, and before December 31, 2014. For each final rule that requires changes in labeling, FSIS will specifically identify January 1, 2016, as the compliance date. All meat and poultry food products that are subject to labeling regulations promulgated between January 1, 2013 and December 31, 2014, will be required to comply with these regulations when introduced into commerce on or after January 1, 2016. If any food labeling regulation involves special circumstances that justify a compliance date other than January 1, 2016, the Agency will determine an appropriate compliance date and will publish that compliance date in the rulemaking.

In rulemaking that began with the May 4, 2004, proposed rule, FSIS provided notice and solicited comment on the concept of establishing uniform compliance dates for labeling requirements (69 FR 24539). In the March 5, 2007, final rule, FSIS noted that the Agency received only four comments in response to the proposal, all fully supportive of the policy to set uniform compliance dates. Therefore, in the March 5, 2007, final rule, FSIS determined that further rulemaking for the establishment of uniform compliance dates for labeling requirements is unnecessary (72 FR 9651). The Agency did not receive comments on the final rule. Consistent with its statement in 2007, FSIS finds at this time that further rulemaking on this matter is unnecessary. However, FSIS is providing an opportunity for comment on the uniform compliance date established in this final rule.

#### **Executive Order 12988**

This final rule has been reviewed under the Executive Order 12988, Civil Justice Reform. Under this final rule: (1) All state and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) no retroactive proceedings will be required before parties may file suit in court challenging this rule.

#### **Executive Orders 12866 and 13563 and the Regulatory Flexibility Act**

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order (E.O.) 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule has been reviewed under E.O. 12866. The Office of Management and Budget (OMB) has determined that it is not a significant regulatory action under section 3(f) of E.O. 12866 and, therefore, it has not been reviewed by OMB.

This rule does not have a significant economic impact on a substantial number of small entities; consequently, a regulatory flexibility analysis is not required (5 U.S.C. 601–612).

#### **Paperwork Requirements**

There are no paperwork or recordkeeping requirements associated with this policy under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

#### **E-Government Act Compliance**

FSIS and USDA are committed to achieving the purposes of the E-Government Act (44 U.S.C. 3601, *et seq.*) by, among other things, promoting the use of the Internet and other information technologies and providing increased opportunities for citizen access to Government information and services, and for other purposes.

#### **USDA Nondiscrimination Statement**

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. (Not all prohibited bases apply to all programs.)

Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's Target Center at 202–720–2600 (voice and TTY).

To file a written complaint of discrimination, write USDA, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW., Washington, DC 20250–9410 or call 202–720–5964 (voice and TTY).

#### **Additional Public Notification**

FSIS will announce this rule online through the FSIS Web page located at [http://www.fsis.usda.gov/regulations\\_&\\_policies/Interim\\_&\\_Final\\_Rules/index.asp](http://www.fsis.usda.gov/regulations_&_policies/Interim_&_Final_Rules/index.asp).

FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade groups, consumer interest groups, health professionals, and other individuals who have asked to be included. The Update is also available on the FSIS Web page. In addition, FSIS offers an electronic mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at [http://www.fsis.usda.gov/News\\_&\\_Events/Email\\_Subscription/](http://www.fsis.usda.gov/News_&_Events/Email_Subscription/). Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

Done at Washington, DC, on: December 21, 2012.

**Alfred V. Almanza,**  
Administrator.

[FR Doc. 2012–31398 Filed 12–28–12; 8:45 am]

**BILLING CODE 3410-DM-P**

## **DEPARTMENT OF ENERGY**

### **10 CFR Parts 429 and 431**

**[Docket Number EERE–2012–BT–CE–0048]**

**RIN 1904–AC90**

#### **Energy Conservation Program: Certification of Commercial and Industrial HVAC, Refrigeration and Water Heating Equipment**

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

**ACTION:** Final rule.

**SUMMARY:** The U.S. Department of Energy (DOE or the “Department”) is adopting amendments to the compliance dates for manufacturers to submit certification reports for certain commercial and industrial equipment covered under the Energy Policy and

Conservation Act of 1975, as amended (EPCA or the “Act”). Specifically, DOE is extending the compliance date for the certification provisions for commercial refrigeration equipment; commercial heating, ventilating, air-conditioning (HVAC) equipment; and commercial water heating (WH) equipment to December 31, 2013. DOE is extending the certification date for automatic commercial ice makers to August 1, 2013. Lastly, DOE is adopting a correction to the packaged terminal equipment standards table, which would impact standard-size packaged terminal air conditioners and packaged terminal heat pumps with a cooling capacity of 15,000 Btu/h.

**DATES:** This rule is effective December 31, 2012.

**ADDRESSES:** This rulemaking can be identified by docket number EERE–2012–BT–CE–0048 and/or RIN number 1904–AC90.

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

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

**FOR FURTHER INFORMATION CONTACT:** Ms. Ashley Armstrong, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. Email: [Ashley.Armstrong@ee.doe.gov](mailto:Ashley.Armstrong@ee.doe.gov); and Ms. Laura Barhydt, U.S. Department of Energy, Office of the General Counsel, Forrestal Building, GC–32, 1000 Independence Avenue SW., Washington, DC 20585. Telephone: (202) 287–5772. Email: [Laura.Barhydt@hq.doe.gov](mailto:Laura.Barhydt@hq.doe.gov).

## SUPPLEMENTARY INFORMATION:

### I. Introduction

#### A. Authority

Title III of the Energy Policy and Conservation Act of 1975, as amended (“EPCA” or “the Act”) sets forth a variety of provisions designed to improve energy efficiency. Part A of Title III (42 U.S.C. 6291–6309) provides

for the Energy Conservation Program for Consumer Products Other Than Automobiles. The National Energy Conservation Policy Act (NECPA), Public Law 95–619, amended EPCA to add Part A–1 of Title III, which established an energy conservation program for certain industrial equipment. (42 U.S.C. 6311–6317)<sup>1</sup>

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

#### B. Background

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

The March 2011 Final Rule provided for the revised certification provisions

to be effective on July 5, 2011. Certain manufacturers of particular types of commercial and industrial equipment<sup>2</sup> stated that, for a variety of reasons, they would be unable to meet that deadline. As a result in a final rule published June 30, 2011, the Department extended the compliance date for certification of commercial refrigeration equipment; commercial HVAC equipment; commercial WH equipment; and walk-in coolers and freezers (June 30 Final Rule). 76 FR 38287 (June 30, 2011). DOE also acknowledged in the June 30 Final Rule that numerous manufacturers for certain types of commercial equipment appear to have been making representations of efficiency and determining compliance with the applicable energy conservation standards without testing products in accordance with all of the provisions of the DOE test procedures, which include sampling plans and certification testing tolerances.

In the June 30 Final Rule, DOE stated that it believed 18 months would be sufficient to provide manufacturers with the time necessary to develop the data and supporting documentation needed to populate the certification reports and certify compliance with DOE’s regulations, including the existing testing and sampling procedures. DOE also emphasized that all covered equipment must meet the applicable energy conservation standard and that all testing procedures and sampling provisions were unaffected by the final rule.

On May 31, 2012, DOE published a proposed rule to revise and expand its regulations regarding alternative efficiency determination methods (AEDMs). (77 FR 32038). AEDMs reduce testing burdens by allowing manufacturers to use computer simulations, mathematical models, and other alternative methods to determine the amount of energy used or efficiency by a particular basic model. AEDM provisions for commercial HVAC equipment and commercial WH equipment already exist, but DOE has proposed to revise those regulations and to allow manufacturers of commercial refrigeration equipment to use AEDMs. DOE has not yet finalized the AEDM rulemaking. See Docket EERE–2011–BT–TP–0024. The Department is also

<sup>2</sup> These products included commercial warm air furnaces, commercial packaged boilers, and commercial air conditioners and heat pumps (collectively referred to as commercial HVAC equipment); commercial refrigeration equipment; commercial water heaters, commercial hot water supply boilers, and unfired hot water storage tanks (collectively referred to as commercial WH equipment); walk-in coolers; walk-in freezers; and automatic commercial ice makers.

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

reviewing recommendations regarding the feasibility of a negotiated rulemaking to revise the certification requirements for commercial HVAC equipment and commercial refrigeration equipment.<sup>3</sup>

In an October 2012 letter to the Secretary of Energy, the Air Conditioning, Heating and Refrigeration Institute (AHRI) requested another certification compliance date extension. (AHRI, No. 1 at pp. 1–2). Specifically, AHRI requested that the compliance date for certification be extended a minimum of 18 months from the date of publication of the AEDM final rule.

On December 6, 2012, the Department proposed to extend compliance date an additional 12 months for commercial refrigeration equipment; commercial HVAC equipment; and commercial WH equipment (December 2012 NOPR). 77

FR 72763. DOE requested comment on its assumption regarding the existence of test data and on whether a longer or shorter period of time would be more appropriate. DOE also proposed to modify the regulatory text to reflect that the compliance dates for certification requirements for walk-in coolers and freezers, distribution transformers, and metal halide lamp ballasts have passed by removing the delayed compliance dates.

Lastly, the Department proposed to correct a technical drafting error for packaged terminal air conditioners and heat pumps that was implemented in the reprinting of Table 5 in 10 CFR 431.97 in a final rule published on May 16, 2012. 77 FR 28994. More specifically, DOE adopted changes to the applicable energy conservation standards for standard size and non-

standard size packaged terminal air conditioners and heat pumps with a cooling capacity of 15,000 Btu/h. DOE proposed to correct this error and adopt the original standards for standard size and non-standard size packaged terminal air conditioners and heat pumps with a cooling capacity of 15,000 Btu/h as presented in a final rule evaluating and originally adopting the amended energy conservation for this equipment published on April 7, 2008. 73 FR 18915.

**II. Discussion of Comments**

The Department received 14 written comments on the NOPR from a number of interested commenters, including various manufacturers, trade associations, and advocacy groups. The following parties submitted comments for this rule:

Commenter name	Short name	Docket ID
Air-Conditioning, Heating and Refrigeration Institute .....	AHRI .....	EERE-2012-BT-CE-0048-0001 EERE-2012-BT-CE-0048-0014
Seasons 4, Incorporated .....	Seasons .....	EERE-2012-BT-CE-0048-0004
Scotsman Ice Systems .....	Scotsman .....	EERE-2012-BT-CE-0048-0005
Hoshizaki America, Inc .....	Hoshizaki .....	EERE-2012-BT-CE-0048-0006
UTC Climate, Controls & Security .....	UTC .....	EERE-2012-BT-CE-0048-0008
AAON, Inc .....	AAON .....	EERE-2012-BT-CE-0048-0009
Ingersoll Rand .....	Ingersoll Rand .....	EERE-2012-BT-CE-0048-0010
Lennox International, Inc .....	Lennox .....	EERE-2012-BT-CE-0048-0011
ASAP, ACEEE, ASE, and NRDC .....	Joint Comment .....	EERE-2012-BT-CE-0048-0012
Rheem Manufacturing Company .....	Rheem .....	EERE-2012-BT-CE-0048-0013
Traulsen & Company .....	Traulsen .....	EERE-2012-BT-CE-0048-0015
Burnham Commercial .....	Burnham .....	EERE-2012-BT-CE-0048-0016
Goodman Manufacturing .....	Goodman .....	EERE-2012-BT-CE-0048-0017
Mitsubishi Electric Cooling and Heating .....	Mitsubishi .....	EERE-2012-BT-CE-0048-0018

*A. Extension of Certification Deadline for Commercial Refrigeration Equipment; HVAC Equipment; and Commercial WH Equipment*

As stated above, DOE proposed an additional 12-month extension to the compliance date for filing complete certification reports for manufacturers of commercial refrigeration equipment; commercial HVAC equipment; and commercial WH equipment. 77 FR 72763. Most commenters supported an extension of at least twelve months. (Seasons, No. 4 at p. 1; UTC, No. 8 at pp. 1–2; AAON, No. 9 at pp. 1–2; Ingersoll Rand, No. 10 at pp. 1–2; Lennox, No. 11 at pp. 1–2; Joint Comment, No. 12 at pp. 1–2; Rheem, No. 13 at p. 3; AHRI, No. 14 at p. 1; Traulsen, No. 15 at pp. 2–3; Burnham, No. 16 at p. 1; Goodman, No. 17 at pp. 1–2; and Mitsubishi, No. 18 at pp. 1–2)

Many commenters believed that the compliance date should be tied to the

completion of the AEDM rule. (Seasons, No. 4 at p. 1; UTC, No. 8 at pp 1–2; Lennox, No. 11 at p.2; Rheem, No. 13 at p. 3; AHRI, No. 14 at pp. 1–2, Traulsen, No. 15 at p. 2–3; Goodman, No. 17 at pp. 1–2; and Mitsubishi, No. 18 at pp. 1–2) Similarly, AAON commented that the AEDM rule would impact the length of the extension needed. (AAON, No. 9 at p. 2) In addition, AAON, Lennox AHRI, Goodman, and Mitsubishi commented that they believe that the compliance date should be extended a minimum of 18 months from the publication of the AEDM final rule. (AAON, No. 9 at p.2; Lennox, No. 11 at p.2; AHRI, No. 14 at p. 2; Goodman, No. 17 at pp. 1–2; and Mitsubishi, No. 18 at pp. 1–2) Goodman detailed a view shared by Seasons, UTC, AAON, Lennox, and AHRI that the length of the extension required would depend upon the actual results of the testing (due to measurement uncertainties, variances in testing set-

ups and product variances) and the tolerances allowed by DOE (for both individual test-to-simulation results as well as average test-to-simulation results), additional testing or a significant amount of effort in development/specification of the internal AEDM procedure may be required. (Goodman, 17 at p. 1; Seasons, No. 4 at p. 1; UTC, No. 8 at pp. 1–2; AAON, No. 9 at p. 2; Lennox, No. 11 at p. 2 and AHRI, No. 14 at p. 2) Ingersoll Rand commented that it was concerned that a December 31, 2013 compliance date may not be sufficient to permit the Department to conduct a negotiated rulemaking and allow manufacturers to develop a means to comply with any modified requirements. (Ingersoll Rand, No. 10 at p. 1–2) In particular, Ingersoll Rand stated that it “hope[s] the Department recognizes [the December 2013 date] is only a stopgap measure, not truly a feasible date for future

<sup>3</sup> The U.S. Department of Energy Convening Report on the Feasibility of a Negotiated Rulemaking to Revise the Certification Program for

Commercial Heating, Ventilating, Air Conditioning, and Commercial Refrigeration Equipment can be found at <http://www.eere.energy.gov/buildings/>

[appliance\\_standards/pdfs/convening\\_report\\_hvac\\_cre.pdf](#)

compliance.” (Ingersoll Rand, No. 10 at p.2) Lennox also suggested that the compliance date should be aligned with the annual certification date for each product. (Lennox, No. 11 at pp. 2–3) Traulsen also supported extending the certification deadline stating that the commercial refrigeration industry may have collected energy consumption performance data for some base model of commercial refrigeration equipment, which may not be appropriate in all circumstances. (Traulsen, No. 15 at p. 2) Traulsen also noted that for certain low volume models of commercial refrigeration equipment current data may not be available because of previously conflicting priorities. (Id.) Mitsubishi also supported an 18-month extension from publication of the AEDM final rule and offered a specific path forward for the Department’s consideration: (1) Finalize the AEDM rulemaking; (2) extend the certification compliance deadline for at least 18 months from the date of the AEDM final rule; (3) In the alternative, issue a written DOE Guidance Document regarding the delay of enforcement of commercial certification compliance until the AEDM rulemaking and accompanying extension are finalized; (4) begin the negotiated rulemaking process, which has already provided MEUS an opportunity to clarify the central issues and which is consistent with AHRI’s proposed direction; and (5) develop a “basic model” definition that aligns with AHRI’s definition—a basic model should be defined by the unit rather than levels of efficiency. (Id.)

One commenter supported the 12-month extension as proposed by the Department without modification. Specifically, Burnham commented in favor of a compliance extension similar to that proposed by the AHRI organization regarding the publication of the AEDM final rule. However, Burnham also clarified that a shorter timeframe would be feasible as well. (Burnham, No. 16 at p. 1)

Several commenters suggested that a significantly longer extension was needed. UTC noted that it believes an additional 12 to 36 months will be necessary after the issuance of a final AEDM rule prior to manufacturers being in a position to submit certification reports. (UTC, No. 8 at p.2) Hoshizaki requested a two-year extension for certification of commercial refrigeration equipment as it has not completed testing of its basic models and is waiting for DOE action on the AEDM rulemaking. (Hoshizaki, No. 6 at p. 1)

In light of the comments above, DOE is extending the compliance date for the certification provisions for commercial

refrigeration equipment; commercial warm air furnaces, commercial packaged boilers, and commercial air conditioners and heat pumps (collectively referred to as commercial HVAC equipment); and commercial water heaters, commercial hot water supply boilers, and unfired hot water storage tanks (collectively referred to as commercial WH equipment) to December 31, 2013. DOE believes 12 months is a reasonable extension and will allow DOE time to complete the AEDM rulemaking and allow manufacturers to develop ratings in accordance with any revised AEDM provisions.

As noted above, the Department is reviewing the feasibility of a negotiated rulemaking to revise the certification requirements for commercial HVAC equipment and commercial refrigeration equipment. DOE is also considering the formation of an advisory committee in conjunction with such a rulemaking. Whether DOE proceeds with a negotiated rulemaking, and the outcome of a negotiated rulemaking, however, is uncertain. DOE believes that, should it proceed with a negotiated rulemaking, the process would, of its nature, involve discussion of any need to extend the new deadline further. Moreover, DOE believes that interested parties would raise the extension issue well in advance of December 31, 2013. Accordingly, DOE believes the 12-month extension is sufficient.

Many commenters submitted additional thoughts regarding the AEDM rulemaking, about the definition of “basic model” and about the potential for a negotiated rulemaking. (AAON, No. 9 at p.1; Ingersoll Rand, No. 10 at p. 1–2; Joint Comment, No. 12 at pp. 1–2; Rheem, No. 13 at pp. 1–3; AHRI, No. 14 at pp. 1–2; Goodman, No. 17 at pp. 1–2, and Mitsubishi, No. 18 at p. 2) DOE appreciates the information provided by parties on these matters. The substance of these comments is the subject of other rulemakings and should be raised in those proceedings. This rulemaking is limited to an extension of the compliance date for the March 2011 certification provisions for commercial HVAC equipment, commercial WH equipment, and commercial refrigeration equipment.

DOE emphasizes that the testing and sampling requirements for commercial refrigeration equipment; commercial HVAC equipment; and commercial WH equipment are unchanged by this extension. These regulations can be found on a per product basis in subpart B to part 429 (sampling plans for testing) and 10 CFR 431.64, 431.76,

431.86, 431.96, 431.106, and 431.134 (uniform test methods).

#### *B. Extension of Certification Deadline for Automatic Commercial Ice Makers*

In the December 2012 NOPR, DOE initially proposed to retain the December 31, 2012 deadline to certify compliance but sought comment on whether an extension was needed. Several commenters requested a six-month extension of time for submitting certification reports for automatic commercial ice makers (ACIM). (Scotsman, No. 5 at p. 1; Hoshizaki, No. 6 at p. 1; AHRI, No. 14 at p. 2) Scotsman requested additional time to work with AHRI so that AHRI could build a database to collect the required information and submit the certification reports on Scotsman’s behalf. (Scotsman, No. 5 at p. 1) Hoshizaki explained that it has the required test reports but that AHRI’s portal for reporting test data is not ready. (Id.) Scotsman, however, indicated that it will need to conduct additional testing prior to submitting certification reports. (Scotsman, No. 5 at p. 1) AHRI requested a six-month extension to allow manufacturers time to complete testing. (AHRI, No. 14 at p. 2)

Scotsman and Hoshizaki commented that DOE released the templates for certification of ACIM in December 2012 and stated that they did not have an automated process to provide many of the data elements contained in the templates. (Scotsman, No. 5 at p. 1; Hoshizaki, No. 6 at p. 1)

Traulsen, on the other hand, noted that it did not have a concern with the Department’s proposed certification deadline of December 31, 2012 for ACIMs even though it does not manufacture or supply this type of equipment. (Traulsen, No. 15 at p. 3)

DOE expresses no view regarding an automated process that a regulated entity may develop to provide its certification reports. DOE notes that the data elements required for certification have been public since March 2011 and the CCMS templates for certification are available to manufacturers online. Given the concerns expressed by manufacturers, DOE is extending the compliance date for ACIM to align the compliance date with the next annual certification reporting date. Manufacturers would be required to submit only one certification report in 2013 for current basic models unless they implement design changes to those models resulting in lower efficiency or increased consumption. Consequently, DOE is adopting a compliance date of August 1, 2013, for submission of certification reports for ACIM.

### C. Compliance and Enforcement

DOE emphasizes that all covered equipment must meet the applicable energy conservation standard. ASAP, ACEEE, ASE, and NRDC also noted in their joint comment that parties are not absolved of their obligations to comply with current standards and encouraged DOE to enforce those standards effectively. (Joint Comment, No. 12 at pp. 1–2) Furthermore, all testing procedures and sampling provisions are unaffected by this final rule. DOE is adopting a 12-month extension to the compliance date for certification only for the commercial refrigeration equipment; commercial HVAC equipment; and commercial WH equipment reporting requirements in the March 2011 final rule. DOE is adopting an 8-month extension to the compliance date for certification only for the ACIM reporting requirements in the March 2011 final rule.

DOE encourages manufacturers to become familiar with the CCMS prior to the certification deadline. The CCMS has templates currently available for all covered equipment available for manufacturers to use when submitting certification data to DOE.

DOE conducts assessment testing of products available for purchase in the United States, pursuant to 10 CFR 429.104. While certification is not required for commercial refrigeration equipment; commercial HVAC equipment; and commercial WH equipment until December 31, 2013, and for ACIM until August 1, 2013, DOE encourages manufacturers to submit to CCMS certification reports to DOE voluntarily prior to the compliance date required for certification. The Department will refrain from selecting models for assessment testing for which the manufacturer has submitted a valid certification report in CCMS. Specifically, in 2013, DOE will, in its enforcement discretion, limit any assessment testing of commercial refrigeration equipment, commercial HVAC equipment, commercial WH equipment, and automatic commercial ice makers to those models for which DOE does not have a valid certification report on file. If DOE purchases a unit for assessment testing prior to a manufacturer submitting a valid certification report, DOE will continue with the assessment test. A valid certification report is one that meets the requirements of 10 CFR part 429, including the manufacturer's determination of compliance being based either on testing in accordance with DOE sampling and test procedures

(parts 429 and 431) or on the AEDM procedures in part 429.

DOE will continue to conduct enforcement testing when it has a reason to believe that products do not meet the applicable standard. In addition, DOE will continue to conduct limited testing in support of its rulemaking activities for these equipment types. DOE will also continue to conduct verification testing in support of the ENERGY STAR program.

AHRI commented that it supports DOE's enforcement policy. (AHRI, No. 14 at p. 2–3) DOE appreciates AHRI's support and notes that the enforcement policy is not tied to participation in a voluntary industry certification program and is based upon the voluntary submittal of a valid CCMS certification report to DOE in advance of the compliance date required for certification of the applicable equipment.

### D. Other Compliance Dates

DOE proposed to modify the regulatory text to reflect that the compliance dates for walk-in coolers and freezers, distribution transformers, and metal halide lamp ballasts have passed. DOE did not receive any comments on this proposal. Thus, DOE is adopting these amendments to 10 CFR 429.12(i).

### E. Technical Correction

The Department proposed to correct a technical drafting error for packaged terminal air conditioners and heat pumps that was implemented in the reprinting of Table 5 in 10 CFR 431.97 in a final rule published on May 16, 2012. 77 FR 28994. More specifically, DOE adopted changes to the applicable energy conservation standards for standard size and non-standard size packaged terminal air conditioners and heat pumps with a cooling capacity of 15,000 Btu/h. DOE did not receive any comments on this proposal.

Consequently, DOE is correcting this error in today's final rule by adopting the original standards for standard size and non-standard size packaged terminal air conditioners and heat pumps with a cooling capacity of 15,000 Btu/h as presented in a final rule evaluating and originally adopting the amended energy conservation for this equipment published on April 7, 2008. 73 FR 18915.

## III. Procedural Issues and Regulatory Review

### A. Review Under Executive Order 12866

Today's regulatory action is not a "significant regulatory action" under

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

### B. Administrative Procedure Act

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

### C. Review Under the Regulatory Flexibility Act

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

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

### D. Review Under the National Environmental Policy Act

DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing

regulations at 10 CFR part 1021. Specifically, this rule amends an existing rule without changing its environmental effect and, therefore, is covered by the Categorical Exclusion in 10 CFR part 1021, subpart D, paragraph A5. Accordingly, neither an environmental assessment nor an environmental impact statement is required

**IV. Approval of the Office of the Secretary**

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

**List of Subjects**

*10 CFR Part 429*

Administrative practice and procedure, Energy conservation, Commercial equipment, Reporting and recordkeeping requirements.

*10 CFR Part 431*

Administrative practice and procedure, Energy conservation, Commercial equipment, Reporting and recordkeeping requirements.

Issued in Washington, DC, on December 26, 2012.

**Kathleen B. Hogan,**

*Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.*

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

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

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

**Authority:** 42 U.S.C. 6291–6317.

■ 2. Revise § 429.12 paragraph (i) to read as follows:

**§ 429.12 General requirements applicable to certification reports.**

\* \* \* \* \*

(i) *Compliance dates.* For any product subject to an applicable energy conservation standard for which the compliance date has not yet occurred, a

certification report must be submitted not later than the compliance date for the applicable energy conservation standard. The covered products enumerated below are subject to the stated compliance dates for certification:

- (1) Automatic commercial ice makers, August 1, 2013;
- (2) Commercial refrigeration equipment, December 31, 2013;
- (3) Commercial heating, ventilating, and air-conditioning equipment, December 31, 2013; and
- (4) Commercial water heating equipment, December 31, 2013.

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

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

**Authority:** 42 U.S.C. 6291–6317.

■ 4. Revise Table 5 to § 431.97 to read as follows:

**§ 431.97 Energy efficiency standards and their compliance dates.**

\* \* \* \* \*

TABLE 5 TO § 431.97—UPDATED MINIMUM EFFICIENCY STANDARDS FOR PTAC AND PTHP

Equipment type	Cooling capacity	Sub-category	Efficiency level	Compliance date: Products manufactured on and after	
PTAC .....	Standard Size .....	<7,000 Btu/h .....	EER = 11.7 .....	October 8, 2012.	
		≥7,000 Btu/h and ≤15,000 Btu/h .....	EER = 13.8 – (0.3 × Cap <sup>1</sup> ) .....	October 8, 2012.	
		>15,000 Btu/h .....	EER = 9.3 .....	October 8, 2012.	
	Non-Standard Size	<7,000 Btu/h .....	EER = 9.4 .....	October 7, 2010.	
		≥7,000 Btu/h and ≤15,000 Btu/h .....	EER = 10.9 – (0.213 × Cap <sup>1</sup> ) .....	October 7, 2010.	
		>15,000 Btu/h .....	EER = 7.7 .....	October 7, 2010.	
PTHP .....	Standard Size .....	<7,000 Btu/h .....	EER = 11.9 .....	October 8, 2012.	
		≥7,000 Btu/h and ≤15,000 Btu/h .....	COP = 3.3 .....	October 8, 2012.	
		>15,000 Btu/h .....	EER = 14.0 – (0.3 × Cap <sup>1</sup> ) .....	October 8, 2012.	
	Non-Standard Size	<7,000 Btu/h .....	COP = 3.7 – (0.052 × Cap <sup>1</sup> ) .....	EER = 9.5 .....	October 8, 2012.
		≥7,000 Btu/h and ≤15,000 Btu/h .....	COP = 2.9 .....	EER = 9.3 .....	October 7, 2010.
		>15,000 Btu/h .....	COP = 2.7 .....	EER = 10.8 – (0.213 × Cap <sup>1</sup> ) .....	October 7, 2010.
		<7,000 Btu/h .....	EER = 9.3 .....	COP = 2.9 – (0.026 × Cap <sup>1</sup> ) .....	October 7, 2010.
		≥7,000 Btu/h and ≤15,000 Btu/h .....	EER = 7.6 .....	COP = 2.5 .....	October 7, 2010.
		>15,000 Btu/h .....	EER = 7.6 .....	COP = 2.5 .....	October 7, 2010.

<sup>1</sup>“Cap” means cooling capacity in thousand Btu/h at 95 °F outdoor dry-bulb temperature.

\* \* \* \* \*

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**DEPARTMENT OF ENERGY****10 CFR Part 430**

[Docket No. EERE-2011-BT-TP-0007]

RIN 1904-AC44

**Energy Conservation Program for Consumer Products: Test Procedures for Residential Furnaces and Boilers (Standby Mode and Off Mode)****AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.**ACTION:** Final rule.

**SUMMARY:** In an earlier final rule, the U.S. Department of Energy (DOE) prescribed amendments to its test procedures for residential furnaces and boilers to include provisions for measuring the standby mode and off mode energy consumption of those products, as required by the Energy Independence and Security Act of 2007. These test procedure amendments were primarily based on provisions incorporated by reference from the International Electrotechnical Commission (IEC) Standard 62301 (First Edition), "Household electrical appliances—Measurement of standby power." In this current final rule, DOE further amends its test procedure to incorporate by reference the latest edition of the IEC Standard, specifically IEC Standard 62301 (Second Edition). The new version of this IEC standard includes a number of methodological changes designed to increase accuracy while reducing testing burden. This final rule also clarifies the rounding guidance and sampling provisions for the new measurement of standby mode and off mode wattage.

**DATES:** This rule is effective January 30, 2013. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register on January 30, 2013.

For purposes of compliance with energy conservation standards, compliance with the amended test procedures is required on and after May 1, 2013 (for non-weatherized gas and oil furnaces including mobile home furnaces, and all electric furnaces). The compliance date for any representations relating to standby mode and off mode of residential furnaces and boilers is July 1, 2013; on and after this date, any such representations must be based upon results generated under these test procedures and sampling plans.

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

A link to the docket Web page can be found at: <http://www.regulations.gov/#!docketDetail;dct=FR%252BPR%252BN%252BO%252BSR;rpp=25;po=0;D=EERE-2011-BT-TP-0007>. The [www.regulations.gov](http://www.regulations.gov) Web page contains simple instructions on how to access all documents, including public comments, in the docket.

For further information on how to review the docket, contact Ms. Brenda Edwards at (202) 586-2945 or by email: [Brenda.Edwards@ee.doe.gov](mailto:Brenda.Edwards@ee.doe.gov).

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**I. Background and Authority**

Title III, Part B<sup>1</sup> of the Energy Policy and Conservation Act of 1975 (EPCA or the Act), Public Law 94-163 (42 U.S.C. 6291-6309, as codified) sets forth a variety of provisions designed to improve energy efficiency and established the Energy Conservation Program for Consumer Products Other Than Automobiles, a program covering most major household appliances, including residential furnaces and boilers (referenced below as one of the "covered products").<sup>2</sup> (42 U.S.C. 6292(a)(5) and 6295(f))

Under the Act, this program consists essentially of four parts: (1) Testing; (2) labeling; (3) Federal energy conservation standards; and (4) certification and enforcement procedures. The testing requirements consist of test procedures that manufacturers of covered products must use as the basis for certifying to DOE that their products comply with applicable energy conservation standards adopted pursuant to EPCA and for making representations about the efficiency of those products. (42 U.S.C. 6293(c); 42 U.S.C. 6295(s)) Similarly, DOE must use these test procedures in any enforcement action to determine whether covered products comply with these energy conservation standards. (42 U.S.C. 6295(s))

Under 42 U.S.C. 6293, EPCA sets forth criteria and procedures for DOE's adoption and amendment of such test procedures. Specifically, EPCA provides that "[a]ny test procedures prescribed or amended under this section shall be reasonably designed to produce test results which measure energy efficiency, energy use \* \* \* or estimated annual operating cost of a covered product during a representative average use cycle or period of use, as determined by the Secretary [of Energy], and shall not be unduly burdensome to conduct." (42 U.S.C. 6293(b)(3)) In addition, if DOE determines that a test procedure amendment is warranted, it must publish proposed test procedures and offer the public an opportunity to present oral and written comments on them. (42 U.S.C. 6293(b)(2)) Finally, in

<sup>1</sup> For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

<sup>2</sup> All references to EPCA in this rulemaking refer to the statute as amended through the Energy Independence and Security Act of 2007, Public Law 110-140.