Federal Register

Tuesday,
January 5, 2010

Part V

Department of Energy

10 CFR Parts 430 and 431

Energy Conservation Program Requirements for Certain Consumer Products and Commercial and Industrial Equipment; Proposed Information Collection; Comment Request; Certification, Compliance, and Enforcement Requirements for Consumer Products and Certain Commercial and Industrial Equipment; Final Rule and Notice

DEPARTMENT OF ENERGY

10 CFR Parts 430 and 431

[Docket Nos. EE–RM/TP–99–450 and EE–RM/TP–05–500]

RIN 1904–AA96 and 1904–AB53

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

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

ACTION: Final rule.

SUMMARY: The Energy Policy and Conservation Act (EPCA), as amended, establishes energy and water conservation standards and test procedures for certain consumer products and commercial and industrial equipment. The Energy Policy Act of 1992 (EPACT 1992) (Pub. L. 102–486) and the Energy Policy Act of 2005 (EPACT 2005) (Pub. L. 109–58) amended EPCA and included new Federal energy and water conservation standards and test procedures for certain consumer products and certain commercial and industrial equipment. In today's final rule, the U.S. Department of Energy (DOE) adopts regulations to implement reporting requirements for energy conservation standards and energy use, and to address other matters, including compliance certification, prohibited actions, and enforcement procedures for specific consumer products and commercial and industrial equipment covered by EPACT 2005, as well as commercial heating, air-conditioning, and water heating equipment covered under EPACT 1992. In addition, DOE is adopting provisions for manufacturer certification for distribution transformers.

DATES: This rule is effective February 4, 2010 except for § 431.371 which contains information collection requirements which have not been approved by the Office of Management and Budget (OMB). The Department of Energy will publish a document in the **Federal Register** announcing the effective date.

Manufacturers (or third-party organizations) of consumer products subject to today's final rule are required to submit a compliance statement and the first certification report to DOE on or before July 6, 2010. Manufacturers (or third-party organizations) of commercial and industrial equipment subject to today's final rule are required to submit a compliance statement and the first certification report to DOE on or before the date 180 days after publication of the notice announcing OMB approval of the information collection requirements.

FOR FURTHER INFORMATION CONTACT: Michael McCabe, 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, (202) 586–9155. E-mail: *Michael.McCabe@ee.doe.gov.*

Michael Kido, U.S. Department of Energy, Office of the General Counsel, GC–72, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–9507. E-mail: *Michael.Kido@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background
II. Summary of Today's Action
III. Discussion of Comments
A. Energy Policy Act of 1992—Commercial Heating, Ventilating, Air-Conditioning and Water Heating Equipment; Energy Policy Act of 2005—Very Large Commercial Packaged Air Conditioning and Heating Equipment
1. Voluntary Industry Certification Program Requirements
2. Criteria for Validation of Alternative Efficiency Determination Methods
3. Differences in Treatment Between Voluntary Industry Certification Program Participants and Non-Participants
4. Reporting for Voluntary Industry Certification Programs
5. Enforcement Testing
B. Energy Policy Act of 2005—Consumer Products
C. Energy Policy Act of 2005—Commercial Equipment
D. Distribution Transformers
E. General Requirements
IV. Procedural Requirements
A. Review Under Executive Order 12866
B. Review Under the Regulatory Flexibility Act
C. Review Under the Paperwork Reduction Act of 1995
D. Review Under the National Environmental Policy Act of 1969
E. Review Under Executive Order 13132
F. Review Under Executive Order 12988
G. Review Under the Unfunded Mandates Reform Act of 1995
H. Review Under the Treasury and General Government Appropriations Act, 1999
I. Review Under Executive Order 12630
J. Review Under the Treasury and General Government Appropriations Act, 2001
K. Review Under Executive Order 13211
L. Congressional Notification
V. Approval of the Office of the Secretary

I. Background

Part A of Title III of the Energy Policy and Conservation Act of 1975 (EPCA), Public Law 94–163, as amended, 42 U.S.C. 6291–6309, established the ''Energy Conservation Program for Consumer Products Other Than Automobiles.'' Similarly, Part A–1 of Title III of EPCA, as amended, 42 U.S.C. 6311–6317, established an energy efficiency program for ''Certain Industrial Equipment,'' which included certain commercial equipment.[1] Subtitle C of Title I of the Energy Policy Act of 1992 (EPACT 1992), Public Law 102–486, amended EPCA to add energy conservation standards and test procedures for commercial central air-conditioning equipment, furnaces, and other types of commercial and industrial equipment. Further, Subtitle C of Title I of the Energy Policy Act of 2005 (EPACT 2005), Public Law 109–58, amended EPCA by providing definitions, test procedures, labeling provisions, and energy conservation standards for particular consumer products and commercial and industrial equipment. EPACT 2005 also required manufacturers of commercial equipment covered by this final rule to submit information and reports for a variety of purposes, including ensuring compliance with the energy conservation standards. See 42 U.S.C. 6316(a).

In implementing the series of changes introduced by EPACT 1992 and EPACT 2005, DOE issued a number of notices, including two notices of proposed rulemaking (NOPR), a supplemental notice of proposed rulemaking (SNOPR) and a final rule. These rulemakings are further described in detail below.

To implement EPACT 1992, DOE published a NOPR on December 13, 1999 (hereafter referred to as the December 1999 NOPR) that proposed: (1) Methods for manufacturers to use (in conjunction with DOE test procedures) to rate the energy efficiency or use of, determine compliance with energy conservation standards for, and make energy representations regarding commercial heating, ventilating, air-conditioning, and water heating (HVAC and WH) equipment; (2) procedures for certifying compliance with applicable energy conservation standards to DOE; and (3) criteria and procedures for DOE enforcement of the energy conservation standards for this equipment. 64 FR 69598, 69603–06, and 69612–18. Subsequently, DOE published a SNOPR on April 28, 2006 (April 2006 SNOPR), which proposed alternatives to the proposed requirements for items (1) and (3) described above. See generally 71 FR 25103, 25104–13, and 25115–17.

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

To implement EPACT 2005, DOE first codified the prescribed energy conservation standards and related definitions on October 18, 2005 (October 2005 final rule). 70 FR 60407; Title 10 of the Code of Federal Regulations (10 CFR) Parts 430 (consumer products) and 431 (commercial and industrial equipment). DOE subsequently proposed test procedures for measuring energy and water-use efficiency and related definitions, as well as certification, compliance, and enforcement requirements for various consumer products and commercial and industrial equipment covered by EPACT 2005's amendments to EPCA. 71 FR 42178 (July 25, 2006) (July 2006 NOPR). On December 8, 2006, DOE issued a final rule (December 2006 final rule) adopting the test procedures for measuring energy and water-use efficiency and related definitions for consumer products and commercial and industrial equipment covered by EPACT 2005. 71 FR 71340; 10 CFR parts 430 and 431.

In the April 2006 SNOPR and July 2006 NOPR, DOE discussed how to address the certification, compliance, and enforcement provisions raised in these notices and the December 1999 NOPR. In particular, DOE considered whether to publish two final rules or a single final rule containing the certification, compliance, and enforcement provisions for consumer products and commercial and industrial equipment. See 71 FR 25104 and 71 FR 42193. DOE reviewed the comments responding to the April 2006 SNOPR and the July 2006 NOPR and, as stated in the preamble to the December 2006 final rule, determined that the issues raised were sufficiently related to each other and merited resolution as a single final rule. 71 FR 71341–42. However, DOE did not include the certification, compliance, and enforcement procedures for the EPACT 2005 consumer products and commercial and industrial equipment, or for commercial heating, air-conditioning and water heating products in the December 2006 final rule. Id. at 71342. Instead, DOE stated its intention to issue a separate final rule to establish certification, compliance, and enforcement provisions for consumer products and commercial and industrial equipment. These provisions are the subject of today's final rule.

DOE previously adopted certification and enforcement procedures for the consumer products originally covered by EPCA, as amended by the National Appliance Energy Conservation Act of 1987 (Pub. L. 100–12) and National Appliance Energy Conservation Amendments of 1988 (Pub. L. 100–357). These procedures, which are applicable only to consumer products, are found in 10 CFR 430.24 and 10 CFR part 430, subpart F. The certification, compliance, and enforcement procedures in the December 1999 NOPR, April 2006 SNOPR, and July 2006 NOPR were based on these existing provisions.

Today's final rule sets forth the certification, compliance, and enforcement provisions for the EPACT 1992 and EPACT 2005 consumer products and commercial and industrial equipment, which DOE discussed in detail in the December 1999 NOPR, April 2006 SNOPR, and July 2006 NOPR. Today's final rule also sets out the certification procedures for distribution transformers that DOE proposed in the July 2006 NOPR.

II. Summary of Today's Action

DOE adopts certification, compliance and enforcement procedures for the consumer products and commercial and industrial equipment covered by the December 2006 final rule, including ceiling fans, ceiling fan light kits, dehumidifiers, medium base compact fluorescent lamps, torchieres, unit heaters, automatic commercial ice makers, commercial prerinse spray valves, traffic and pedestrian signal modules, distribution transformers, certain types of commercial refrigerators, freezers, and refrigerator-freezers. DOE also adopts certification, compliance and enforcement procedures for the commercial HVAC and WH equipment covered by the December 1999 NOPR and the April 2006 SNOPR.[2] The adoption of these procedures, explained in more detail below, provides a method by which to measure the energy efficiency of, and determine compliance with the standards established for, the products covered by this final rule. Today's final rule generally follows the same approach that currently exists for regulations covering consumer products under 10 CFR part 430.

For each consumer product covered by the December 2006 final rule, DOE is adopting sampling requirements. These sampling requirements address the number of units of each basic model a manufacturer must test as the basis for rating the model and determining whether it complies with the applicable energy conservation standard. As stated above, these sampling plans follow the approach for sampling found in 10 CFR part 430. Today's final rule also applies to each of these products the existing manufacturer certification and enforcement provisions in 10 CFR part 430. These provisions are set forth in section 430.62 for certification, and sections 430.61, 430.71, 430.72, 430.73, and 430.74 for enforcement. Today's final rule also includes an amendment to section 430.62(a)(4) about information that manufacturers of these products must include in certification reports for the consumer products the rule covers.

For each type of commercial or industrial equipment covered by the December 2006 final rule, the December 1999 NOPR, or the April 2006 SNOPR, DOE is adopting sampling requirements for manufacturer testing. DOE is also requiring in today's rule that each manufacturer of commercial or industrial equipment file a compliance statement and certification reports. The compliance statement adopted today is essentially a one-time filing in which the manufacturer or private labeler states that all basic models currently produced, as well as any basic models manufactured in the future, are (or will be) in compliance with applicable energy conservation requirements.[3] The certification reports will generally provide the efficiency, or energy or water use, as applicable, for each covered basic model that a manufacturer or private labeler distributes.[2] Manufacturers of consumer products subject to today's final rule must submit

[2] Enforcement provisions for distribution transformers were established in the test procedures final rule for distribution transformers published on April 27, 2006. 71 FR 24972. Certification and enforcement for electric motors are set forth in subpart B of 10 CFR part 431. Certification procedures for battery chargers and external power supplies were included in the July 2006 proposed rule but are not included in today's final rule because the energy conservation standards rulemaking addressing those products remains pending.

[3] The compliance statement must be submitted by each manufacturer subject to the energy conservation standards in 10 CFR parts 430 and 431. The compliance statement is signed by the company official submitting the statement (*e.g.,* the point of contact for the company or 3rd party representative), certifying that all basic models currently produced, and those that will be produced in the future, are (or will be) in compliance with the applicable energy or water conservation standards and does not need to be resubmitted unless the information on the compliance statement changes.

[2] The certification report must be submitted for each basic model distributed for sale. The certification report must be updated and resubmitted when any change is made to a basic model, which affects the energy or water consumption. However, if such change to a basic model reduces the energy or water consumption, the new basic model shall be considered in compliance. The certification report should include the applicable energy-efficiency or energy-use ratings as tested using DOE's test procedures along with the other information requested in appendix A to subpart F of part 430, appendix B to subpart T of part 431, or appendix C to subpart T of part 431.

the first compliance statement and certification on or before July 6, 2010, and manufacturers of commercial or industrial equipment subject to today's final rule must submit the first compliance statement and certification on or before 180 days after notification of OMB approval of the information collection requirements is published in the **Federal Register.** As set forth in Subpart T, the certification provisions adopted in today's final rule would also apply to distribution transformers. Today's final rule also includes provisions for DOE enforcement of the applicable energy conservation standards. These provisions include DOE's initial steps in an enforcement action and a requirement for manufacturer cessation of distribution of non-complying equipment.

Consumer products and commercial and industrial equipment covered by DOE's regulations are subject to various provisions in 10 CFR parts 430 and 431, respectively. These provisions address a variety of matters, such as waivers of applicable test procedures, treatment of imported and exported equipment, maintenance of records, subpoenas, confidentiality of information, and petitions to exempt state regulations from preemption. Today's final rule applies these provisions to consumer products and commercial and industrial equipment covered by this rule. For consumer products, those provisions are in sections 430.27, 430.40 through 430.49, 430.50 through 430.57, 430.64, 430.65, 430.72, and 430.75 of 10 CFR part 430. For commercial equipment, those provisions are in sections 431.401, 431.403 through 431.407, and 431.421 through 431.430.

III. Discussion of Comments

The agency received comments from a variety of interested parties including the Air-Conditioning, Heating, and Refrigeration Institute (AHRI) [3]; various manufacturers, and the China WTO/TBT National Notification & Enquiry Center, an agency within the Government of the People's Republic of China (PRC). These entities generally addressed a range of issues and offered alternatives to DOE's proposal. Issues addressed by the commenters included the use and validation of alternative efficiency determination methods (AEDMs), voluntary industry certification program (VICP) requirements, the treatment of non-VICP participants, reporting requirements for VICPs, enforcement testing, sampling, certification, and enforcement for commercial equipment in EPACT 2005, certification requirements for distribution transformers, and general requirements for consumer products and commercial equipment. The comments and DOE's responses to them are discussed below.

A. Energy Policy Act of 1992—Commercial Heating, Ventilating, Air-Conditioning and Water Heating Equipment; Energy Policy Act of 2005—Very Large Commercial Packaged Air Conditioning and Heating Equipment

The December 1999 NOPR proposed sampling requirements for manufacturer testing of commercial HVAC and WH equipment, as well as provisions that would generally allow manufacturers to use AEDMs to calculate the energy performance of equipment in lieu of testing. 64 FR 69604–05, 69612–14. DOE proposed less stringent sampling and AEDM requirements for manufacturers participating in a DOE-approved VICP, which is a voluntary program (usually run by a manufacturer trade association) that collects, disseminates, and verifies information about the performance of one or more types of equipment. 64 FR 69603–05. DOE proposed less stringent sampling and AEDM requirements for manufacturers that participate in a VICP because a VICP verifies the accuracy of the manufacturer's certification claims. Non-VICP participants are not subject to verification testing and, therefore, have a more stringent sampling requirement to ensure the accuracy of the manufacturer's certification claims. Under DOE's proposal, a VICP would be eligible to use these new requirements if it included features such as the collection and dissemination of efficiency ratings for each basic model of equipment, periodic testing of each basic model to determine the accuracy of the manufacturer's efficiency rating for the model, a process for taking corrective actions when a manufacturer's rating is inconsistent with the test results, and reporting of certain information to DOE. 64 FR 69604–05, 69613–14. These conditions would, to some extent, reflect provisions of existing VICPs and were designed to give greater assurance that the programs will work as intended to help justify less stringent requirements for VICP participants.

In the April 2006 SNOPR, DOE supplemented its NOPR by: (1) Proposing specific, and slightly more stringent criteria where a VICP participant uses testing to determine equipment ratings, 71 FR 25105, 25115; (2) requiring that a VICP participant perform the same amount of testing as a non-participant to establish the validity of its AEDM(s), 71 FR 25105–06, 25115; (3) reducing the tolerance level (*i.e.,* the amount by which AEDM and test results could vary) for a manufacturer to determine that an AEDM is valid, *id.;* (4) requiring that any AEDM is validated using test results to rate the efficiency the equipment, *id.;* and (5) requiring that a VICP have specific and stringent criteria for its verification of manufacturer efficiency and energy use ratings. See generally 71 FR 25108–09, 25115–16. The notice also indicated that DOE was considering prohibiting knowingly using an AEDM to overrate a basic model's energy efficiency. See 71 FR 25107.

In addition, EPACT 2005 created a new category of covered equipment and set forth definitions, test procedures, and energy conservation standards for very large commercial package air conditioning and heating equipment. DOE has codified the definitions and energy conservation standards in 10 CFR part 431. 70 FR 60407. In the April 2006 SNOPR, DOE proposed to apply the proposed compliance and enforcement requirements to very large commercial package air conditioning and heating equipment. 71 FR 25104.

DOE received numerous comments responding to the December 1999 NOPR and the five proposed changes detailed in the April 2006 SNOPR, which are summarized in the subsections below. Together, the December 1999 NOPR and the April 2006 SNOPR notices proposed a testing framework that would help ensure the accuracy of energy efficiency ratings while formalizing the use of VICPs for certification purposes. By providing incentives for manufacturers to voluntarily participate in VICPs through less burdensome sampling and certification procedures, DOE, through the VICPs, can better monitor and ensure the accuracy of energy ratings reported by individual manufacturers.

1. Voluntary Industry Certification Program Requirements

In the December 1999 NOPR, DOE proposed tolerances for validating an AEDM by comparing the efficiency

[3] The Air-Conditioning, Heating, and Refrigeration Institute (AHRI) is the trade association representing a majority of air conditioning and heating equipment manufacturers subject to today's rule. Formerly, the Air-Conditioning and Refrigeration Institute (ARI) represented the air conditioning manufacturers and GAMA (Gas Appliance Manufacturers Association) represented the heating manufacturers. GAMA and the Air-Conditioning and Refrigeration Institute (ARI) announced on December 17, 2007, that their members had voted to approve the merger of the two trade associations to represent the interests of cooling, heating, and commercial refrigeration equipment manufacturers. The merged association became AHRI on Jan. 1, 2008. Since GAMA and ARI submitted comments to this rulemaking prior to the merger, DOE is attributing each comment to its respective organization.

ratings derived from applying the AEDM to the tested models, which were used to derive the AEDM. For VICP participants who made the comparison for only one basic model, DOE proposed that the difference between the AEDM and test results must be within 1 percent for the AEDM to be valid. 64 FR 69613. In the comments from interested parties summarized below, the ''1-percent rule'' refers to the December 1999 proposal that the predicted efficiencies calculated for the tested basic model(s) must on average be within 1 percent of the efficiencies determined from testing such basic model(s). The 1-percent rule requires a level of tolerance that is greater than the tolerance in the basic certification requirements.

The April 2006 SNOPR proposed revisions to the proposals that DOE initially outlined in the December 1999 NOPR to the required criteria to receive DOE approval of a VICP. These revisions to the criteria were proposed partly on the grounds that the initially proposed amendments to sections 431.484(a)(9) and (13) were ''overly vague'' and might not sufficiently convey that a VICP must use verification methods and criteria sufficiently rigorous to give reasonable assurance that a given rating claim would apply to all units of the tested basic model. 71 FR 25108.

In the December 1999 NOPR (64 FR 69613–14), DOE had initially proposed that these sections read as follows: ''The program has an appropriate standard for determining whether the efficiency rating a manufacturer claims for a product is valid. * * * the VICP provides to the Department annually data on the results of its verification testing during the previous 12 months, including the following for each basic model on which the VICP has performed verification testing: The measured efficiency from the verification testing, the manufacturer's efficiency rating, and either the applicable energy conservation standard or a description of the model sufficient to enable the Department to determine such standard.''

In contrast, the April 2006 SNOPR (71 FR 25116) proposed to revise section 431.484(a)(9) to read as follows: ''The program includes appropriate standards for the accuracy of its verification testing results and for determining whether the efficiency rating of a manufacturer claims for equipment is valid. Such standards must include criteria which give reasonable assurance that a manufacturer's efficiency rating for a basic model represents the mean performance for all units it manufactures of that model, and could include, for example, statistically valid methods, such as a sampling plan, for determining the efficiency of a basic model. If the program provides that a manufacturer's rating for equipment will be valid so long as the verification test results under the VICP are within a given percentage of the rating, then the program must meet the following requirements: It must specify the percentage(s) it uses and the equipment categories to which each such percentage applies; each such percentage must correspond to the normal manufacturing variability and measurement uncertainty for the equipment to which the percentage applies; and the program must provide that if, during a calendar year, the average of the manufacturers' efficiency ratings found valid under the VICP is more than one percent above (or more than one percent below for energy use ratings) the average of the efficiencies from the verification tests under the VICP, the program will be revised to provide reasonable assurance that in the future ratings under the VICP will average no more than one percent above verification test results.''

Lennox International, Inc. (Lennox), the Gas Appliance Manufacturers Association (GAMA) and the Air-Conditioning and Refrigeration Institute (ARI) commented on the proposed requirements for VICPs in the April 2006 SNOPR. Lennox asserted that while a general limit on the accuracy of efficiency ratings under a VICP, such as 1 percent, may be obtained for one class of equipment, it may not be practical for other classes of equipment. Lennox urged DOE to prescribe the tolerance placed on the accuracy of an efficiency rating on a case-by-case basis, rather than impose a ''one-size fits all'' approach. To this end, Lennox requested that DOE, in consultation with the VICP, establish an acceptable percentage of accuracy for each class of covered equipment. (EE–RM/TP–99–450, Lennox, No. 10 at p. 1) [4]

Additionally, ARI and GAMA stated that DOE should reconsider its proposal that a VICP revise its certification program when the disparity between average verification test results and average manufacturers' rating claims during a calendar year exceeds 1 percent. Without this modification, these commenters asserted that the DOE-proposed ''1-percent rule'' could be overly burdensome to the industry, particularly in light of the steps already taken to avoid overrating products and the likely additional costs needed to reevaluate each industry certification program. Commenters also pointed to the inherent variability of the test procedure results, *e.g.,* instrument accuracy, and manufacturing variability for each product. (EE–RM/TP–99–450, ARI, No. 12 at p. 2, and EE–RM/TP–99–450, GAMA, No. 11 at p. 3)

GAMA supported the criteria at sections 431.484(a)(9) and (13) in the December 1999 NOPR, but objected to the April 2006 SNOPR revisions to section 431.484(a)(9). GAMA opined that the original language of section 431.484(a)(9) is not vague, but would produce reasonable assurance that a VICP-verified efficiency rating is truly representative of all units of the tested basic model. In addition, GAMA supported the proposed section 431.484(a)(14) changes contained in the April 2006 SNOPR, which would permit manufacturers to challenge a competitor's erroneous efficiency ratings. (EE–RM/TP–99–450, GAMA, No. 11 at p. 2) The April 2006 SNOPR (71 FR 25116) proposed that section 431.484(a)(14) read as follows: ''The program contains provisions under which each participating manufacturer can challenge ratings submitted by other manufacturers, which it believes to be in error.''

ARI, GAMA, and Lennox each contended that a ''one size fits all'' methodology is inappropriate given the different types of commercial equipment experience, manufacturing variability, test procedure accuracy, and measurement uncertainty. (EE–RM/TP–99–450, ARI, No. 12 at p. 2; EE–RM/TP–99–450, GAMA, No. 11 at p. 2; and EE–RM/TP–99–450, Lennox, No. 10 at p. 1) Additionally, GAMA asserted that such a provision would require changing a VICP when ''any disparity'' between average test results and ratings exceeds 1 percent. (EE–RM/TP–99–450, GAMA No. 11 at p. 2)

The April 2006 SNOPR proposals are based on the underlying assumption that each type of equipment would have a normal distribution of ratings, with comparable degrees of error on the high and low sides. 71 FR 25108. With the sampling in DOE's test procedures for a given piece of commercial equipment, on average, the ratings would closely match the VICP's verification test results so long as the ratings were not biased. If these ratings were significantly

[4] A note in the form ''EE–RM/TP–99–450, Lennox, No. 10 at p. 1'' refers to: (1) To a statement that was submitted by Lennox and is recorded in the docket under ''Energy Efficiency Program for Commercial and Industrial Equipment: Efficiency Certification, Compliance, and Enforcement Requirements for Commercial Heating, Air Conditioning and Water Heating Equipment,'' Docket Number EE–RM/TP–99–450, as comment number 10; and (2) a passage that appears on page 1 of that statement.

higher, however, this would appear to indicate that many ratings were inaccurate, implying that the VICP had validated manufacturer overrating of equipment. In such a situation, by systematically rating products at levels above what was warranted by test results, these results would likely indicate that manufacturers were taking advantage of the VICP's practice of holding valid all ratings that were within a given percentage above the verification test results.

In view of the above concerns, DOE recognizes that the proposed ''one size fits all'' methodology may not be appropriate for all commercial HVAC and WH equipment. Therefore, DOE adopts the methodology for VICP participants as originally proposed in the December 1999 NOPR, which includes a reporting of verification test results to DOE to provide assurance that VICP-verified efficiency ratings are representative of the units of the model offered for sale. Nevertheless, DOE believes that the published ratings must accurately reflect the energy efficiency of the models participating in the VICP. For example, DOE expects the differences between rated values and tested values to have a normal (Gaussian) distribution around the rated value (*i.e.,* the proportion of the verification test results that are higher than the rating submitted by the manufacturer is approximately equal to the proportion that are lower). Thus, if DOE reviews the results of a VICP's tests and found a skewed distribution of efficiency levels, DOE would closely examine the validity of the VICP and, based on that examination, determine whether the VICP is qualified under the requirements being issued today.

2. Criteria for Validation of Alternative Efficiency Determination Methods

Lennox asserted that the criteria for validation of an AEDM, as proposed in the April 2006 SNOPR, are inadequate to verify the robustness of an AEDM for use on all equipment models. It indicated that correlating an AEDM to the manufacturer's three highest selling basic models would not be sufficient to validate its use for predicting the efficiency of other basic models with different characteristics because there is no assurance that the basic models chosen are capable of accounting for the impact of all critical variables inherent in the product type being modeled by the AEDM. Instead, Lennox recommended that, in addition to the proposed requirements in the April 2006 SNOPR, the review and qualification for use of an AEDM be judged against a uniform set of criteria established by the VICP for participants, and by DOE for non-VICP participants. (EE–RM/TP–99–450, Lennox, No. 10 at pp. 1–2)

ARI disagreed with the proposed requirement in the April 2006 SNOPR that a VICP participant validate its AEDM by comparing test results and AEDM results for three or more basic models. ARI asserted that the AEDM validation should be performed against no more than one basic model for VICP participants. For non-VICP participants, ARI recommended that DOE require AEDM validation to be made against three or more basic models. (EE–RM/TP–99–450, ARI, No. 12 at p. 2)

In view of ARI's and Lennox's comments, DOE will require a VICP participant to apply its AEDM to one or more basic models that have been tested according to the applicable test procedure, and that each basic model produced by a manufacturer be tested at least once every five years. The provisions being adopted today, which were originally proposed in the December 1999 NOPR for subsection 431.484(a)(4), require each organization operating a VICP to report to DOE annually on verification testing results under the VICP. 64 FR 69603, 69613. In addition, DOE approval of a VICP requires that each basic model covered by a VICP be tested under the program at least once every five years. *Id.* By reviewing these test data, DOE will be able to validate a manufacturer's AEDMs and the appropriate VICP.

In the April 2006 SNOPR, DOE also proposed to modify the tolerance band to ± 2 percent for comparing the predicted efficiency calculated with an AEDM to the test results. 71 FR 25106. DOE stated in the April 2006 SNOPR that the December 1999 NOPR proposal, which permitted an AEDM to have a margin of error of 5 percent for the validation points, could create an increased potential for an AEDM to produce erroneous results. *Id.* To reduce this possibility, DOE proposed to modify the tolerance band from ± 5 percent as originally proposed in the December 1999 NOPR to a tolerance band of ± 2 percent. 71 FR 25106.

ARI disagreed with the ± 2 percent tolerance band proposed in the April 2006 SNOPR. ARI commented that tightening the AEDM's tolerance to ± 2 percent for VICP participants is not justified, unnecessary, and overly burdensome. Instead, ARI recommended that DOE keep the tolerance at ± 5 percent for VICP participants and retain the ± 2 percent tolerance for non-VICP participants to account for the very limited testing that is done to verify product efficiency. (EE–RM/TP–99–450, ARI, No. 12 at p. 3)

The PRC commented that commercial HVAC and WH equipment efficiency is influenced by several factors, including the ambient temperature, room structure, and the parts of the refrigeration systems. Because of the variability created by these factors, and the inability of mathematical models to describe accurately how they affect product performance, it asserted that it is difficult to keep the tolerance within ± 2 percent between the anticipated efficiency value and the actual test value. Instead, the PRC suggested that the tolerance be set according to the different types and classifications of products. (EE–RM/TP–99–450, PRC, No. 13 at p. 1)

DOE agrees that the 2-percent tolerance level for VICP participants could be overly burdensome and VICP participants are already subject to more stringent tolerance requirements due to the nature of the VICP certification program. DOE also acknowledges the PRC's view that a large variation between various types of commercial HVAC and WH equipment exists that warrants the use of different tolerances.[5] In view of the above comments, DOE establishes a tolerance level of 5 percent for VICP participants and 3 percent for non-VICP participants. DOE understands that there is sufficient variation in testing and repeatability in test results from one laboratory to another that a 3 to 5 percent difference between the tested value and rated value could occur. Nevertheless, DOE expects the variability in test results to be a distribution that is centered around the rated value of the equipment, rather than a skewed distribution. Consequently, DOE will monitor VICPs and AEDMs to determine if they satisfy the goals of the VICP program and the testing requirements adopted by today's final rule.

3. Differences in Treatment Between Voluntary Industry Certification Program Participants and Non-Participants

The proposals detailed in the December 1999 NOPR specified that participation in a VICP would allow a manufacturer to follow either: (1) The DOE sampling plan; or (2) a DOE approved AEDM. A VICP participant must still test its products, validate its AEDM (if applicable), and file a compliance statement and certification

[5] The source of variation between various types of commercial HVAC and WH equipment depends on the size of the equipment, the number of units manufactured, the variation in equipment design, and any manufacturing variations.

report, either directly to DOE, or through the VICP, which will file these documents on the manufacturers' behalf. DOE also included specific criteria that a VICP must meet to gain recognition. The program would have to include, for example, provisions for the collection and dissemination of efficiency ratings of each basic model of equipment, periodic testing of each basic model to determine the accuracy of the manufacturer's efficiency rating for the model, a process for taking corrective action (*e.g.,* deleting or decertifying equipment) when a manufacturer's rating conflicts with the test results, and the reporting of certain information to DOE. The December 1999 NOPR also addressed how the organization operating a VICP could obtain DOE approval of the VICP and the duration of that approval. 64 FR 69605.

Further, the December 1999 NOPR proposed more stringent criteria for testing and the use of AEDMs for those manufacturers opting not to participate in a VICP. DOE proposed to require that non-VICP manufacturers would have to conduct independent testing, use DOE-prescribed sampling plans, and obtain DOE approval of its AEDMs (if applicable) before those methods could be used for compliance certification purposes. Non-VICP manufacturers would also need to file a compliance statement and certification report directly to DOE.

In the December 1999 NOPR, DOE also proposed to require a non-VICP manufacturer that uses an AEDM under this subpart to validate that method by subjecting to testing three or more of its basic models, which must be the highest-selling basic models. These test results would then be compared with the results from the AEDM model. (In contrast, a VICP participant would have to compare the test results for only one or more basic models with the results of the AEDM model.) Under the December 1999 NOPR, the test results would have needed to be within 1 percent of the AEDM model results for the AEDM to be valid. 64 FR 69613. The April 2006 SNOPR maintained these aspects of the proposal. 71 FR 25107.

Lennox and ARI asserted that the December 1999 NOPR and the April 2006 SNOPR would put VICP participants at a disadvantage relative to non-participants. ARI stated that a VICP participant must incur ''significant cost'' and risk ongoing verification testing of its products, whereas a non-participant need only test three basic models to validate its AEDM(s). (EE–RM/TP–99–450, ARI, No. 12 at p. 4) In addition, Lennox claimed that, for a non-participant's products, consumers are only assured that a tested sample of units performs at the level of the manufacturer's efficiency ratings. (EE–RM/TP–99–450, Lennox, No. 10 at p. 2) GAMA also opined that provisions in the April 2006 SNOPR ''provide disincentives to participate in VICPs,'' although it did not identify which provisions. Further, GAMA stated that a VICP polices a manufacturer's efficiency claims at no cost to taxpayers, and that a manufacturer participates in a VICP at significant cost and considerable risk because of the penalties levied if verification testing does not support its efficiency ratings.[6] (EE–RM/TP–99–450, GAMA, No. 11 at p. 4)

Lennox requested that DOE require non-VICP manufacturers to participate in a DOE-administered verification program that would be based on DOE's requirements and funded at a VICP-equivalent level by the non-VICP participants. (EE–RM/TP–99–450, Lennox, No. 10 at p. 2) ARI recommended that a non-VICP participant be required to show compliance and the accuracy of its efficiency representations through verification testing conducted by an independent laboratory. (EE–RM/TP–99–450, ARI, No. 12 at p. 4)

The proposals detailed in the December 1999 NOPR and April 2006 SNOPR were tailored for non-VICP participants and participants of a VICP. Note that while the requirements for VICP participants include less initial testing, the requirements specify third party verification testing. In contrast, non-VICP participants must perform more rigorous initial testing because third party verification testing is not required. As stated above, non-VICP manufacturers are required to conduct independent testing, use DOE-prescribed sampling plans, gain DOE's approval of AEDMs, and file their own compliance statements and certification reports. For the reasons provided above, DOE believes that the procedures for VICP participants and non-VICP manufacturers being adopted in today's final rule are appropriate.

[6] Manufacturer trade organizations, such as GAMA, maintain a certified directory, which includes the efficiency ratings of certified equipment. The information contained within the certified directory for VICP participants includes manufacturer, model number, input or capacity rating, efficiency rating, and other applicable footnotes such as when the efficiency information was revised. In addition, the directory indicates where a model is current or discontinued. One example of a certified directory currently maintained by AHRI (formerly ARI and GAMA) is the ''Consumers' Directory of Certified Efficiency Ratings for Heating and Water Heating Equipment'' (see *http://www.ahrinet.org/ARI/util/showdoc.aspx?doc=710*).

4. Reporting for Voluntary Industry Certification Programs

The December 1999 NOPR proposed to require a VICP to report annually verification test results, each manufacturer's rated efficiency, and either the applicable energy conservation standard or information that would enable DOE to determine the standard for each basic model on which the VICP performed verification testing. The April 2006 SNOPR, which carried over the annual reporting requirement, proposed to require that a VICP also report model numbers for tested products, which would enable DOE to monitor whether the VICP is doing verification testing of each basic model at least once every five years. See 71 FR 25109.

ARI commented that the April 2006 SNOPR's proposed annual model number reporting requirement is overly burdensome. Instead, ARI suggested that VICPs provide aggregate results by type of equipment only. DOE agrees that requiring annual reporting could be unduly burdensome, to both the VICP and DOE due to the vast number of models offered by manufacturers of a given product type. By providing aggregate results, DOE will be able to discern any trends contained in the testing data. In addition, DOE is requiring VICPs to make test data records available for DOE inspection. DOE believes that, in light of all of these factors, the added detail from annual reporting does not add any useful value that would significantly enhance DOE's ability to monitor manufacturer compliance with the energy conservation standards. Therefore, DOE intends to review a VICP on an as-needed basis and has withdrawn its proposed requirement for including model numbers in the annual reporting. A VICP will be required to maintain the records of test results and applicable compliance information, all of which would be made available to DOE for inspection as set forth in the regulations. In the case, for example, where DOE is investigating an energy performance certification, the records of test results would be made available to DOE as set forth in the regulations.

5. Enforcement Testing

DOE proposed in the December 1999 NOPR to test initially two units of a basic model to determine its compliance with the applicable energy conservation standard, except that under certain circumstances DOE would test one unit. 64 FR 69616. The December 1999 NOPR also provided that a model would be in compliance if the average result for the

two tested units (or the result from testing a single unit) fell within a 5-percent tolerance range (*i.e.,* 95 percent or more of the applicable efficiency standard or 105 percent or less of an energy use standard). 64 FR 69617. If the test results fall outside the 5-percent tolerance range, resulting in a non-compliance determination, a manufacturer could request that DOE conduct additional testing. DOE would then conduct the additional testing and determine compliance by averaging the results from both rounds of testing and applying the 5-percent criterion.

DOE revised this approach for enforcement testing in the April 2006 SNOPR by making three changes. First, DOE would generally test four units of a basic model, but would test fewer if only a lesser number were available, or if testing of such lesser number were otherwise warranted (*e.g.,* if a basic model is very large or has unusual testing requirements) as described in section 431.373(a)(3)(ii)(B). If DOE were to test three or four units, it would test each unit once; if it tested two units it would test each twice; and if it tested one unit it would test that unit four times. Second, DOE would compute the mean of the test results, as provided in the NOPR, but would also calculate a lower control limit for energy efficiency or an upper control limit for energy use. The lower control limit, for example, would be the greater of either: (a) 97.5 percent of the applicable energy efficiency standard, or (b) the applicable energy efficiency standard minus the product of the sample standard error and the t-value for a 97.5-percent, one-sided confidence limit. The upper control limit would be calculated in a similar fashion (See Appendix D to Subpart T of Part 431.). Finally, the April 2006 SNOPR proposed that a basic model would be in compliance only if the mean measurement for the sample meets or exceeds the lower control limit in the case of an efficiency standard or is less than or equal to the upper control limit in the case of an energy use standard. 71 FR 25110.

GAMA disagreed with DOE's proposal to tighten the enforcement testing tolerance for commercial equipment. Specifically, it preferred the 95 percent confidence limit proposed in the December 1999 NOPR. GAMA noted that while its certification programs employ test tolerances of 2 percent for commercial equipment and 3.5 percent for residential products, DOE's citing of these tolerances in support of the proposed tightened tolerances is inaccurate and inappropriate because the 2-percent tolerance only applies to verification testing of commercial boilers and commercial water heater thermal efficiencies. Further, GAMA pointed out that the 2-percent tolerance is not included in its certification program for commercial furnaces. For residential products, GAMA's certification program allows a 3.5-percent tolerance for residential water heaters and a 5-percent tolerance for furnaces. GAMA cautioned DOE not to prescribe uniform compliance and enforcement criteria for all products. (EE–RM/TP–99–450, GAMA, No. 11 at p. 4)

Notwithstanding GAMA's comments, DOE continues to believe that it is unnecessary and would be unduly burdensome to prescribe unique tolerances for each type of equipment that could undergo enforcement testing. DOE also notes that the 97.5-percent tolerance proposed in the April 2006 SNOPR is intended to ensure that DOE has a high degree of certainty when making a determination of non-compliance. This is not a requirement for the manufacturers but an effort by DOE to help mitigate false positives by tightening the tolerances during enforcement testing; DOE believes that the lower degree of certainty of 95 percent is not appropriate because it would more likely lead to determinations of non-compliance when, in fact, the basic model complies with the applicable energy conservation standards. Therefore, DOE rejects GAMA's comment and is establishing the tolerance specified for enforcement testing at 97.5 percent for all types of commercial HVAC and WH equipment.

GAMA also commented that the April 2006 SNOPR proposed to significantly change the enforcement testing requirements by proposing the selection and testing of four samples. GAMA opined that adopting such a requirement would be burdensome and out of proportion to the reality of the commercial equipment market. Instead, GAMA supported DOE's approach in the December 1999 NOPR, which based enforcement testing on two samples instead of four. (EE–RM/TP–99–450, GAMA, No. 11 at p. 4; EE–RM/TP–05–500, GAMA, No. 7 at p. 3–4)

In view of GAMA's comment, DOE believes that there are very few units produced in any given year for certain types of commercial HVAC and WH equipment, and that it would be impossible to find, much less test, a sample of four units. For example, small commercial package air conditioners and heat pumps are manufactured on a larger scale with less variation, whereas very large commercial package air conditioners and heat pumps are manufactured on a small scale, made-to-order basis with more specific variations based upon the commercial customer's design preferences for a given project. DOE acknowledges there can be large variations in the number of units produced in a given year depending on the specific projects being developed by the commercial customer. Therefore, DOE adopts the approach outlined in the December 1999 NOPR, which requires enforcement testing to be based upon two samples instead of four.

Additionally, GAMA disagreed with DOE's assertion and proposal that multiple testing of the same unit would provide greater assurance of standards compliance. Instead, GAMA asserted that conducting multiple tests of the same unit becomes an evaluation of the test procedure accuracy and test setup, rather than an evaluation of the model's efficiency rating. (EE–RM/TP–99–450, GAMA, No. 11 at p. 4; EE–RM/TP–05–500, GAMA, No. 7 at p. 3–4)

In view of GAMA's comment, DOE understands that multiple testing of a single unit does not accurately reflect the energy efficiency or performance of the basic model. DOE believes testing multiple units of a basic model gives an indication of the manufacturing variability within a basic model. While testing one unit multiple times indicates the ability of the test procedure to provide repeatable results, testing multiple units captures the variability of the manufacturing process. As a result, DOE concludes that such multiple testing of an individual unit is inappropriate for enforcement testing and is removing that requirement from today's final rule.

GAMA also commented on the definition of a ''defective unit'' as it applies to water heaters that DOE proposed in the July 2006 SNOPR. Under proposed section 431.373(a)(5)(iii), a defective unit is one that is inoperative. A defective unit can also be one that is in noncompliance due to a manufacturing defect or the failure of the unit to operate according to the manufacturer's design and operating instructions, and where the manufacturer demonstrates by statistically valid means that, with respect to such defect or failure, the unit is not representative of the population of production units from which it is obtained. GAMA recommended that a water heater found to have one or more significant insulation voids should be considered a defective unit and should not be included in an enforcement test sample, because it is not representative of the manufacturer's production. GAMA further recommended that for commercial water heaters, the criteria for a significant insulation void should

be one-third of 1 percent or more of the tank surface area that is exposed. GAMA included in its comment a detailed proposal based on nominal tank size, but ultimately, GAMA indicated that DOE should address the issue of water heater insulation voids. (EE–RM/TP–99–450, GAMA, No. 11 at p. 4; EE–RM/TP–05–500, GAMA, No. 7 at p. 3–4)

DOE disagrees with GAMA on the matter of water heater insulation voids. DOE believes that a unit with an insulation void so large as to materially affect the measure of efficiency, the unit should, in the normal course of manufacturing, be identified and either the insulation void corrected or the unit scrapped. Such a unit would, therefore, not be subject to testing for either certification or demonstration of compliance. However, if a unit with an insulation void is not identified through normal inspection procedures and rejected for sale to consumers, then it should not be rejected for testing for certification purposes or demonstration of compliance since it is representative of units offered for sale. Therefore, DOE rejects GAMA's comment and will not include any additional requirements to identify and exclude a water heater with an insulation void from compliance certification or enforcement testing.

GAMA also asked that the agency clarify what it would consider ''the date of last determination of compliance'' under the proposed section 431.508(a)(2). 64 FR 69617. GAMA asserted that the date of last determination of compliance means the most recent date when the efficiency of a particular model has been checked, which could include either normal verification testing by an approved VICP or efficiency checks done in a manufacturer's own quality control program. (EE–RM/TP–99–450, GAMA, No. 11 at p. 4; EE–RM/TP–05–500, GAMA, No. 7 at p. 3–4) Consequently, determining this date largely depends on the individual practices followed by the manufacturer.

Consistent with GAMA's concerns, DOE will notify the manufacturer of the applicable date on a case-by-case basis when DOE, or the manufacturer, or the private labeler determines that the HVAC or WH equipment is noncompliant. Otherwise, if there have been no noncompliance issues for a particular manufacturer's model of HVAC or WH equipment that was certified by DOE, then the date of last determination of compliance would be the date the manufacturer had last certified compliance of that product to DOE.

The PRC suggested that ''definite standards used for testing and sampling be specified to facilitate testing procedures.'' (EE–RM/TP–99–450, PRC, No. 13 at p. 1) DOE understands the PRC's comment as asking DOE to specify a test procedure in addition to the sampling plan for each equipment class. If correct, DOE believes the PRC has misunderstood the purpose of the April 2006 SNOPR, since the test procedures for commercial HVAC and WH equipment were finalized in previous final rules.[7] The purpose of the April 2006 SNOPR was to set forth the revisions to the certification and enforcement provisions for commercial HVAC and WH equipment for the test procedures that already exist.

B. Energy Policy Act of 2005—Consumer Products

Section 323(b)(3) of EPCA, 42 U.S.C. 6293(b)(3), requires a test procedure be reasonably designed to produce results measuring energy efficiency or energy use and not be unduly burdensome to conduct. In the July 2006 NOPR, DOE proposed the use of a statistically meaningful sampling procedure for selecting test specimens of consumer products to reduce the testing burden on manufacturers, while giving sufficient assurance that the true mean energy efficiency of a basic model meets or exceeds the rated measure of energy efficiency or energy use. DOE stated that it reviewed sampling plans for consumer products and commercial and industrial equipment which could provide guidance on how many and which units to test to determine compliance.[8] 71 FR 42193. DOE considered four factors when proposing sampling plans: (1) Minimizing a manufacturer's testing time and costs; (2) assuring compatibility with other sampling plans DOE has promulgated; (3) providing a highly valid statistical probability that basic models that are tested meet the applicable energy conservation standards; and (4) providing a highly valid statistical probability that a manufacturer preliminarily found to be in noncompliance will actually be in noncompliance. 71 FR 42193.

After review of the sampling plans for consumer products in 10 CFR Part 430, sections 430.63, 430.70, and appendix B to subpart F, DOE proposed that the manufacturer select a sample at random from a production line and, after each unit or group of units is tested, either accept the sample, reject the sample, or continue sampling and testing additional units until a compliance determination can be made. *Id.* DOE did not propose a sample size in the July 2006 NOPR because the sample size is determined by the validity of the sample and how the mean compares to the standard, factors which cannot be determined in advance. Moreover, DOE believed that testing a randomly selected sample until a determination is reached is a method that arrives at a statistically valid decision on the basis of fewer tests than fixed-number sampling, which is the basis for most of the statistical sampling procedures for consumer products under 10 CFR 430.24, Units to be Tested.

The July 2006 NOPR proposed to require at section 430.24 that manufacturers randomly select and test a sample of production units of a representative basic model, and then calculate a simple average of the values to determine the actual mean value of the sample. 71 FR 42204. For each representative model, a sample of sufficient size would be selected at random and tested to ensure that any represented value of energy efficiency is, for example, no greater than the lower of (A) the mean of the sample; or (B) the lower 95-percent confidence limit of the mean of the entire population of that basic model, divided by a coefficient applicable to the represented value. The coefficients in the July 2006 NOPR are product specific and intended to reasonably reflect variations in materials, the manufacturing process, and testing tolerances. 71 FR 42193.

Additionally, the July 2006 NOPR sought comments and data concerning the accuracy and workability of the sampling plan for ceiling fans, ceiling fan light kits, torchieres, medium base compact fluorescent lamps, and dehumidifiers, including the confidence limits and coefficients, and invited discussion about improvements or alternatives. 71 FR 42193. DOE did not receive any comments regarding its proposed sampling plans and continues to believe that the sampling plans and procedures would minimize the manufacturers' testing time and cost, while providing statistical validity that the true mean energy efficiency of a

[7] DOE issued several final rules relating to test procedures on October 21, 2004—Test Procedures and Efficiency Standards for Commercial Warm Air Furnaces, 69 FR 61916; Test Procedures and Efficiency Standards for Commercial Water Heaters, Hot Water Supply Boilers and Unfired Hot Water Storage Tanks, 69 FR 61974; Test Procedures and Efficiency Standards for Commercial Packaged Boilers, 69 FR 61949; Test Procedures and Efficiency Standards for Commercial Air Conditioners and Heat Pumps, 69 FR 61962.

[8] The sampling plans reviewed for consumer products are those found in 10 CFR Part 430 and the sampling plans reviewed for commercial and industrial equipment are those found in 10 CFR Part 431 and the December 1999 NOPR. See generally 64 FR 69602–06.

basic model meets or exceeds the rated measure of energy efficiency or energy use and that the basic models comply with the applicable energy conservation standards. Based on a consideration of the above, DOE is adopting the sampling plans as proposed in the July 2006 NOPR for ceiling fans, ceiling fan light kits, torchieres, medium base compact fluorescent lamps, and dehumidifiers. Today's rule would also apply to these products the provisions in 10 CFR part 430, subpart F. The relevant provisions are section 430.62 for certification, and sections 430.61, 430.71, 430.72, 430.73, and 430.74 for enforcement. Today's final rule amends section 430.62(a)(4) to require manufacturer reporting for ceiling fans, ceiling fan light kits, torchieres, medium base compact fluorescent lamps, and dehumidifiers. The existing section 430.62(a)(1) includes general instructions for manufacturer submission of certification data to DOE, including the mailing address for submitting certification data. Those directions apply to the products added by today's final rule.

C. Energy Policy Act of 2005—Commercial Equipment

As part of the July 2006 NOPR, DOE proposed to adopt sampling requirements for manufacturer testing similar to those in part 430 for consumer products for each type of commercial or industrial equipment EPACT 2005 covers and for which DOE finalized test procedures in the December 8, 2006 final rule. For certification reporting on covered commercial equipment, the procedures proposed in the July 2006 NOPR would require manufacturers to report the energy efficiency, energy use, or water use of each basic model. 71 FR 42192. DOE proposed to require that each manufacturer of commercial or industrial equipment file a compliance statement and certification report. The compliance statement would be a one-time filing [9] in which the manufacturer or private labeler states that it complies with applicable energy conservation requirements, and the certification reports generally provide the efficiency, or energy or water use, as applicable, for each covered basic model that a manufacturer distributes. A basic model refers to those models with no differing electrical, physical, or functional features that affect energy consumption. These requirements take the same approach as the certification procedures in part 430 and incorporate, with some modifications, certification provisions that DOE proposed for commercial heating, air conditioning, and water heating equipment in the December 1999 NOPR (64 FR 69602, 69611) and the April 2006 SNOPR (71 FR 25104, 25116).

DOE also set forth provisions for enforcement of the EPACT 2005 standards for commercial equipment in the July 2006 NOPR. 71 FR 42192, 42214. The enforcement proposals address DOE's initial steps in an enforcement action and would require a manufacturer to cease distribution of non-complying equipment, following the approach in Part 430. They are the same procedures for HVAC and WH equipment contained in the December 1999 NOPR. 64 FR 69604, 69617. For enforcement testing, including sampling provisions during enforcement testing and compliance determinations, DOE proposed two procedures based on the volume of shipments produced for commercial equipment. 71 FR 42192. For commercial prerinse spray valves, illuminated exit signs, traffic signal modules and pedestrian modules, and refrigerated bottled or canned beverage vending machines, DOE understands that each basic model is manufactured in relatively large quantities, similar to the quantities of consumer products covered by 10 CFR part 430. As a result of this understanding, DOE proposed to adopt the same sampling provisions that apply to consumer products under 10 CFR part 430 for use during enforcement testing of commercial equipment under 10 CFR part 431. *Id.* For automatic commercial ice makers, as well as commercial refrigerators, freezers, and refrigerator-freezers, DOE understands each basic model is manufactured in smaller quantities, similar to the quantities of commercial heating, air conditioning and water heating equipment covered by 10 CFR part 431. Therefore, DOE proposed to adopt the same sampling provisions for use during enforcement testing as those proposed in the April 2006 SNOPR for commercial equipment. *Id.*

In comments filed in response to the July 2006 NOPR, ARI agreed with DOE that automatic commercial ice makers and commercial refrigerators, freezers, and refrigerator-freezers are manufactured in small quantities and therefore, should have the same certification and enforcement provisions as commercial HVAC and WH equipment. (EE–RM/TP–05–500, ARI, No. 63 at p. 3) ARI requested that DOE review the comments it submitted to DOE in response to the publication of the April 2006 SNOPR and apply them to automatic commercial ice makers and commercial refrigeration equipment. ARI argued that requiring commercial refrigeration equipment and automatic commercial ice makers to be subject to similar sampling procedures for certification and enforcement in 10 CFR part 430 would be unduly burdensome because of the small quantities of equipment that are manufactured. ARI urged DOE to abandon this concept for automatic commercial ice makers, commercial refrigeration equipment, and commercial HVAC and WH equipment. (EE–RM/TP–05–500, ARI, No. 63 at p. 4)

DOE recognizes that modeling its certification and enforcement provisions for commercial refrigeration equipment and automatic commercial ice makers on those provisions already established for consumer products has certain drawbacks. For example, consumer products are generally manufactured in greater quantities than commercial refrigeration equipment and automatic commercial ice makers. Because of the smaller population available for sampling, DOE has decided to adopt certification and enforcement provisions for commercial refrigeration equipment and automatic commercial ice makers with sampling procedures based on commercial HVAC and WH equipment. DOE is adopting some of these provisions from the December 1999 NOPR and some from the July 2006 NOPR in response to commenters, like ARI and others listed above in section III.A, which this final rule applies to for these two types of equipment. 64 FR 69603–06 and 71 FR 42191–93.

D. Distribution Transformers

Section 325(y) of EPCA, 42 U.S.C. 6295(y), establishes energy conservation standards for low-voltage dry-type distribution transformers that are manufactured on or after January 1, 2007. The July 2006 NOPR provided until January 1, 2008, before certification requirements for such transformers would become effective. 71 FR 42193–95. Today's final rule modifies the proposed schedule and applies an effective date of 180 days after publication of notice announcing OMB approval of the information collection requirements for manufacturers of low-voltage, dry-type, liquid-immersed, and medium-voltage dry-type distribution transformers to comply with these certification requirements. This change is consistent

[9] The compliance statement must be submitted by each manufacturer subject to the energy conservation standards in 10 CFR parts 430 and 431. The compliance statement is signed by the company official submitting the statement (*e.g.,* the point of contact for the company or 3rd party representative), certifying that the basic model is in compliance with the applicable energy or water conservation standards and does not need to be resubmitted unless the information on the compliance statement changes.

with the requirements of other EPACT 2005 products and equipment covered under today's final rule.

The certification requirements for distribution transformers have two elements: A compliance statement and a certification report. In the July 2006 NOPR, DOE proposed a single format and set of requirements for compliance statements for all covered commercial and industrial equipment (except electric motors), including distribution transformers. 71 FR 42193–95. The certification report for distribution transformers being adopted today is similar to that which currently exists for electric motors at 10 CFR 431.36(b) and appendix C to subpart B, due to the large number of distribution transformer basic models that each manufacturer typically produces.

For distribution transformers in general, each time a design change is made to a core or winding, the energy consumption of the transformer can change, making that design a different basic model.[10] Due to the way in which distribution transformers are specified and manufactured, customized transformer designs will virtually always be a different basic model. Customized designs are necessary to meet customer requirements and to accommodate price changes in the raw materials used in the production of a distribution transformer. Distribution transformer manufacturers could produce thousands of basic models each year, and DOE is concerned that applying the same certification and reporting requirements as found in 10 CFR Part 430 to them could place a significant burden on these manufacturers.

In light of the heavy burdens manufacturers would face if a compliance certification process similar to the one used for consumer products were followed for distribution transformers, DOE proposed in the July 2006 NOPR that each distribution transformer manufacturer submit a certification report on the efficiency of the least efficient basic model within a certain kilovolt-ampere (kVA) group. 71 FR 42194. For low-voltage dry-type distribution transformers, kVA groups are defined as the combination of a kVA rating and number of phases for a transformer, as presented in the table of efficiency values in 10 CFR 431.196, as amended by the October 2005 final rule. 70 FR 60417. For liquid-immersed distribution transformers, like low-voltage dry-type transformers, kVA groups are based on the insulation type (liquid-immersed), kVA rating, and number of phases. For medium-voltage dry-type distribution transformers, kVA groups are based on the insulation type (dry-type), kVA rating, number of phases (single or three), and the basic impulse insulation level (BIL) rating, such as 20–45 kV BIL, 46–95 kV BIL, and greater than 96 kV BIL.

In response to the compliance testing and certification requirements for dry-type distribution transformers addressed in the July 2006 NOPR, Federal Pacific Transformer (Federal Pacific) asserted that the definition of ''basic model'' in the distribution transformer final rule, at 71 FR 24972 (April 27, 2006), increased the number of basic models for testing to an ''unbearable amount,'' and that the number of basic models to be tested has ''broadened exponentially'' because of how the term ''basic model'' is defined. (EE–RM/TP–05–500, Federal Pacific, No. 70 at pp. 3 and 4) DOE is aware of this issue, and it is the basis for the rule being adopted today, which establishes kVA groupings (described above), the requirement that manufacturers maintain records on all basic models sold, and that only compliance reports on the least efficient basic model within a kVA grouping are required to be submitted to DOE. This approach is consistent with the approach DOE adopted for electric motors, another industry with a large diversity of basic models.

In addition, Federal Pacific, GE Energy and the National Electrical Equipment Manufacturers Association (NEMA) commented on test procedures for distribution transformers which were outside the scope of this rulemaking. Federal Pacific questioned DOE's proposal to require reporting the least efficient basic model within a kVA group and sought clarification as to whether ''least efficient'' refers to the average efficiency of a newer, less efficient basic model within a kVA group or the highest individual unit within the group. (EE–RM/TP–05–500, Federal Pacific, No. 70 at p. 5) Federal Pacific proposed revisions to the draft rule language at 10 CFR 431.371(a)(6)(ii) and (b)(1), which affect sample size requirements and periodic reporting of compliance to DOE. (EE–RM/TP–05–500, Federal Pacific, No. 70 at p. 6).

For distribution transformers, the test procedure rulemaking addressed sampling and other testing issues regarding representations and compliance with the energy conservation standards. See 10 CFR part 431.197; 71 FR 24972 (April 27, 2006). Today's final rule is limited to reporting requirements, which include submitting the compliance statement and certification reports. While DOE appreciates Federal Pacific's comments, changes to incorporate kVA groupings or sampling sizes suggested by Federal Pacific is a test procedure issue. Test procedures for distribution transformers, including the applicable sampling plans for compliance testing, can be found in 10 CFR 431.197 and were finalized in a final rule published in the **Federal Register** on April 27, 2006. 71 FR 24972.

Similarly, GE Energy and NEMA both recommended that DOE adopt a linear interpolation method to determine the appropriate energy efficiency requirement for a unit with a kVA rating that does not appear in the tables. (EE–RM/TP–05–500, GE Energy, No. 145 at p. 1; EE–RM/TP–05–500, NEMA, No. 174 at p. 4) DOE understands that efficiency levels can be scaled between any two kVA ratings, and that similar techniques are used by the Institute of Electrical and Electronics Engineers and the American National Standards Institute to derive requirements for unusual (*i.e.,* non-standard) kVA ratings. This issue also falls outside the scope of this rulemaking as it deals with the application of the energy conservation standards for distribution transformers. This issue was dealt with in the October 12, 2007 final rule regarding test procedures for distribution transformers. In the October 12, 2007 final rule, DOE adopted the linear interpolation method proposed by GE Energy and NEMA. (72 FR 58217)

E. General Requirements

Consumer products and commercial and industrial equipment covered under 10 CFR parts 430 and 431, respectively, are subject to a variety of regulatory provisions, including those involving Petitions for Waiver from a particular test procedure, imported and exported products and equipment, maintenance of records, subpoenas, confidentiality of information, and petitions to exempt a State regulation from preemption. Today's final rule applies these provisions to the consumer products and commercial and industrial equipment it covers. For consumer products, the provisions are in sections 430.27, 430.40 through 430.57, 430.64, 430.65, 430.72, and 430.75 of 10 CFR part 430. For commercial equipment, the provisions are in sections 431.401, 431.403 through 431.407, and 431.421 through 431.430.

[10] The design changes made to distribution transformers affect the amount and quality of the material used for the core or winding and have a direct impact on the basic model. As the amount increased, and the quality improved of the material that is used in the core or winding of the distribution transformer, the electrical resistance decreases and the system efficiency of the distribution transformer increases.

In addition, our July 2006 NOPR proposed provisions for the preemption of State energy use and efficiency regulations for the consumer products and commercial or industrial equipment covered by EPACT 2005. The regulations implement EPACT 2005 amendments to EPCA that include various provisions concerning preemption with respect to these products and equipment. 42 U.S.C. 6295(ff)(7), 6295(ii), and 6316(e).[11] All of the provisions applicable to consumer products provide that, once Federal energy conservation standards take effect for a product, the preemption requirements of section 327 of EPCA (42 U.S.C. 6297) become applicable to any State or local standard for that product. 42 U.S.C. 6295(ff) and (ii) (as amended by EPACT 2005) DOE's existing rules for covered consumer products set forth such a requirement, providing that any Federal standard that is in effect for ''a covered product'' preempts any State standard for the product that is not identical to the Federal standard, except as otherwise provided in section 327 of EPCA. 10 CFR 430.33. Consistent with EPCA's preemption provisions, DOE proposed to apply the same requirements for consumer products to the commercial or industrial equipment. 71 FR 42195.

IV. Procedural Requirements

A. Review Under Executive Order 12866

Today's regulatory action is not a ''significant regulatory action'' under section 3(f)(1) of Executive Order 12866, ''Regulatory Planning and Review.'' 58 FR 51735 (October 4, 1993). Accordingly, today's action was not subject to review by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB).

B. 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 for any rule that by law must be proposed for public comment, and a final regulatory flexibility analysis for any such rule that an agency adopts as a final rule, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. A regulatory flexibility analysis examines the impact of the rule on small entities and considers alternative ways of reducing negative impacts. Also, 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 rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of General Counsel's Web site: *http://www.gc.doe.gov.*

EPACT 1992 and EPACT 2005 amended EPCA to incorporate into DOE's energy conservation program certain consumer products and commercial and industrial equipment. Today, DOE establishes certification, compliance, and enforcement requirements for these products and types of commercial and industrial equipment, as described above and proposed in the December 1999 NOPR, April 2006 SNOPR, and July 2006 NOPR.

DOE reviewed the certification, compliance, and enforcement provisions in today's final rule, for the products and equipment covered, under the provisions of the Regulatory Flexibility Act and the policies and procedures published on February 19, 2003. DOE estimates approximately 350 manufacturing firms could be potentially impacted by the certification, compliance, and enforcement provisions in today's final rule. DOE estimated the total number of manufacturing firms by using AHRI's Directory of Certified Product Performance, the ENERGY STAR databases of qualifying products, AHAM's Directory of Certified Products, and manufacturers' product literature. Of these 350 manufacturing firms, DOE did not explicitly identify the number of small entities that could potentially be impacted by the provisions in today's final rule because DOE believes the burden will be small. DOE's estimates include both small and large businesses, and the actual number of small business is likely to be smaller. The provisions of this final rule, described below and in further detail elsewhere in the preamble, would apply to all of those small businesses.

Today's final rule adopts procedures for manufacturers to certify compliance with the energy conservation standards in EPCA or set forth by DOE pursuant to EPCA, using applicable test procedures established by DOE. These procedures require manufacturers of covered consumer products and commercial equipment to submit information and reports for a variety of purposes, including ensuring compliance with requirements. These certification requirements, as well as the enforcement provisions, are new for manufacturers of consumer products and commercial equipment subject to today's final rule and will affect both small and large enterprises.

The final rule has been drafted to minimize the certification, compliance and enforcement burden for manufacturers and relies heavily on current industry practice. For example, the statistical sampling procedures being adopted in today's final rule are based on procedures established for consumer appliance products at 10 CFR 430.24. These procedures are designed to keep the testing burden on manufacturers as low as possible, while still providing confidence that the test results can be applied to all units of the same basic model. To minimize the testing burden further, manufacturers are permitted to use analytical procedures, such as computer simulation, to determine the efficiencies of their products. Manufacturers are also given the option of certifying their products to DOE independently or through trade associations, which can minimize costs by reporting on large numbers of individual products at one time. Finally, the certification forms and enforcement procedures are similar to those already required for consumer products, and several of the same manufacturers produce both consumer products and commercial equipment.

The cost of establishing compliance will depend on the number of basic models a manufacturer produces. The cost of completing the certification report should be small once testing for each basic model has occurred pursuant to test procedures prescribed by DOE; the manufacturer must input the data required by, for consumer products, 10 CFR 430.62 and, for commercial and industrial equipment, 10 CFR 431.371(a)(6)(i) (or, in the case of distribution transformers, (ii)) into the report and provide it to DOE. Some of the information required by 10 CFR 430.62 and 431.371 is product-specific; manufacturers would be required to provide only that information that is generally applicable or specific to the products they manufacture. DOE estimated in previous rules that the testing, certification, compliance, and enforcement procedures would take the average firm 160 hours to complete. 71 FR 42197–98. DOE also believes that at least 90 percent of these burden hours can be attributed to complying with DOE's test procedures, which have

[11] Since the enactment of EPACT 2005, Congress subsequently amended EPCA through the Energy Independence and Security Act of 2007, Public Law 110–140 (Dec. 19, 2007). As a result of this legislative change, 42 U.S.C. 6295(gg) was redesignated as 42 U.S.C. 6295(ii).

already been established. DOE believes the resulting 10 percent (*i.e.,* 16 hours) would be the most that it would take the average firm to develop the necessary testing documentation, complete the certification and compliance reports, and then either mail or e-mail them to DOE; the costs of e-mail would be negligible and the costs of mailing would depend on the number of basic models manufactured but are not expected to be significant given prevailing postal rates.

The maintenance of records and the compliance reporting requirements are also based largely on current industry practices for similar products and equipment under 10 CFR part 430 and 10 CFR part 431. Moreover, for the products and equipment covered by this notice, manufacturers participating in the ENERGY STAR program already report the energy performance of their products to the Environmental Protection Agency (EPA), and many report such performance to industry trade associations such as ARI. DOE concludes that reporting this same information to DOE would not result in a significant impact. DOE also understands that, as a matter of sound business practice, manufacturers routinely maintain the types of records as to product and equipment testing that today's rule would require. For all of these reasons, DOE believes that the cost of complying with today's final rule will not be significant for small manufacturers of these products.

DOE sought public comment in the December 1999 NOPR and the July 2006 NOPR conclusion that the incremental costs of complying with the certification, compliance and enforcement requirements would not impose a significant impact on a substantial number of small businesses. DOE did not receive any comments on this conclusion; comments on the economic impacts of the proposed rules generally are discussed above and do not change this conclusion. Based on the foregoing factual basis, DOE certifies that today's final rule will not have a significant economic impact on substantial number of small entities. DOE will transmit the certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act of 1995

Adoption of today's final rule requires manufacturers of covered consumer products and commercial and industrial equipment to maintain records about how they determined the energy efficiency or energy consumption of their products. The final rule also requires manufacturers to submit a compliance statement indicating that all basic models currently produced, as well as any basic models produced in the future, comply (or will comply) with the applicable energy conservation standards using applicable test procedures,[14] as well as certification reports that set forth the energy performance of the basic models it manufactures. The certification reports are submitted for each basic model, either when the requirements go into effect (for models already in distribution) or when the manufacturer begins distribution of that model; the reports must be updated when a new model is introduced or a change affecting energy efficiency or use is made to an existing model. The collection of information is necessary for monitoring compliance with the efficiency standards and testing requirements for the consumer products and commercial and industrial equipment mandated by EPCA.

The certification and recordkeeping requirements for consumer products in 10 CFR part 430 have previously been approved by OMB and assigned OMB control number 1910–1400. The certification and recordkeeping requirements being adopted in today's final rule for the commercial and industrial equipment in 10 CFR part 431 must be approved and assigned a control number by OMB. DOE submitted these proposed certification and recordkeeping requirements to OMB for review and approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* and will publish notice of the approval, and the effective date of the information collection requirements, in a subsequent **Federal Register** notice.

DOE initially developed burden estimates for the EPACT 2005 commercial equipment in the July 2006 NOPR; given that the requirements in this final rule do not differ significantly from those proposed in the July 2006 NOPR, these burden estimates continue to remain accurate. 71 FR 42197–198. In addition, DOE believes that these burden estimates would apply equally for manufacturers of the EPACT 1992 commercial equipment because the compliance requirements would be the same for these manufacturers. DOE also believes that at least 90 percent of these burden hours can be attributed to complying with DOE's test procedures, which have already been established through separate rulemakings. DOE believes the resulting 10 percent (*i.e.,* 16 hours) would be the most that it would take the average firm to comply with the certification, compliance, and enforcement requirements in today's final rule. The following are the DOE estimates of the total annual reporting and recordkeeping burden imposed on manufacturers of commercial and industrial equipment by today's final rule to develop the necessary testing documentation, complete the certification and compliance reports, and then either mail or e-mail them to DOE.

- For unit heaters, the estimated number of covered manufacturing firms is 15. The total annual reporting and recordkeeping burden from compliance with the final rule is expected to be 240 hours per year (15 firms × 16 hours per firm).
- For automatic commercial ice makers, the estimated number of covered manufacturing firms is 10. The total annual reporting and recordkeeping burden from compliance with the final rule is expected to be 160 hours per year (10 firms × 16 hours per firm).
- For commercial prerinse spray valves, the estimated number of covered manufacturing firms is five. The total annual reporting and recordkeeping burden from compliance with the final rule is expected to be 80 hours per year (5 firms × 16 hours per firm).
- For illuminated exit signs, the estimated number of covered manufacturing firms is 49. The total annual reporting and recordkeeping burden from compliance with the final rule is expected to be 784 hours per year (49 firms × 16 hours per firm).
- For traffic signal modules and pedestrian modules, the estimated number of covered manufacturing firms is eight. The total annual reporting and recordkeeping burden from compliance with the final rule is expected to be 128 hours per year (8 firms × 16 hours per firm).
- For commercial refrigerators, freezers, and refrigerator-freezers, the estimated number of covered manufacturing firms is 23. The total annual reporting and recordkeeping burden from compliance with the final rule is expected to be 368 hours per year (23 firms × 16 hours per firm).
- For commercial boilers, the estimated number of covered

[14] The compliance statement must be submitted by each manufacturer subject to the energy conservation standards in 10 CFR parts 430 and 431. The compliance statement is signed by the company official submitting the statement (*e.g.,* the point of contact for the company or 3rd party representative), certifying that the basic model is in compliance with the applicable energy or water conservation standards and does not need to be resubmitted unless the information on the compliance statement changes.

manufacturing firms is 26. The total annual reporting and recordkeeping burden from compliance with the final rule is expected to be 416 hours per year (26 firms × 16 hours per firm).

• For commercial furnaces, the estimated number of covered manufacturing firms is 15. The total annual reporting and recordkeeping burden from compliance with the final rule is expected to be 240 hours per year (15 firms × 16 hours per firm).

• For packaged terminal equipment, the estimated number of covered manufacturing firms is 9. The total annual reporting and recordkeeping burden from compliance with the final rule is expected to be 144 hours per year (9 firms × 16 hours per firm).

• For commercial air conditioning and heating equipment, the estimated number of covered manufacturing firms is 30. The total annual reporting and recordkeeping burden from compliance with the final rule is expected to be 480 hours per year (30 firms × 16 hours per firm).

• For commercial water heating equipment, the estimated number of covered manufacturing firms is 14. The total annual reporting and recordkeeping burden from compliance with the final rule is expected to be 224 hours per year (14 firms × 16 hours per firm).

In developing the burden estimates, DOE considered that the required compliance certification would contain the type of information that many manufacturers already submit to trade associations or government agencies, such as EPA under the ENERGY STAR program. Those manufacturers should be able to comply with the proposed certification without undue burden because they are already collecting and reporting data to other organizations. Moreover, DOE understands that manufacturers already maintain the types of records the proposed rule would require them to keep.

In response to the burden hour estimates in the July 2006 proposed rule, DOE received several comments from various ceiling fan manufacturers. The manufacturers stated their concerns that the testing burden hour estimates were inadequate to accurately reflect the number of hours they would need to comply with the airflow efficiency test included in the July 2006 proposed rule. (EE–RM/TP–05–500, American Lighting Association, No. 14 at Part II at pp. 2 and 3, No. 18.8 at pp. 63–65, and No. 97 at pp. 3–5.)

At this time, the only requirement for ceiling fans are the design standards set forth in EPACT 2005 and codified in the October 2005 final rule. Manufacturers of these products would simply have to certify compliance with the applicable design requirements. If DOE establishes energy conservation standards for ceiling fans by setting a minimum airflow efficiency rating in a separate rulemaking proceeding, then manufacturers would be subject to the other types of certification, compliance, and enforcement provisions, such as sampling procedures. Note that ceiling fans are a consumer product, the information collection requirements of which were approved by OMB under control number 1904–1400.

DOE believes that the collection of information required by this final rule is the least burdensome method of meeting the statutory requirements and achieving the program objectives of the DOE compliance certification program for these products and equipment.

Under the Paperwork Reduction Act, an agency may not conduct or sponsor a collection of information unless the collection displays a currently valid OMB control number (44 U.S.C. 3506(c)(1)(B)(iii)(V)). As stated in the **EFFECTIVE DATE** line of this notice of final rulemaking, the information collection requirements of today's final rule will be effective 180 days after the publication of a notice announcing OMB approval of the information collection requirements. DOE will provide notice of OMB approval and the OMB control number in a subsequent **Federal Register** notice.

D. Review Under the National Environmental Policy Act of 1969

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.*), the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and DOE's regulations for compliance with the National Environmental Policy Act (10 CFR Part 1021). Specifically, this rule establishing test procedures will not affect the quality or distribution of energy, nor will it result in any environmental impacts, and, therefore, is covered by the Categorical Exclusion at paragraph A6 to subpart D, 10 CFR part 1021. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

DOE reviewed this rule pursuant to Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999), which imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in developing regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in developing such regulations. 65 FR 13735. DOE examined today's final rule and determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are subject of today's final rule. States can petition DOE for exemption from preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297) No further action required by Executive Order 13132.

F. Review Under Executive Order 12988

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

review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

DOE reviewed this regulatory action under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, which requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Today's rule contains neither an intergovernmental mandate nor a mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any year, so these requirements under the UMRA do not apply.

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

DOE determined that, for this rulemaking, it need not prepare a Family Policymaking Assessment under section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277). 71 FR 42199. DOE received no comments concerning section 654 in response to the July 2006 proposed rule and therefore, is taking no further action in today's final rule with respect to this provision.

I. Review Under Executive Order 12630

DOE determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (March 18, 1988), that today's rule would not result in any takings that might require compensation under the Fifth Amendment to the United States Constitution. 71 FR 42199. DOE received no comments concerning Executive Order 12630 in response to the July 2006 proposed rule and, therefore, is taking no further action in today's final rule with respect to this Executive Order.

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

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines each agency establishes pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs of OMB a Statement of Energy Effects for any proposed significant energy action. DOE determined that the proposed rule was not a ''significant energy action'' within the meaning of Executive Order 13211. 71 FR 42199. In addition, the Administrator of OIRA did not designate this action as a significant energy action. Accordingly, DOE did not prepare a Statement of Energy Effects on the proposed rule. DOE received no comments on this issue in response to the July 2006 proposed rule. As with the proposed rule, DOE has concluded that today's final rule is not a significant energy action within the meaning of Executive Order 13211, and has not prepared a Statement of Energy Effects on the rule.

L. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress a report regarding the issuance of today's final rule prior to the effective dates set forth at the outset of this notice. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

V. 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 430

Administrative practice and procedure, Energy conservation test procedures, Household appliances.

10 CFR Part 431

Administrative practice and procedure, Commercial products, Energy conservation test procedures.

Issued in Washington, DC, on December 9, 2009.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

■ For the reasons stated in the preamble, Chapter II, Subchapter D, of Title 10 of the Code of Federal Regulations is amended to read as set forth below:

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; 28 U.S.C. 2461 note.

■ 2. Section 430.24 is amended by revising the introductory paragraph and by adding new paragraphs (w), (x), (y), (z), (aa), and (bb) to read as follows:

§ 430.24 Units to be tested.

When testing of a covered product is required to comply with section 323(c) of the Act, or to comply with rules prescribed under sections 324 or 325 of the Act, a sample shall be selected and tested comprised of units, or be representative of production units of the basic model being tested, and shall meet the following applicable criteria. Components of similar design may be substituted without requiring additional testing if the represented measures of energy consumption, or, in the case of showerheads, faucets, water closets and urinals, water use, continue to satisfy the applicable sampling provision.

* * * * *

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

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

(i) The mean of the sample, or

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

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

(i) The mean of the sample, or

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

(x) For each basic model of ceiling fan light kit with sockets for medium screw

base lamps or pin-based fluorescent lamps selected for testing, a sample of sufficient size shall be selected at random and tested to ensure that—

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

(i) The mean of the sample, or

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

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

(i) The mean of the sample, or

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

(y) For each basic model of bare or covered (no reflector) medium base compact fluorescent lamp selected for testing, a sample of sufficient size shall be selected at random and tested to ensure that—

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

(i) The mean of the sample, or

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

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

(i) The mean of the sample, or

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

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

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

(i) The mean of the sample, or

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

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

(i) The mean of the sample, or

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

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

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

(i) The mean of the sample, or

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

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

(i) The mean of the sample, or

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

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

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

(i) The mean of the sample, or

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

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

(i) The mean of the sample, or

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

■ 3. Section 430.62 is amended by adding new paragraphs (a)(4)(xviii), (a)(4)(xix), (a)(4)(xx), (a)(4)(xxi), and (a)(4)(xxii) to read as follows:

§ 430.62 Submission of data.

(a) * * *

(4) * * *

(xviii) Ceiling fans, the model number.

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

(xx) Medium base compact fluorescent lamps, the minimum initial efficacy in lumens per watt, the lumen maintenance at 1,000 hours in lumens, the lumen maintenance at 40 percent of rated life in lumens, the rapid cycle stress test, and the lamp life in hours.

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

(xxii) Torchieres, the model number.

* * * * *

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

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

Authority: 42 U.S.C. 6291–6317.

■ 5. Section 431.2 is amended by adding, in alphabetical order, the definitions of ''Independent laboratory'' and ''Manufacturer's model number'' to read as follows:

§ 431.2 Definitions.

* * * * *

Independent laboratory means a laboratory or test facility not controlled by, affiliated with, having financial ties with, or under common control with the manufacturer or distributor of the covered equipment being evaluated.

* * * * *

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

* * * * *

■ 6. Add a new § 431.65 to subpart C of part 431 to read as follows:

§ 431.65 Units to be tested.

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

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

(1) The mean of the sample, or

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

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

(1) The mean of the sample, or

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

(Components of similar design may be substituted without requiring additional

testing if the represented measures of energy continue to satisfy the applicable sampling provision.)

■ 7. Add a new § 431.135 to subpart H of part 431 to read as follows:

§ 431.135 Units to be tested.

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

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

(1) The mean of the sample, or

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

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

(1) The mean of the sample, or

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

(Components of similar design may be substituted without requiring additional testing if the represented measures of energy continue to satisfy the applicable sampling provision.)

■ 8. Section 431.172 is amended by revising the introductory text, and adding the definition of ''Alternate efficiency determination method or AEDM'' in alphabetical order to read as follows:

§ 431.172 Definitions.

The following definitions apply for purposes of subparts D through G, J through K and subpart T of this part. Other terms in these subparts shall be defined elsewhere in this Part and, if not defined in this part, shall have the meaning set forth in section 340 of the Act.

Alternate efficiency determination method or AEDM means a method of calculating the efficiency of a commercial HVAC and WH product, in terms of the descriptor used in or under section 342(a) of the Act to state the energy conservation standard for that product.

* * * * *

■ 9. Revise subpart J of part 431 to read as follows:

Subpart J—Provisions for Commercial Heating, Ventilating, Air-Conditioning and Water Heating Products

Sec.

431.174 Additional requirements applicable to Voluntary Independent Certification Program participants.
431.175 Additional requirements applicable to non-Voluntary Independent Certification Program participants.
431.176 Voluntary Independent Certification Programs.

Subpart J—Provisions for Commercial Heating, Ventilating, Air-Conditioning and Water Heating Products

§ 431.173 Requirements applicable to all manufacturers.

(a) *General.* A manufacturer of a HVAC and WH product may not distribute any basic model of such equipment in commerce unless the manufacturer has determined the efficiency of the basic model either from testing of the basic model or from application of an alternative efficiency determination method (AEDM) to the basic model, in accordance with the requirements of this section. In instances where a manufacturer has tested that basic model to validate an AEDM, the efficiency of that basic model must be determined and rated according to results from actual testing. (For purposes of this subpart, the ''efficiency'' of a commercial HVAC and WH product means the energy efficiency or energy use of that product, expressed in terms of the descriptor that referenced in section 342(a) of the Act to state the energy conservation standard for that product.)

(b) *Testing.* If a manufacturer tests a basic model pursuant to this section to determine its efficiency, the manufacturer must:

(1) Select at random the unit(s) to be tested, which must be representative of the basic model,

(2) Perform the testing in accordance with the applicable Department of Energy test procedure,

(3) Meet industry standards for the measurement accuracy of testing for the equipment being tested. This includes accuracy requirements in applicable test procedures, accuracy achieved by laboratory-grade equipment, and the accuracy of calibration standards, and

(4) Meet the requirements of either § 431.174(b) or § 431.175(a), whichever is applicable.

(c) *Alternative efficiency determination methods*—(1) *Criteria an AEDM must satisfy.* You may not apply an AEDM to a basic model to determine its efficiency pursuant to this subpart unless:

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

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

(2) *Subsequent verification of an AEDM.* If you have used an AEDM pursuant to this subpart,

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

(A) The method or methods used;

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

(C) Complete test data, product information, and related information that you generated or acquired under paragraph (c)(1) of this section and §§ 431.174(c) or 431.(b)(1), as applicable; and

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

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

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

(B) Provide analyses of previous simulations conducted by you;

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

(D) Conduct a combination of these.

(3) *Limitation on use of an AEDM.* A manufacturer may not knowingly use an AEDM to overrate the efficiency of a basic model.

§ 431.174 Additional requirements applicable to Voluntary Independent Certification Program participants.

(a) *Description of Voluntary Independent Certification Program participant.* For purposes of this subpart, a manufacturer that participates in a Voluntary Independent Certification Program (VICP) approved by the Department for a commercial HVAC and WH product, as described in § 431.176, and that complies with all requirements imposed by that program, is a ''VICP participant'' with respect to that product.

(b) *Testing.* A VICP participant that tests a basic model pursuant to this subpart must use statistically valid and accurate methods to arrive at the efficiency rating of such basic model.

(c) *Alternative efficiency determination methods.* Before using an

AEDM to determine the efficiency of a basic model pursuant to this subpart, a VICP participant must apply the AEDM to one or more basic models that have been tested in accordance with §§ 431.173(b) and 431.174(b) of this subpart, and the predicted efficiency calculated for each such basic model from application of the AEDM must be within 5 percent of the efficiency determined from testing that basic model. In addition, the predicted efficiency(ies) calculated for the tested basic model(s) must on average be within one percent of the efficiency(ies) determined from testing such basic model(s).

(d) *Limitation on use of an Alternative Efficiency Determination Method.* A manufacturer may not use an AEDM to overrate the efficiency of a basic model.

§ 431.175 Additional requirements applicable to non-Voluntary Independent Certification Program participants.

If you are a manufacturer that is not a VICP participant with respect to a particular type of commercial HVAC and WH product, you must meet the following requirements as to that product.

(a) *Testing.* You must perform any testing of a basic model pursuant to this subpart under the supervision of independent testing personnel, or have such testing performed at an independent laboratory. In addition, you must test a sufficient number of units of the basic model, and the efficiency rating of the basic model must be determined, such that,

(1) Any represented value of energy efficiency is no greater than the lower of the mean of the sample, or the lower 95 percent confidence limit of the true mean divided by 0.95, and

(2) Any represented value of energy usage is no less than the greater of the mean of the sample, or the upper 95 percent confidence limit of the true mean divided by 1.05.

(b) *Alternative efficiency determination methods.* Before using an AEDM to determine the efficiency of a basic model pursuant to this subpart, you must first:

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

(2) Obtain from the Department approval of the AEDM. The Department will provide such approval after receiving from you documentation which establishes that the AEDM satisfies the requirements of §§ 431.173(c)(1) and 431.175(b)(1) of this subpart.

(3) *Validation of an AEDM.* To use an AEDM under this subpart, the manufacturer must validate it as follows:

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

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

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

(4) *Limitation on use of an AEDM.* A manufacturer may not use an AEDM to overrate the efficiency of a basic model.

§ 431.176 Voluntary Independent Certification Programs.

(a) The Department will approve a Voluntary Independent Certification Program (VICP) for a commercial HVAC and WH product if the VICP meets all of the following criteria:

(1) The program publishes its operating procedures in written form, and permits participation by all manufacturers of products covered by the program so long as they comply with the VICP's requirements concerning operation of the program.

(2) The program requires each participant to report to the program the efficiency of each basic model that the participant manufactures and that is covered by the program. The participant must determine such efficiency based on measurement of the basic model's performance.

(3) The program publishes the efficiency ratings received from each participant, or otherwise makes the ratings readily available to the general public and to the Department.

(4) The program conducts periodic verification testing on listed equipment, by testing the efficiency of each basic model at least once every five years and comparing its rated efficiency to the test results.

(5) An independent laboratory conducts the tests, or independent laboratory personnel supervise the tests.

(6) For verification testing, the testing personnel select units randomly from the manufacturer's stock.

(7) The program uses efficiency testing in accordance with the applicable Department test procedures.

(8) The program's verification testing meets industry standards for the accuracy of testing and of rating results for the equipment being tested, and the program satisfactorily describes how it meets these standards.

(9) The program has a standard for determining whether the efficiency rating a manufacturer claims for a product is valid.

(10) The program requires that, if a basic model fails verification testing conducted by the VICP, the manufacturer of the basic model must remove it from production and sale if the verification testing results show it is not in compliance with EPCA efficiency standards, or correctly re-rate it if it complies with such standards. The program must also provide that a participating manufacturer will be expelled from the VICP if it does not comply with such requirements, and that the VICP will report to the Department certification test results that find the performance of a basic model not to meet EPCA efficiency standards. (A basic model ''fails'' verification testing when the VICP has compared the basic model's efficiency rating resulting from completion of that testing with the efficiency rating claimed by the manufacturer, and has determined that the rating claimed by the manufacturer is not valid.)

(11) The program provides for penalties or other incentives to encourage manufacturers to report accurate and reliable efficiency ratings.

(12) The program provides to the manufacturer copies of all records of completed verification testing performed on the manufacturer's equipment covered by the program.

(13) The VICP makes available for DOE review, data on the results of its verification testing, including the following for each basic model on which the VICP has performed verification testing:

(i) The measured efficiency from the verification testing,

(ii) The manufacturer's efficiency rating, and

(iii) Either the applicable energy conservation standard or a description

of the model sufficient to enable the Department to determine such standard.

(14) The program contains provisions under which each participating manufacturer can challenge ratings submitted by other manufacturers, which it believes to be in error.

(b) If the organization operating an approved VICP makes any changes in its program, the organization must notify the Department of such changes within 30 days of their occurrence, and the Department may then rescind or continue its approval.

■ 10. Add a new § 431.205 to subpart L of part 431 to read as follows:

§ 431.205 Units to be tested.

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

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

(1) The mean of the sample, or

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

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

(1) The mean of the sample, or

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

(Components of similar design may be substituted without requiring additional testing if the represented measures of energy continue to satisfy the applicable sampling provision.)

■ 11. Add a new § 431.225 to subpart M of part 431 to read as follows:

§ 431.225 Units to be tested.

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

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

(1) The mean of the sample, or

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

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

(1) The mean of the sample, or

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

(Components of similar design may be substituted without requiring additional testing if the represented measures of energy continue to satisfy the applicable sampling provision.)

■ 12. Add a new § 431.265 to subpart O of part 431 to read as follows:

§ 431.265 Units to be tested.

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

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

(1) The mean of the sample, or

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

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

(1) The mean of the sample, or

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

(Components of similar design may be substituted without requiring additional testing if the represented measures of energy continue to satisfy the applicable sampling provision.)

■ 13. Add a new § 431.295 to subpart Q of part 431 to read as follows:

§ 431.295 Units to be tested.

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

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

(1) The mean of the sample, or

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

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

(1) The mean of the sample, or

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

(Components of similar design may be substituted without requiring additional testing if the represented measures of energy continue to satisfy the applicable sampling provision.)

■ 14. Add a new subpart T to part 431 to read as follows:

Subpart T—Certification and Enforcement

Sec.

431.370 Purpose and scope.
431.371 Submission of data.
431.372 Sampling.
431.373 Enforcement.
Appendix A to Subpart T of Part 431—Compliance Statement for Certain Commercial Equipment
Appendix B to Subpart T of Part 431—Certification Report for Certain Commercial Equipment
Appendix C to Subpart T of Part 431—Certification Report for Distribution Transformers
Appendix D to Subpart T of Part 431—Enforcement for Performance Standards; Compliance Determination Procedure for Certain Commercial Equipment

Subpart T—Certification and Enforcement

§ 431.370 Purpose and scope.

This subpart sets forth the procedures to be followed for manufacturer compliance certifications of all covered equipment except electric motors, and for the Department's enforcement action to determine whether a basic model of covered equipment, other than electric motors and distribution transformers, complies with the applicable energy or water conservation standard set forth in this part. Energy and water conservation standards include minimum levels of efficiency and maximum levels of consumption (also referred to as performance standards), and prescriptive design requirements (also referred to as design standards). This subpart does not apply to electric motors.

§ 431.371 Submission of data.

(a) *Certification.* (1) Except as provided in paragraph (a)(2) of this section, each manufacturer or private labeler before distributing into the stream of commerce any basic model of covered equipment covered by this subpart and subject to an energy or water conservation standard set forth in this part, shall certify by means of a compliance statement and a certification report that each basic model meets the applicable energy or water conservation standard. Except as provided in paragraph (a)(2) of this section, each manufacturer or private labeler shall file

a compliance statement and its first certification report with the Department on or before (180 days after the Department of Energy publishes a document in the **Federal Register** announcing OMB approval of the information collection requirements in § 431.371). The compliance statement, signed by the company official submitting the statement, and the certification report(s) shall be sent by certified mail to: U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121, or e-mailed to the Department at: *certification.report@ee.doe.gov.*

(2) Each manufacturer or private labeler of a basic model of commercial clothes washer, distribution transformer, traffic signal module, pedestrian module, and commercial prerinse spray valve shall file a compliance statement and its first certification report with the Department on or before (180 days after the Department of Energy publishes a document in the **Federal Register** announcing OMB approval of the information collection requirements in § 431.371).

(3) *Amendment of information.* If information in a compliance statement or certification report previously submitted to the Department under this section is found to be incorrect, each manufacturer or private labeler (or an authorized representative) must submit the corrected information to the Department at the address and in the manner described in this section.

(4) Notices designating a change of third-party representative must be sent to the Department at the address and in the manner described in this section.

(5) The compliance statement, which each manufacturer or private labeler need not submit more than once unless the information on the report changes, shall include all information specified in the format set forth in appendix A of this subpart and shall certify, with respect to each basic model currently produced by the manufacturer and new basic models it introduces in the future, that:

(i) Each basic model complies and will comply with the applicable energy or water conservation standard;

(ii) All representations as to efficiency in the manufacturer's certification report(s) are and will be based on testing and/or use of an AEDM in accordance with 10 CFR Part 431;

(iii) All information reported in the certification report(s) is and will be 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.

(6) Each manufacturer must submit to the Department a certification report for all of its basic models.

(i) For covered equipment that are subject to standards other than distribution transformers and electric motors, the certification report (for which a suggested format is set forth in appendix B of this subpart) shall include for each basic model the product type, product class, manufacturer's name, private labeler's name(s) (if applicable), and the manufacturer's model number(s), and:

(A) The thermal efficiency as a percentage and the maximum rated capacity (rated maximum input) in Btu/h of commercial warm air furnaces;

(B) The combustion efficiency as a percentage and the capacity (rated maximum input) in Btu/h of commercial package boilers;

(C) The seasonal energy efficiency ratio and the cooling capacity in Btu/h of small commercial, air cooled, three-phase, packaged air conditioners less than 65,000 Btu/h;

(D) The energy efficiency ratio and the cooling capacity in Btu/h of small commercial water-cooled and evaporatively cooled packaged air conditioners less than 65,000 Btu/h;

(E) The energy efficiency ratio and the cooling capacity in Btu/h of large and very large commercial air cooled, water-cooled, and evaporatively cooled packaged air conditioners;

(F) The energy efficiency ratio and the cooling capacity in Btu/h of packaged terminal air conditioners;

(G) The seasonal energy efficiency ratio, the heating seasonal performance factor and the cooling capacity in Btu/h of small commercial air cooled, three-phase packaged air conditioning heat pumps less than 65,000 Btu/h;

(H) The energy efficiency ratio, the coefficient of performance and the cooling capacity in Btu/h of small commercial water-source packaged air conditioning heat pumps;

(I) The energy efficiency ratio, the coefficient of performance and the cooling capacity in Btu/h of large and very large air cooled commercial package air conditioning heat pumps;

(J) The energy efficiency ratio, coefficient of performance and the cooling capacity in Btu/h of packaged terminal heat pumps;

(K) The maximum standby loss in percent per hour of electric storage water heaters;

(L) The minimum thermal efficiency in percent, the maximum standby loss in Btu/h, and the size (input capacity) in Btu/h of gas- and oil-fired storage water heaters;

(M) The minimum thermal efficiency in percent, maximum standby loss in Btu/h, and the size (storage capacity) in gallons of gas- and oil-fired instantaneous water heaters and gas- and oil-fired hot water supply boilers greater than or equal to 10 gallons;

(N) The minimum thermal efficiency in percent and the size (storage capacity) in gallons of gas- and oil-fired instantaneous water heaters and gas- and oil-fired hot water supply boilers less than 10 gallons;

(O) The minimum thermal insulation and the storage capacity of unfired hot water storage tanks;

(P) The maximum daily energy consumption in kilowatt hours per day and volume in cubic feet of refrigerators with solid doors, refrigerators with transparent doors, freezers with solid doors, and freezers with transparent doors;

(Q) The maximum daily energy consumption in kilowatt hours per day and adjusted volume in cubic feet of refrigerator-freezers with solid doors;

(R) The equipment type, type of cooling, maximum energy use in kilowatt hours per 100 pounds of ice, maximum condenser water use in gallons per 100 pounds of ice, and harvest rate in pounds of ice per 24 hours of commercial ice makers;

(S) The modified energy factor and water consumption factor of commercial clothes washers;

(T) The input power demand in watts of illuminated exit signs;

(U) The nominal and maximum wattage in watts and signal type of traffic signal modules and pedestrian modules; and

(V) The flow rate in gallons per minute of commercial prerinse spray valves.

(ii) For the least efficient basic model of distribution transformer within each ''kilovolt ampere (kVA) grouping'' for which this part prescribes an efficiency standard, the certification report (for which a suggested format is set forth in appendix C of this subpart shall include the kVA rating, the insulation type (*i.e.,* low-voltage dry-type, medium-voltage dry-type or liquid-immersed), the number of phases (*i.e.,* single-phase or three-phase), the basic impulse insulation level (BIL) group rating (for medium-voltage dry-types), the model number(s), the efficiency, and the method used to determine the efficiency (*i.e.,* actual testing or an AEDM). As used in this section, a ''kVA grouping''

is a group of basic models which all have the same kVA rating, have the same insulation type (*i.e.,* low-voltage dry-type, medium-voltage dry-type or liquid-immersed), have the same number of phases (*i.e.,* single-phase or three-phase), and, for medium-voltage dry-types, have the same BIL group rating (*i.e.,* 20–45 kV BIL, 46–95 kV BIL or greater than 96 kV BIL).

(7) Copies of reports to the Federal Trade Commission that include the information specified in paragraph (a)(6) of this section could serve in lieu of the certification report.

(b) *Model Modifications.* Any change to a basic model that affects energy or water consumption (in the case of prerinse spray valves) constitutes the addition of a new basic model. If such a change reduces consumption, the new model shall be considered in compliance with the standard without any additional testing. If, however, such a change increases consumption while meeting the standard, then

(1) For distribution transformers, the manufacturer must submit all information required by paragraph (a)(6)(ii) of this section for the new basic model, unless the manufacturer has previously submitted to the Department a certification report for a basic model of distribution transformer that is in the same kVA grouping as the new basic model, and that has a lower efficiency than the new basic model;

(2) For other equipment, the manufacturer must submit all information required by paragraph (a)(6) of this section for the new basic model; and

(3) Any such submission shall be by certified mail, to: Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0121, or e-mailed to the Department at: *certification.report@ee.doe.gov.*

(c) *Discontinued model.* For equipment other than distribution transformers, when production of a basic model has ceased and is no longer being distributed, the manufacturer shall report this, by certified mail, to: U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121, or e-mailed to the Department at: *certification.report@ee.doe.gov.* For each basic model, the report shall include: equipment type, equipment class, the manufacturer's name, the private labeler's 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) *Third-party representation.* A manufacturer or private labeler may elect to use a third party (such as a trade association or other authorized representative) to submit the certification report to the Department. Such certification reports shall include all the information specified in paragraph (a)(6) 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 the Department on their behalf. The third-party representative also may submit discontinued model information on behalf of an authorizing manufacturer.

§ 431.372 Sampling.

For purposes of a certification of compliance, the determination that a basic model complies with the applicable energy conservation standard or water conservation standard shall be based upon the testing and sampling procedures, and other applicable rating procedures set forth in this part. For purposes of a certification of compliance, the determination that a basic model complies with the applicable design standard shall be based on the incorporation of specific design requirements specified in this part.

§ 431.373 Enforcement.

For covered equipment other than electric motors, this section sets forth procedures the Department will follow in pursuing alleged non-compliance with an applicable energy or water conservation standard. Paragraph (c) of this section applies to all such covered equipment, paragraphs (a)(1) and (a)(2) of this section apply to all such equipment except for distribution transformers and commercial heating, ventilating, and air conditioning equipment and commercial water heating equipment.

(a) *Performance standards*—(1) *Test notice.* Upon receiving information in writing concerning the energy performance or water performance (in the case of commercial prerinse spray valves) of a particular covered equipment sold by a particular manufacturer or private labeler, which indicates that the covered equipment may not be in compliance with the applicable energy- or water-performance standard, the Secretary may conduct a review of the test records. The Secretary may then conduct enforcement testing of that equipment by means of a test notice addressed to the manufacturer or private labeler in accordance with the following requirements:

(i) The test notice procedure will only be followed after the Secretary or his/her designated representative has examined the underlying test data (or, where appropriate, data about the use of an alternative efficiency determination method (AEDM)) provided by the manufacturer, and after the manufacturer has been offered the opportunity to meet with the Department to verify compliance with the applicable energy conservation standard or water conservation standard. When compliance of a basic model was certified based on an AEDM, the Department has the discretion to pursue other steps provided under this part for verifying the AEDM before invoking the test notice procedure. A representative designated by the Secretary must be permitted to observe any reverification procedures undertaken according to this subpart, and to inspect the results of such reverification.

(ii) The test notice will be signed by the Secretary or his/her designee and will be mailed or delivered by the Department to the plant manager or other responsible official designated by the manufacturer.

(iii) The test notice will specify the model or basic model to be selected for testing, the number of units to be tested, the method for selecting these units, the date and time at which testing is to begin, the date when testing is scheduled to be completed, and the facility at which testing will be conducted. The test notice may also provide for situations in which the selected basic model is unavailable for testing, and it may include alternative basic models. For equipment that this part allows to be rated by use of an AEDM, the specified basic model may be one that the manufacturer has rated by actual testing or that it has rated by the use of an AEDM.

(iv) The Secretary may require in the test notice that the manufacturer of a covered equipment shall ship at his expense a reasonable number of units of each basic model specified in the test notice to a testing laboratory designated by the Secretary. The number of units of a basic model specified in a test notice shall not exceed 20.

(v) Within five working days of the time the units are selected, the manufacturer must ship the specified test units of a basic model to the designated testing laboratory.

(2) *Testing laboratory.* Whenever the Department conducts enforcement

testing at a designated laboratory in accordance with a test notice under this section, the resulting test data shall constitute official test data for that basic model. The Department will use such test data to make a determination of compliance or noncompliance.

(3) *Sampling.* The Secretary will base the determination of whether a manufacturer's basic model complies with the applicable energy- or water-performance standard on testing conducted in accordance with the applicable test procedures specified in this part, and with the following statistical sampling procedures:

(i) For commercial prerinse spray valves, illuminated exit signs, traffic signal modules and pedestrian modules, refrigerated bottled or canned vending machines, and commercial clothes washers, the methods are described in appendix B to subpart F of part 430 (Sampling Plan for Enforcement Testing).

(ii) For automatic commercial ice makers, as well as commercial refrigerators, freezers, and refrigerators-freezers, the methods are described in appendix C to subpart T of part 431 and include the following provisions:

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

(B) Except as provided in paragraph (a)(3)(ii)(C) of this section, if fewer than two units of basic model are available for testing when the manufacturer receives the test notice, then:

(*1*) If only one unit of a basic model is available for testing, the Department will test that unit, and will base the compliance determination on the results for that unit in a manner otherwise in accordance with this section. Available units are those, which are available for commercial distribution within the United States.

(*2*) If a basic model is very large or has unusual testing requirements, the Department may decide to base the determination of compliance on the testing of one unit, if the manufacturer so requests and provides sufficient justification for the request.

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

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

(C) Notwithstanding paragraphs (a)(3)(ii)(A) and (a)(3)(ii)(B) of this section, if testing of the available or subsequently available units of a basic model would be impractical, as for example when a basic model is very large, has unusual testing requirements, or has limited production, the Department may in its discretion decide to base the determination of compliance on the testing of fewer than the available number of units, if the manufacturer so requests and demonstrates that the criteria of this paragraph are met.

(iii) For commercial HVAC and WH products, the methods are described in appendix C to subpart T of part 431 and include the following provisions:

(A) Except as required or provided in paragraphs (a)(3)(iii)(B) and (a)(3)(iii)(C) of this section, initially, the Department will test two units.

(B) Except as provided in paragraph (a)(3)(iii)(C) of this section, if fewer than two units of basic model are available for testing when the manufacturer receives the test notice, then:

(*1*) The Department will test the available unit(s); or

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

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

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

(C) Notwithstanding paragraphs (a)(3)(iii)(A) and (a)(3)(iii)(B) of this section, if testing of the available or subsequently available units of a basic model would be impractical, as for example when a basic model is very large, has unusual testing requirements, or has limited production, the Department may in its discretion decide to base the determination of compliance on the testing of fewer than the available number of units, if the manufacturer so requests and demonstrates that the criteria of this paragraph are met.

(iv) For the purposes of paragraphs (a)(3)(ii)(A) through (a)(3)(ii)(C) and (a)(3)(iii)(A) through (a)(3)(iii)(C) of this section, when it tests three or fewer units, the Department will base the compliance determination on the results of such testing in a manner otherwise in accordance with this section.

(v) For the purposes of paragraphs (a)(3)(ii)(A) through (a)(3)(ii)(C) and (a)(3)(iii)(A) through (a)(3)(iii)(C) of this section, available units are those that are available for commercial distribution within the United States.

(4) *Test unit selection.* (i) For commercial prerinse spray valves, illuminated exit signs, traffic signal modules and pedestrian modules, refrigerated bottled or canned vending machines, and commercial clothes washers, the following applies:

(A) The Department shall select a batch, a batch sample, and test units from the batch sample in accordance with the following provisions of this paragraph and the conditions specified in the test notice.

(B) The batch may be subdivided by the Department using criteria specified in the test notice.

(C) The Department will then randomly select a batch sample of up to 20 units from one or more subdivided groups within the batch. The manufacturer shall keep on hand all units in the batch sample until the basic model is determined to be in compliance or non-compliance.

(D) The Department will randomly select individual test units comprising the test sample from the batch sample.

(E) All random selection shall be achieved by sequentially numbering all of the units in a batch sample and then using a table of random numbers to select the units to be tested.

(ii) For automatic commercial ice makers, as well as commercial refrigerators, freezers, and refrigerator-freezers, the following applies:

(A) The Department will select a batch from all available units, and a test sample (*i.e.,* the units to be tested) from the batch, in accordance with the provisions of this paragraph and the conditions specified in the test notice.

(B) The Department may select the batch by utilizing the criteria specified in the test notice (date of manufacture, component-supplier, location of manufacturing facility, or other criteria) which may differentiate one unit from another within a basic model.

(C) The Department will randomly select individual units to be tested, comprising the test sample, from the batch. The Department will achieve random selection by sequentially numbering all of the units in a batch and then using a table of random numbers to select the units to be tested. The manufacturer must keep on hand all units in the batch until such time as the inspector determines that the unit(s) selected for testing is (are) operative. Thereafter, once a manufacturer distributes or otherwise disposes of any unit in the batch, it may no longer claim under paragraph (a)(5)(iii) of this section that a unit selected for testing is defective due to a manufacturing defect or failure to operate in accordance with its design and operating instructions.

(5) *Test unit preparation.* (i) Before and during the testing, a test unit selected in accordance with paragraph (a)(4) of this section shall not be prepared, modified, or adjusted in any manner unless such preparation, modification, or adjustment is allowed

by the applicable Department test procedure. The Department will test each unit in accordance with the applicable test procedures.

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

(iii) A test unit shall be considered defective if it is inoperative. A test unit is also defective if it is found to be in noncompliance due to a manufacturing defect or due to failure of the unit to operate according to the manufacturer's design and operating instructions, and the manufacturer demonstrates by statistically valid means that, with respect to such defect or failure, the unit is not representative of the population of production units from which it is obtained. Defective units, including those damaged due to shipping or handling, must be reported immediately to the Department. The Department will authorize testing of an additional unit on a case-by-case basis.

(6) *Testing at manufacturer's option.* (i) If the Department determines a basic model to be in noncompliance with the applicable energy performance standard or water performance standard at the conclusion of its initial enforcement sampling plan testing, the manufacturer may request that the Department conduct additional testing of the basic model. Additional testing under this paragraph must be in accordance with the applicable test procedure, and:

(A) For commercial prerinse spray valves, illuminated exit signs, traffic signal modules and pedestrian modules, refrigerated bottled or canned vending machines, and commercial clothes washers, the applicable provisions in appendix B to subpart F of part 430;

(B) For automatic commercial ice makers, as well as commercial refrigerators, freezers, and refrigerator-freezers, the applicable provisions in appendix C of this subpart, and limited to a maximum of six additional units of basic model.

(ii) All units tested under this paragraph shall be selected and tested in accordance with paragraphs (a)(1)(v), (a)(2), (a)(4), and (a)(5) of this section.

(iii) The manufacturer shall bear the cost of all testing under this paragraph.

(iv) The Department will advise the manufacturer of the method for selecting the additional units for testing, the date and time at which testing is to begin, the date by which testing is scheduled to be completed, and the facility at which the testing will occur.

(v) The manufacturer shall cease distribution of the basic model tested under the provisions of this paragraph from the time the manufacturer elects to exercise the option provided in this paragraph until the basic model is determined to be in compliance. The Department may seek civil penalties for all units distributed during such period.

(vi) If the additional testing results in a determination of compliance, the Department will issue a notice of allowance to resume distribution.

(b) *Design standard.* In the case of a design standard, the Department can determine that a model is noncompliant after the Department has examined the underlying design information from the manufacturer and has offered the manufacturer the opportunity to verify compliance with the applicable design standard.

(c) *Cessation of distribution of a basic model of commercial equipment other than electric motors.* (1) In the event the Department determines, in accordance with enforcement provisions set forth in this subpart, a model of covered equipment is noncompliant, or if a manufacturer or private labeler determines one of its models to be in noncompliance, the manufacturer or private labeler shall:

(i) Immediately cease distribution in commerce of all units of the basic model in question;

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

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

(2) The manufacturer may modify the noncompliant basic model in such manner as to make it comply with the applicable performance standard. The manufacturer or private labeler must treat such a modified basic model as a new basic model and certify it in accordance with the provisions of this subpart. In addition to satisfying all requirements of this subpart, the manufacturer must also maintain records that demonstrate that modifications have been made to all units of the new basic model before its distribution in commerce.

(3) If a manufacturer or private labeler has a basic model that is not properly certified in accordance with the requirements of this subpart, the Secretary may seek, among other remedies, injunctive action to prohibit distribution in commerce of the basic model.

Appendix A to Subpart T of Part 431—Compliance Statement for Certain Commercial Equipment

Equipment Type:

_____

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

_____

_____

[Company name] (''the company'') submits this Compliance Statement under 10 CFR Part 431 (Energy Efficiency Program for Certain Commercial and Industrial Equipment) and Part C of the Energy Policy and Conservation Act (Pub. L. 94–163), and amendments thereto. I am signing this on behalf of and as a responsible official of the company. All basic models of commercial or industrial equipment subject to energy conservation standards specified in 10 CFR part 431 that this company manufacturers comply with the applicable energy or water conservation standard(s). We have complied with the applicable testing requirements (prescribed in 10 CFR part 431) in making this determination, and in determining the energy efficiency, energy use, or water use that is set forth in any accompanying Certification Report. All information in such Certification Report(s) and in this Compliance Statement is true, accurate, and complete. The company pledges that all this information in any future Compliance Statement(s) and Certification Report(s) will meet these standards, and that the company will comply with the energy conservation requirements in 10 CFR part 431 with regard to any new basic model it distributes in the future. The company is aware of the penalties associated with violations of the Act and the regulations there under, 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 of Company Official:

_____

Title: _____

Firm or Organization: _____

Date: _____

Name of Person to Contact for Further Information: _____

Address: _____

_____

Telephone Number: _____

Facsimile Number: _____

Third-Party Representation (if applicable)

For a certification report prepared and submitted by a third-party organization under the provisions of 10 CFR part 431, the company official who authorized said third-party representation is:

Name: _____

Title: _____

Address: _____

_____

_____

Telephone Number: _____

Facsimile Number: _____

The third-party organization authorized to act as representative:
Third-Party Organization: _____
Address: _____
_____
Telephone Number: _____
Facsimile Number: _____

The Compliance Statement needs to be resubmitted if information on the form changes.

Appendix B to Subpart T of Part 431—Certification Report for Certain Commercial Equipment

All information reported in this Certification Report(s) is true, accurate, and complete. The company is aware of the penalties associated with violations of the Act, the regulations hereunder, 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 or Third-Party Representative: _____
Signature of Company Official or Third-Party Representative:

_____
Title: _____
Date: _____
Equipment Type: _____
Manufacturer: _____
Private Labeler (if applicable): _____
Name of Person to Contact for Further Information: _____
Address: _____
_____
Telephone Number: _____
Facsimile Number: _____
For Existing, New, or Modified Models: [1]
For Discontinued Models: [2]

Submit by Certified Mail to: U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, Mailstop EE–2J, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0121.

Submit by E-mail to: *certification.report@ee.doe.gov.*

Appendix C to Subpart T of Part 431—Certification Report for Distribution Transformers

All information reported in this 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 or Third-Party Representative: _____
Signature of Company Official or Third-Party Representative: _____
_____
Title: _____
Date: _____
Equipment Type: _____
Manufacturer: _____
Private Labeler (if applicable): _____
Name of Person to Contact for Further Information: _____
Address: _____
_____
Telephone Number: _____
Facsimile Number: _____

For Existing, New, or Modified Models: [1]

Prepare tables that will list distribution transformer efficiencies. Each table should have a heading that provides the name of the manufacturer, as well as the type of transformer (*i.e.,* low-voltage dry-type, liquid-immersed, or medium-voltage dry-type) and the number of phases for the transformers reported in that table. Each table should also have five columns, labeled ''kVA rating,'' ''BIL rating'' for medium-voltage units, ''Least efficient basic model (model number(s)),'' ''Efficiency (%)'' and ''Test Method Used.'' Each table should have one row for each of the kVA groups that are produced by the manufacturer and that are subject to minimum efficiency standards. In the ''Test Method Used'' column, the manufacturer should report whether the efficiency of the reported least efficient basic model in that kVA grouping was determined by testing or through the application of an alternative efficiency determination method.

Submit by Certified Mail to: U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, Mailstop EE–2J), Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0121.

Submit by E-mail to: *certification.report@ee.doe.gov.*

Appendix D to Subpart T of Part 431—Enforcement for Performance Standards; Compliance Determination Procedure for Certain Commercial Equipment

The Department will determine compliance as follows:

(a) The first sample size (n_1) must be four or more units, except as provided by § 431.373(a)(3).

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

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

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

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

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

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

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

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

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

or

$$LCL_1 = 95.0EPS, \text{ (whichever is greater).} \qquad [4b]$$

(2) For an energy use standard, compute the upper control limit (UCL1) according to:

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

or

$$UCL_1 = 1.05EPS, \text{ (whichever is less),} \qquad [5b]$$

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

(f)(1) Compare the sample mean to the control limit. The basic model is in compliance and testing is at an end if, for an energy efficiency standard, the sample mean is equal to or greater than the lower control limit or, for an energy consumption standard, the sample mean is equal to or less than the upper control limit. If, for an energy efficiency standard, the sample mean is less than the lower control limit or, for an energy

[1] Provide specific equipment information for each basic model required in 431.371(a)(6)(i), including the product class and manufacturer's model number(s).

[2] Provide manufacturer's model number(s).

consumption standard, the sample mean is greater than the upper control limit, compliance has not been demonstrated. Unless the manufacturer requests manufacturer-option testing and provides the additional units for such testing, the basic model is in noncompliance and the testing is at an end.

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

■ 15. Section 431.403 is amended by removing the word ''and'' at the end of paragraph (a)(2); removing the period at the end of paragraph (a)(3) and adding a semicolon in its place; and adding new paragraphs (a)(4) and (a)(5) to read as follows:

§ 431.403 Maintenance of records.

(a) * * *

(4) For commercial HVAC and WH products, the test data for all testing conducted pursuant to 10 CFR part 431, including any testing conducted by a VICP; and

(5) For commercial HVAC and WH products, the development, substantiation, application, and subsequent verification of any AEDM.

* * * * *

■ 16. Section 431.408 is added to subpart V to read as follows:

§ 431.408 Preemption of State regulations for covered equipment other than electric motors and commercial heating, ventilating, air-conditioning and water heating products.

This section concerns State regulations providing for any energy conservation standard, or water conservation standard (in the case of commercial prerinse spray valves or commercial clothes washers), or other requirement with respect to the energy efficiency, energy use, or water use (in the case of commercial prerinse spray valves or commercial clothes washers), for any covered equipment other than an electric motor or commercial HVAC and WH product. Any such regulation that contains a standard or requirement 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) and 345(e), (f) and (g) of the Act.

[FR Doc. E9–30887 Filed 1–4–10; 8:45 am]

BILLING CODE 6450–01–P