

opportunity to operate without marketing order requirements in order to review the effectiveness of the order. During the suspension period, the industry will be able to monitor the quality of potatoes being shipped. Should problems develop, suspension of the order will provide the Committee the alternative of reactivating the order. Therefore, the Committee voted to suspend, rather than terminate, the marketing order.

Accordingly, no changes will be made to the rule, based on the comment received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide>. Any questions about the compliance guide should be sent to Laurel May at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that the order suspended by this final rule, as hereinafter set forth, does not tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because handlers are aware of this rule, which was recommended at a public meeting. Also, a 60-day comment period was provided for in the interim rule.

#### List of Subjects in 7 CFR Part 953

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

Accordingly, the interim rule that suspended 7 CFR part 953 and that was published at 76 FR 33967 on June 10, 2011, is adopted as a final rule, without change.

Dated: October 14, 2011.

**David R. Shipman,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 2011-27275 Filed 10-20-11; 8:45 am]

**BILLING CODE 3410-02-P**

## DEPARTMENT OF ENERGY

### 10 CFR Parts 429 and 431

[Docket No. EERE-2011-BT-CE-0050]

RIN 1904-AC58

#### Energy Conservation Program: Compliance Date Regarding the Test Procedures for Walk-In Coolers and Freezers and the Certification for Metal Halide Lamp Ballasts and Fixtures

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

**ACTION:** Final rule.

**SUMMARY:** This document clarifies the compliance date by which manufacturers must begin to use portions of a recently promulgated test procedure (*i.e.*, the April 15, 2011 final rule) when certifying walk-in coolers and walk-in freezers. This document also adopts regulatory text changes to reflect the U.S. Department of Energy's (DOE) intent that only manufacturers of components of walk-in coolers and walk-in freezers are required to submit certification reports. Additionally, the final rule clarifies the types of test data needed to support the certification of compliance pursuant to DOE's existing test procedures for walk-in coolers and walk-in freezers and the recently promulgated test procedure for this equipment. Finally, DOE is adopting an extension to the compliance date for which manufacturers, including importers, need to certify compliance to the Department of metal halide lamp ballasts and fixtures.

**DATES:** This final rule is effective November 21, 2011.

**ADDRESSES:** The docket (*i.e.*, docket number EERE-2011-BT-CE-0050 and/or RIN number 1904-AC58) is available for review at <http://www.regulations.gov>, including **Federal Register** notices, comments, and other supporting documents/materials. All documents in the docket are listed in the <http://www.regulations.gov> index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

**FOR FURTHER INFORMATION CONTACT:** Ms. Ashley Armstrong, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE-2J, 1000 Independence Avenue, SW., Washington, DC 20585-0121. E-mail: [Ashley.Armstrong@ee.doe.gov](mailto:Ashley.Armstrong@ee.doe.gov).

In the Office of the General Counsel, contact Ms. Laura Barhydt, U.S.

Department of Energy, Office of the General Counsel, GC-32, 1000 Independence Avenue, SW., Washington, DC 20585-0121. Telephone: (202) 287-5772. E-mail: [Laura.Barhydt@hq.doe.gov](mailto:Laura.Barhydt@hq.doe.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background on the Test Procedures for Walk-In Coolers and Freezers

The Energy Policy and Conservation Act (EPCA), as amended by section 312(c) of the Energy Independence and Security Act (EISA 2007), requires the Department of Energy (DOE) to prescribe a test procedure to measure the energy use of walk-in coolers and freezers (collectively, walk-ins or WICFs). See 42 U.S.C. 6314(a). DOE recently satisfied this requirement by issuing a final rule establishing a test procedure for manufacturers to use when measuring the energy use or energy efficiency of certain walk-in components: Panels, non-display doors, display doors, and refrigeration systems. See 76 FR 21580 (April 15, 2011) (final rule prescribing walk-in test procedures) and 76 FR 33631 (June 9, 2011) (notice containing corrected formulas).

Since the publication of that rulemaking, DOE recognized a need to clarify the date by which manufacturers must begin using the test procedure. The **SUMMARY** and **DATES** sections of the preamble text to the final rule stated that the test procedures will be mandatory for making representations of energy usage or energy efficiency starting October 12, 2011; that is, 180 days after publication of the test procedure final rule. DOE published a notice of proposed rulemaking on August 9, 2011, which proposed to clarify that the compliance date for using the new test procedure for certifications of compliance will be the same as the compliance date for the performance-based energy conservation standards currently under development. 76 FR 48745. At this time, DOE plans to issue the performance-based standards final rule by 2012 and manufacturers must comply with those standards within three years of publication of the final rule. Thus, pending the completion of the performance-based energy conservation standards rulemaking, manufacturers will be required to certify compliance to those standards using the new test procedure in 2015, unless DOE adopts an alternative compliance date.<sup>1</sup> *Id.*

In addition, DOE clarified the entity responsible for certifying compliance to

<sup>1</sup> DOE may also provide for a delayed effective date if the Secretary determines this three-year period is inadequate. (42 U.S.C. 6313(f)(4)(B))

the Department for WICFs in the preamble of the certification, compliance, and enforcement final rule published on March 7, 2011 in the **Federal Register**. 76 FR 12422. Specifically, DOE discussed a certification scheme requiring the WICF component manufacturer to certify compliance to the Department. 76 FR 12442–44. Since the March 2011 final rule, DOE has received numerous additional inquiries and questions regarding this compliance scheme. Thus, the August 2011 NOPR proposed regulatory text in 10 CFR 429.53 to further clarify that only component manufacturers are required to submit certifications of compliance with the current standards (*i.e.*, those design-based standards resulting from the enactment of EISA 2007). 76 FR 48748. These clarifications are consistent with the initial approach outlined in the March 2011 final rule and are meant to help manufacturers further determine who is responsible for certifying compliance to the Department.

## II. Background for the Certification Compliance Date of Metal Halide Lamp Fixtures

DOE's recent certification, compliance and enforcement rulemaking extended the compliance dates for certification of several types of commercial equipment. 76 FR 38287, 38292. Specifically, DOE extended the certification compliance date for manufacturers of metal halide lamp fixtures to October 1, 2011. Since the issuance of the final rule, additional information has come to the attention of the DOE regarding a lack of sufficient test data to support certification on the full sample required by DOE's regulations. To provide parity with similarly situated manufacturers of other types of commercial equipment, DOE proposed to extend the certification compliance date further for manufacturers of metal halide lamp fixtures, requiring submittal of a certification report no later than 1 year following publication of this final rule (*i.e.*, approximately October 2012). 76 FR 48747, 48748.

## III. Discussion of Comments and Summary of Final Rule

In response to the August 2011 NOPR, DOE received 3 comments, which are discussed in detail below.

### A. Walk-In Coolers and Freezers

The Air-Conditioning, Heating, and Refrigeration Institute (AHRI) did not agree with DOE's proposal to set the test procedure compliance date to be the same as the date of compliance with the standards, but stated that the

manufacturers should not be responsible for compliance until after an alternate efficiency determination method (AEDM) rulemaking is complete. AHRI urged DOE to set the test procedure compliance date no sooner than 3 years from the completion of an AEDM rulemaking. (AHRI, No. 0006 at p. 2)

In response to the comment from AHRI, DOE clarifies that once the compliance date of the walk-in energy conservation standard is reached, manufacturers must use the new DOE test procedure to certify compliance with the performance-based standards. However, if use of an AEDM is allowed, manufacturers may use the AEDM to certify compliance as long as the manufacturers satisfy DOE's provisions governing the use of the AEDM. DOE intends to complete both the AEDM and performance-based standards rules in 2012. While the exact compliance date cannot be predicted at this time, DOE expects the publication of these two final rules to be on a similar schedule. As a result, consistent with AHRI's suggestion, under the rulemaking schedule currently underway, DOE anticipates that manufacturers are likely to have at least 3 years to make the transition to the new test procedure.

Regarding energy use representations, Hill Phoenix, a manufacturer of panels used in walk-in applications, stated that requiring energy representations (other than those based on R-value) to be based on the new test procedure (starting on October 12, 2011) would be unduly burdensome to manufacturers because the National Sanitation Foundation International (NSF) requires panel manufacturers to provide the panel's U-factor if the panel manufacturer is not providing refrigeration systems with the panels. Hill Phoenix recommended that DOE allow manufacturers additional time to complete the testing for purposes of representations, and recommended that the new test procedures only be used when the new standards go into effect (*i.e.*, three years after publication). (Hill Phoenix, No. 0005 at p. 1)

Under 42 U.S.C. 6314(d), 180 days after DOE has published a test procedure, no manufacturer, distributor, retailer, or private labeler may make any representation in writing or in any broadcast advertisement regarding the energy consumption of covered equipment—or the cost of energy consumed by that equipment—unless that equipment has been tested in accordance with that test procedure. See 42 U.S.C. 6314(d)(1). DOE is permitted to extend that 180-day requirement once for no more than 180 days upon receipt

of a timely submitted petition (*i.e.* submitted no later than the 60th day before the expiration of the period involved) from a manufacturer, distributor, retailer, or private labeler. In this case, a timely petition should have been filed by August 12, 2011; Hill Phoenix's comments were submitted on August 30, 2011. As a result, DOE cannot treat this comment as having been filed in a timely manner in accordance with this provision.

Nevertheless, DOE carefully examined this issue. After reviewing this issue, DOE has concluded that manufacturers who have already conducted the required testing in accordance with that new (April 2011) test procedure would be able to make the required representations, including those made to NSF. NSF certification is an ongoing process and must be maintained by manufacturers producing equipment for the food industry, which represent the vast majority of manufacturers in the walk-in industry. Manufacturers have had several months since the promulgation of that final rule to initiate and complete testing necessary for making these representations. While the U-factor testing required by DOE, including long-term thermal resistance testing, may take time to perform, DOE has no statutory authority to relieve manufacturers of the representation requirement under 42 U.S.C. 6314(d). In consideration of these factors, DOE cannot extend the amount of time available to manufacturers before they must begin to use the new April 2011 test procedure for all representations of energy use or energy efficiency using the new DOE test procedure, including U-factor.

DOE encourages voluntary compliance with the new test procedure prior to the compliance date of any energy conservation performance-based standards that may be set for walk-in equipment. However, if DOE sets energy conservation standards for walk-in equipment, the new test procedure must be used once the compliance date for those standards is reached.

DOE also notes that manufacturers must still use DOE's current testing procedure in 431.304(b)(1)–(4) to certify compliance to the EISA 2007 R-value standards. All R-value representations must be determined using DOE's testing procedure and sampling plans for WICF panels.

In the test procedure final rule, DOE established the industry standard AHRI 1250–2009 as the method for testing walk-in refrigeration systems. See 76 FR 33631. AHRI recommended that the entity responsible for certifying compliance should be the party

responsible for the rating of the entire refrigeration system as prescribed by the DOE test procedure. AHRI also stated that the party responsible for rating the refrigeration system would not necessarily be the manufacturer making the individual components constituting the refrigeration system (e.g., unit coolers or condensing units). AHRI requested that DOE clarify this point in the final rule. (AHRI, No. 0006 at p. 2) DOE plans to clarify which entity would be responsible for certifying compliance with any potential performance-based standard that DOE may set as part of the planned rulemaking addressing potential standards for walk-in equipment. DOE will consider AHRI's comments, along with others that are submitted, in that rulemaking proceeding.

DOE notes its adoption of provisions regarding testing for WICF panels in today's final rule. Specifically, DOE is clarifying that manufacturers are not, and will not, be required to test non-foam members and/or edge regions using the ASTM C518 test procedure prescribed in EPCA. Non-foam members and edge regions are only considered in the U-factor testing using ASTM C1363, which is part of the new DOE test procedures. Manufacturers have questioned whether the metal facers should be in place during testing. DOE does not consider the facers to be "structural members." DOE believes that the measurement of the R-value of the foam with facers should be equal to a measurement of the R-value of the foam without the facers. Consistent with this approach, DOE is adopting the following clarification in today's final rule: "Foam produced inside of a panel \* \* \* must be tested in its final foamed state and must not include any structural members or non-foam materials other than the panel's protective skins or facers."

Finally, DOE notes its adoption of provisions regarding testing for WICF panels in today's final rule. DOE is adopting regulatory text to clarify that the entity responsible for certifying compliance is the WICF component manufacturer. Furthermore, DOE is clarifying that only door, panel and fan motor WICF component manufacturers are required to submit certifications of compliance with the current standards (i.e., those design-based standards resulting from the enactment of EISA 2007). DOE emphasizes that WICFs distributed in commerce in the United States must meet *all* of the design standards enacted in EISA 2007, irrespective of whether a certification report is required. DOE also notes that it is clarifying that the anti-sweat heater

power draw should be reported in watts per square foot of door opening, which is consistent with the units used in the current EISA 2007 standards.

#### *B. Metal Halide Lamp Ballast and Fixtures*

Due to the lack of sufficient test data to support certification as further outlined above, DOE proposed to extend the certification compliance date for manufacturers of metal halide lamp fixtures and to require the submittal of an initial certification report by no later than one year following publication of the final rule. 76 FR 48747, 48748. In response, NEMA supported DOE's proposed one year extension. In addition, NEMA requested that DOE consider aligning the initial certification and annual certification reporting dates to reduce reporting burden. (NEMA, No. 0002, p. 1) DOE is adopting a 1-year extension from publication of the final rule for manufacturers to submit certification reports to DOE for all basic models distributed in commerce. Since the 1-year extension will be after the annual submission deadline for 2012, the annual requirement does not apply for that particular year. DOE notes that in the years following 2012, manufacturers will still be required to meet the annual filing deadline of September 1.

### **IV. Procedural Issues and Regulatory Review**

#### *A. Review Under Executive Order 12866*

This final rule has been determined not to be a "significant regulatory action" under section 3(f) of Executive Order 12866. Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB).

#### *B. 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 (IRFA) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking," 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the DOE

rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's Web site: <http://www.gc.doe.gov>.

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

#### *C. Review Under the National Environmental Policy Act*

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

### **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 429*

Energy conservation, Household appliances, Reporting and recordkeeping requirements.

##### *10 CFR Part 431*

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

Issued in Washington, DC, on October 13, 2011.

**Kathleen B. Hogan,**

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

For the reasons set forth in the preamble, DOE amends parts 429 and 431 of chapter II of title 10 of the Code of Federal Regulations to read as follows:

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

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

**Authority:** 42 U.S.C. 6291–6317.

■ 2. Revise § 429.12(i)(6) to read as follows:

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

\* \* \* \* \*

(i) \* \* \*

(6) Metal halide lamp ballasts and fixtures, October 22, 2012.

■ 3. Revise § 429.53(b) to read as follows:

**§ 429.53 Walk-in coolers and walk-in freezers.**

\* \* \* \* \*

(b) *Certification reports.* (1) Except that § 429.12(b)(6) applies to the certified component, the requirements of § 429.12 are applicable to manufacturers of the components of walk-in coolers and freezers (WICFs) listed in paragraph (b)(2) of this section, and;

(2) Pursuant to § 429.12(b)(13), a certification report shall include the following public product-specific information:

(i) For WICF doors: The door type, R-value of the door insulation, and a declaration that the manufacturer has incorporated the applicable design requirements. In addition, for those WICFs with transparent reach-in doors and windows: The glass type of the doors and windows (*e.g.*, double-pane with heat reflective treatment, triple-pane glass with gas fill), and the power draw of the antisweat heater in watts per square foot of door opening.

(ii) For WICF panels: The R-value of the insulation (except for glazed portions of the doors or structural members)

(iii) For WICF fan motors: The motor purpose (*i.e.*, evaporator fan motor or condenser fan motor), the horsepower,

and a declaration that the manufacturer has incorporated the applicable design requirements.

**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 431.304 is amended by:

- a. Redesignating paragraph (b) as paragraph (c);
- b. Adding a new paragraph (b);
- c. In newly redesignated paragraph (c), revising the paragraph heading; adding new introductory text prior to paragraph (c)(1); redesignating paragraphs (c)(5) through (c)(8) as paragraphs (c)(7) through (c)(10); and adding new paragraphs (c)(5) and (c)(6).

The revisions and additions read as follows:

**§ 431.304 Uniform test method for the measurement of energy consumption of walk-in coolers and walk-in freezers.**

\* \* \* \* \*

(b) *Testing and Calculations—EISA 2007 Test Procedure.* Manufacturers shall use this paragraph (b) for the purposes of certifying compliance with the applicable energy conservation standards of the R-value of panels until January 1, 2015.

(1) The R value shall be the 1/K factor multiplied by the thickness of the panel.

(2) The K factor shall be based on ASTM C518 (incorporated by reference, see § 431.303).

(3) For calculating the R value for freezers, the K factor of the foam at 20 degrees Fahrenheit (average foam temperature) shall be used.

(4) For calculating the R value for coolers, the K factor of the foam at 55 degrees Fahrenheit (average foam temperature) shall be used.

(5) Foam shall be tested after it is produced in its final chemical form. Foam produced inside of a panel (“foam-in-place”) must be tested in its final foamed state and must not include any structural members or non-foam materials other than the panel’s protective skins or facers. A test sample less than or equal to 4 inches thick must be taken from the center of the foam-in-place panels. Foam produced as board stock may be tested prior to its incorporation into a final panel.

(6) Manufacturers are not required to consider non-foam member and/or edge regions in ASTM C518 testing.

(c) *Testing and Calculations—Amended Test Procedures.*

Manufacturers shall use this paragraph (c) for any representations of energy efficiency/energy use starting on October 12, 2011 and to certify compliance to the energy conservation standards of the R-value of panels on or after January 1, 2015.

\* \* \* \* \*

(5) For ASTM C518 testing, foam shall be tested after it is produced in its final chemical form. Foam produced inside of a panel (“foam-in-place”) must be tested in its final foamed state and must not include any structural members or non-foam materials other than the panel’s protective skins or facers. A test sample less than or equal to 4 inches thick must be taken from the center of the foam-in-place panels. Foam produced as board stock may be tested prior to its incorporation into a final panel.

(6) Manufacturers are not required to consider non-foam member and/or edge regions in ASTM C518 testing.

\* \* \* \* \*

[FR Doc. 2011–27154 Filed 10–20–11; 8:45 am]

BILLING CODE 6450–01–P

**DEPARTMENT OF HOMELAND SECURITY**

**U.S. Customs and Border Protection**

**DEPARTMENT OF THE TREASURY**

**19 CFR Parts 10, 24, 162, 163, and 178**

[USCBP–2010–0041; CBP Dec. 11–19]

RIN 1515–AD68

**United States-OMAN Free Trade Agreement**

**AGENCIES:** U.S. Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

**ACTION:** Final rule.

**SUMMARY:** This document adopts as a final rule, without change, interim amendments to the Customs and Border Protection (“CBP”) regulations which were published in the **Federal Register** on January 6, 2011, as CBP Dec. 11–01 to implement the preferential tariff treatment and other customs-related provisions of the United States—Oman Free Trade Agreement entered into by the United States and the Sultanate of Oman.

**DATES:** Final rule effective November 21, 2011.

**FOR FURTHER INFORMATION CONTACT:** Textile Operational Aspects: Nancy Mondich, Office of International Trade, (202) 863–6524. Other Operational Aspects: Seth Mazze, Office of