

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF ENERGY

### 10 CFR Parts 429 and 431

[Docket Number: EERE-2012-BT-CE-0048]

RIN 1904-AC90

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

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The U.S. Department of Energy (DOE or the “Department”) proposes to amend the compliance dates for revisions to its certification regulations for certain commercial and industrial equipment covered under the Energy Policy and Conservation Act of 1975, as amended (EPCA or the “Act”). Specifically, DOE is proposing a 12-month extension to the compliance date for the certification provisions of commercial refrigeration equipment; commercial heating, ventilating, air-conditioning (HVAC) equipment; and commercial water heating equipment. DOE is proposing to retain a December 31, 2012 certification date for automatic commercial ice makers. Lastly, DOE is proposing a correction in the packaged terminal equipment standards table, which would impact standard-size packaged terminal air conditioners and packaged terminal heat pumps with a cooling capacity of 15,000 Btu/h.

**DATES:** DOE will accept comments, data, and information regarding the notice of proposed rulemaking (NOPR) postmarked no later than December 21, 2012.

**ADDRESSES:** Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov). Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE-2012-BT-CE-0048, by any of the following methods:

- **Email:** to [CCENOPR2012CE0048@ee.doe.gov](mailto:CCENOPR2012CE0048@ee.doe.gov). Include EERE-2012-BT-CE-0048 in the subject line of the message.

- **Mail:** Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE-2J, Revisions to Energy Efficiency Enforcement Regulations, EERE-2012-BT-CE-0048, 1000 Independence Avenue SW., Washington, DC 20585-0121. Phone: (202) 586-2945. Please submit one signed paper original.

- **Hand Delivery/Courier:** Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 6th Floor, 950 L’Enfant Plaza SW., Washington, DC 20024. Phone: (202) 586-2945. Please submit one signed paper original.

**Instructions:** All submissions received must include the agency name and docket number or RIN for this rulemaking.

**Docket:** For access to the docket to read background documents, or comments received, go to the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov).

**FOR FURTHER INFORMATION CONTACT:** Ms. Ashley Armstrong, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE-2J, 1000 Independence Avenue SW., Washington, DC 20585-0121. Telephone: 202-586-6590. Email: [Ashley.Armstrong@ee.doe.gov](mailto:Ashley.Armstrong@ee.doe.gov); and Ms. Laura Barhydt, U.S. Department of Energy, Office of the General Counsel, Forrestal Building, GC-32, 1000 Independence Avenue SW., Washington, DC 20585. Telephone: (202) 287-5772. Email: [Laura.Barhydt@hq.doe.gov](mailto:Laura.Barhydt@hq.doe.gov).

**SUPPLEMENTARY INFORMATION:** On March 7, 2011, DOE published a final rule in the **Federal Register** that, among other things, modified the requirements regarding manufacturer submission of compliance statements and certification reports to DOE (hereafter referred to as the March 2011 Final Rule) (76 FR 12421). These certification provisions are central to the Department’s regulatory framework for ensuring that covered products and equipment sold in the United States comply with existing Federal energy conservation standards and associated regulations.

The March 2011 Final Rule imposed new reporting requirements, including a

requirement that manufacturers submit annual reports to the Department certifying compliance of their basic models with applicable standards. It also revised the types of information manufacturers must provide in that submission. The Department emphasized that manufacturers could use their discretion in grouping individual models as a certified “basic model” such that the certified rating for the basic model matched the represented rating for all included models. See 76 FR 12428-12429 for more information. This reflected a basic requirement of the Department’s longstanding self-certification compliance regime—that efficiency certifications and representations must be supported by either testing or an approved alternative method of estimating efficiency.

The March 2011 Final Rule provided for the revised certification provisions to be effective on July 5, 2011. Certain manufacturers of particular types of commercial and industrial equipment<sup>1</sup> stated that, for a variety of reasons, they would be unable to meet that deadline. As a result, the Department extended the compliance date for certification of commercial refrigeration equipment; commercial HVAC equipment; commercial WH equipment; and walk-in coolers and freezers. See 76 FR 38287 (hereafter referred to as the June 30 Final Rule). DOE also acknowledged in the June 30 Final Rule that numerous manufacturers for certain types of commercial equipment appear to have been making representations of efficiency and determining compliance with the applicable energy conservation standards without testing products in accordance with all of the provisions of the DOE test procedures, which include sampling plans and certification testing tolerances.

In the June 30 Final Rule, DOE stated that it believed 18 months would be sufficient to provide manufacturers with the time necessary to develop the data and supporting documentation needed

<sup>1</sup> These products included commercial warm air furnaces, commercial packaged boilers, and commercial air conditioners and heat pumps (collectively referred to as commercial HVAC equipment); commercial refrigeration equipment; commercial water heaters, commercial hot water supply boilers, and unfired hot water storage tanks (collectively referred to as commercial WH equipment); walk-in coolers; walk-in freezers; and automatic commercial ice makers.

to populate the certification reports and certify compliance with DOE's regulations, including the existing testing and sampling procedures. DOE also emphasized that all covered equipment must meet the applicable energy conservation standard and that all testing procedures and sampling provisions were unaffected by the final rule.

On May 24, 2012, DOE issued a proposed rule to revise and expand its regulations regarding alternative efficiency determination methods (AEDMs). AEDMs reduce testing burdens by allowing manufacturers to use computer simulations, mathematical models, and other alternative methods to determine the amount of energy used or efficiency by a particular basic model. AEDM provisions for commercial HVAC equipment and commercial WH equipment already exist, but DOE has proposed to revise those regulations and to allow manufacturers of commercial refrigeration equipment to use AEDMs. DOE has not yet finalized the AEDM rulemaking.

In an October 2012, letter to the Secretary of Energy, the Air Conditioning, Heating and Refrigeration Institute (AHRI) requested another certification compliance date extension. AHRI wrote, the "AEDM is a critical element of the DOE certification process as it will help manufacturers comply with the regulations without having to test every basic model they offer." (AHRI, No. 1 at pp. 1–2) As a result, in its letter AHRI requested that the compliance date for certification be extended a minimum of 18 months from the date of publication of the AEDM final rule.

The Department agrees that it may address some of the concerns raised by manufacturers' by completing the AEDM rulemaking. The Department is also reviewing the recommendations of the Convenor regarding the feasibility of a negotiated rulemaking to revise the certification requirements for commercial HVAC equipment and commercial refrigeration equipment.<sup>2</sup>

As such, the Department agrees with AHRI that further extension of the December 31, 2012 compliance date may be warranted for commercial refrigeration equipment; commercial HVAC equipment; and commercial WH

equipment. However, as all manufacturers should have at least some valid test data upon which to develop a substantiated AEDM, DOE does not believe that an extension for the length of time after finalization of an AEDM rule requested by AHRI would be necessary. Further, the potential for issues raised by manufacturers to be addressed through a negotiated rulemaking also suggests that the time requested by AHRI may be longer than necessary. Accordingly, the Department is proposing a 12-month delay in the compliance date for submission of a certification report for commercial refrigeration equipment, commercial HVAC equipment, and commercial WH equipment. However, DOE is requesting comment on its assumption regarding the existence of test data. We also seek comment on whether a longer or shorter period of time would be more appropriate.

If the Department adopts in a final rule a delayed compliance date for submission of certification reports, DOE will also implement an enforcement policy to encourage voluntary certifications. Specifically, during the interim period, DOE would not perform random assessment tests (as defined at 10 CFR 429.104) of basic models of commercial HVAC, refrigeration, or WH equipment that are voluntarily certified in accordance with DOE's regulations set forth in 10 CFR Parts 429 and 431. This approach would acknowledge the efforts of manufacturers that have been working toward completing the necessary testing to develop certified ratings in accordance with the December 31, 2012 deadline. Even under this approach, DOE would continue to conduct enforcement testing of any basic model pursuant to 10 CFR 429.110 when it has a reason to believe a given basic model may be non-compliant with the applicable Federal standard.

The preamble to the June 30 Final Rule stated that the compliance date for submitting a certification report for automatic commercial ice makers (ACIM) was also extended; however, the regulatory text did not extend the compliance date for that product (76 FR 38287). DOE has not enforced the certification requirements for ACIM. Information available to DOE does not suggest any issues with the compliance date for ACIMs; therefore, DOE is proposing to modify the regulatory text to require submission of a certification report for each basic model of ACIM by December 31, 2012, as contemplated by the June 30 Final Rule. DOE requests comment, however, regarding whether

the compliance date for ACIM certification should also be extended.

The compliance dates for certification requirements for walk-in coolers and freezers, distribution transformers, and metal halide lamp ballasts have passed, and manufacturers of those products are now submitting certification reports. The proposed regulatory text would reflect that these products are now required to be certified by removing the delayed compliance dates.

Lastly, the Department is proposing to correct a technical drafting error for packaged terminal air conditioners and heat pumps that was implemented in the reprinting of Table 5 in 10 CFR 431.97 in a final rule published on May 16, 2012 (77 FR 28994). More specifically, DOE adopted changes to the applicable energy conservation standards for standard size and non-standard size packaged terminal air conditioners and heat pumps with a cooling capacity of 15,000 Btu/h. DOE is proposing to correct this error in today's proposed rule and adopt the original standards for standard size and non-standard size packaged terminal air conditioners and heat pumps with a cooling capacity of 15,000 Btu/h as presented in a final rule evaluating and originally adopting the amended energy conservation for this equipment published on April 7, 2008 (73 FR 18915).

#### Further Information on Submitting Comments

Under 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies: one copy of the document including all the information believed to be confidential, and one copy of the document with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include (1) A description of the items, (2) whether and why such items are customarily treated as confidential within the industry, (3) whether the information is generally known by or available from other sources, (4) whether the information has previously been made available to others without obligation concerning its confidentiality, (5) an explanation of the competitive injury to the submitting person which would result from public disclosure, (6) when such information might lose its confidential character due to the

<sup>2</sup> The U.S. Department of Energy Convening Report on the Feasibility of a Negotiated Rulemaking to Revise the Certification Program for Commercial Heating, Ventilating, Air Conditioning, and Commercial Refrigeration Equipment can be found at [http://www.eere.energy.gov/buildings/appliance\\_standards/pdfs/convening\\_report\\_hvac\\_cre.pdf](http://www.eere.energy.gov/buildings/appliance_standards/pdfs/convening_report_hvac_cre.pdf).

passage of time, and (7) why disclosure of the information would be contrary to the public interest.

**I. Procedural Issues and Regulatory Review**

*A. Review Under Executive Order 12866*

This proposed 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 (IFRA) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, “Proper Consideration of Small Entities in Agency Rulemaking,” (67 FR 53461, August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process (68 FR 7990). DOE has made its procedures and policies available on the Office of the General Counsel’s Web site: <http://www.energy.gov/gc>.

DOE reviewed this proposed rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. This proposed 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 CCE rulemaking. That analysis considered the impacts of that rulemaking on small entities. As a result, DOE certifies that, if adopted, this proposed rule 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.

**II. Approval of the Office of the Secretary**

The Secretary of Energy has approved publication of today’s NOPR.

**List of Subjects in 10 CFR Parts 429 and 431**

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

Issued in Washington, DC, on November 28, 2012.

**Kathleen B. Hogan,**

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

For the reasons stated in the preamble, DOE is proposing to amend chapter II, subchapter D, of title 10 of the Code of Federal Regulations, to read as set forth below:

**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. In § 429.12, revise paragraph (i) to read as follows:

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

\* \* \* \* \*

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

- (1) Automatic commercial ice makers, December 31, 2012;
- (2) Commercial refrigeration equipment, December 31, 2013;
- (3) Commercial heating, ventilating, and air-conditioning equipment, December 31, 2013; and
- (4) Commercial water heating equipment, December 31, 2013.

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

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

**Authority:** 42 U.S.C. 6291–6317.

4. In § 431.97, paragraph (c), revise Table 5 to read as follows:

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

\* \* \* \* \*

(c) \* \* \*

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

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

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

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

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

\* \* \* \* \*  
[FR Doc. 2012–29486 Filed 12–5–12; 8:45 am]  
BILLING CODE 6450–01–P

**SMALL BUSINESS ADMINISTRATION**

**13 CFR Part 121**

**RIN 3245–AG44**

**Small Business Size Standards: Support Activities for Mining**

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Small Business Administration (SBA) proposes to increase small business size standards for three industries in North American Industry Classification System (NAICS) Subsector 213, Support Activities for Mining, within NAICS Sector 21, Mining, Quarrying, and Oil and Gas Extraction. NAICS Sector 21 contains four industries with receipts based standards and 19 industries with employee based size standards. As part of its ongoing comprehensive review of all size standards, in this proposed rule, SBA has evaluated the four industries that have the receipts based size standards in NAICS Sector 21 to determine whether they should be retained or revised. SBA will review the 19 industries that have the employee based standards in NAICS Sector 21 at a later date. This proposed rule is one of a series of proposed rules that will review size standards of industries grouped by NAICS Sector. SBA has issued a White Paper entitled “Size Standards Methodology” and published a notice in the October 21, 2009 issue of the **Federal Register** to advise the public that “Size Standards Methodology” is available on its Web site at [www.sba.gov/size](http://www.sba.gov/size) for public review and comments. The “Size Standards Methodology” White Paper explains how SBA establishes, reviews,

and modifies its receipts based and employee based small business size standards. In this proposed rule, SBA has applied its methodology in determining changes to receipts based size standards in NAICS Sector 21, Mining, Quarrying, and Oil and Gas Extraction.

**DATES:** SBA must receive comments to this proposed rule on or before February 4, 2013.

**ADDRESSES:** Identify your comments by RIN 3245–AG44 and submit them by one of the following methods: (1) *Federal eRulemaking Portal:* [www.regulations.gov](http://www.regulations.gov), following the instructions for submitting comments; or (2) *Mail/Hand Delivery/Courier:* Khem R. Sharma, Ph.D., Chief, Size Standards Division, 409 Third Street SW., Mail Code 6530, Washington, DC 20416. SBA will not accept comments to this proposed rule submitted by email.

SBA will post all comments to this proposed rule on [www.regulations.gov](http://www.regulations.gov). If you wish to submit confidential business information (CBI) as defined in the User Notice at [www.regulations.gov](http://www.regulations.gov), you must submit such information to U.S. Small Business Administration, Khem R. Sharma, Ph.D., Chief, Size Standards Division, 409 Third Street SW., Mail Code 6530, Washington, DC 20416, or send an email to [sizestandards@sba.gov](mailto:sizestandards@sba.gov). You should highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review your information and determine whether it will make the information public or not.

**FOR FURTHER INFORMATION CONTACT:** Khem R. Sharma, Ph.D., Chief, Size Standards Division, phone: (202) 205–6618 or [sizestandards@sba.gov](mailto:sizestandards@sba.gov).

**SUPPLEMENTARY INFORMATION:** To determine eligibility for Federal small business assistance, SBA establishes small business size definitions (referred to as size standards) for private sector

industries in the United States. SBA uses two primary measures of business size—average annual receipts and average number of employees. SBA uses financial assets, electric output, and refining capacity to measure the size of a few specialized industries. In addition, SBA’s Small Business Investment Company (SBIC), Certified Development Company (504), and 7(a) Loan Programs use either the industry based size standards or net worth and net income based alternative size standards to determine eligibility for those programs. At the beginning of the current comprehensive size standards review, there were 41 different size standards covering 1,141 NAICS industries and 18 sub-industry activities (“exceptions” in SBA’s table of size standards). Thirty-one of these size levels were based on average annual receipts, seven were based on average number of employees, and three were based on other measures.

Over the years, SBA has received comments that its size standards have not kept up with changes in the economy, in particular the changes in the Federal contracting marketplace and industry structure. The last time SBA conducted a comprehensive review of all size standards was during the late 1970s and early 1980s. Since then, most reviews of size standards were limited to a few specific industries in response to requests from the public and Federal agencies. At least once every five years, SBA also reviews the effect of inflation on its size standards and makes necessary adjustments to its monetary based size standards. SBA’s latest inflation adjustment to size standards was published in the **Federal Register** on July 18, 2008 (73 FR 41237).

Because of changes in the Federal marketplace and industry structure since the last comprehensive size standards review, SBA recognizes that current data may no longer support some of its existing size standards. Accordingly, in 2007, SBA began a