



# FEDERAL REGISTER

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Vol. 81

Friday,

No. 122

June 24, 2016

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Part II

## Department of Energy

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10 CFR Parts 429 and 431

Energy Conservation Program: Certification, Compliance, Labeling, and Enforcement for Electric Motors and Small Electric Motors; Proposed Rule

**DEPARTMENT OF ENERGY****10 CFR Parts 429 and 431**

[Docket No. EERE-2014-BT-CE-0019]

RIN 1904-AD25

**Energy Conservation Program: Certification, Compliance, Labeling, and Enforcement for Electric Motors and Small Electric Motors**

**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”) is proposing to revise its certification, compliance, and enforcement regulations for electric motors and small electric motors to conform to the enforcement regulations for all other covered products and equipment and to consolidate, to the extent possible, the certification and compliance regulations for electric motors and small electric motors with those for other types of covered products and equipment. In addition to bringing the certification, compliance, and enforcement regulations for electric motors and small electric motors under the umbrella and general regulatory scheme of DOE’s existing certification, compliance, and enforcement regulations for other equipment and products, this proposal provides specific sampling plans, certification of efficiency requirements, independent testing laboratory and certification program requirements, and labeling requirements for electric motors and small electric motors.

**DATES:** DOE will accept comments, data, and information regarding this NOPR no later than July 25, 2016. See section V, Public Participation, for details.

**ADDRESSES:** Any comments submitted must identify the NOPR for Certification, Compliance, and Enforcement for Electric Motors and Small Electric Motors, and provide docket number EERE-2014-BT-CE-0019 and/or regulatory information number (RIN) number 1904-AD25. Comments may be submitted using any of the following methods:

1. *Federal eRulemaking Portal:* [www.regulations.gov](http://www.regulations.gov). Follow the instructions for submitting comments.

2. *Email:* [MotorsCCE2014CE0019@ee.doe.gov](mailto:MotorsCCE2014CE0019@ee.doe.gov). Include the docket number and/or RIN in the subject line of the message.

3. *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE-2], 1000 Independence Avenue SW.,

Washington, DC 20585-0121. If possible, please submit all items on a CD. It is not necessary to include printed copies.

4. *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L’Enfant Plaza SW., Suite 600, Washington, DC 20024. Telephone: (202) 586-2945. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to the Office of Energy Efficiency and Renewable Energy through the methods listed above and by email to [Chad\\_S\\_Whiteman@omb.eop.gov](mailto:Chad_S_Whiteman@omb.eop.gov).

For detailed instructions on submitting comments and additional information on the rulemaking process, see section V of this document (Public Participation).

**Docket:** The docket, which includes **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials, is available for review at [regulations.gov](http://www.regulations.gov). All documents in the docket are listed in the [regulations.gov](http://www.regulations.gov) index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

A link to the docket Web page can be found at: <http://www.energy.gov/eere/buildings/implementation-certification-and-enforcement>. This Web page will contain a link to the docket for this notice on the [regulations.gov](http://www.regulations.gov) site. The [regulations.gov](http://www.regulations.gov) site contains simple instructions on how to access all documents, including public comments, in the docket. See section V for further information on how to submit comments through [www.regulations.gov](http://www.regulations.gov).

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

**FOR FURTHER INFORMATION CONTACT:** Ms. Ashley Armstrong, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE-5B, 1000 Independence Avenue SW., Washington, DC 20585-0121. Telephone: (202) 586-6590 or [Ashley.Armstrong@ee.doe.gov](mailto:Ashley.Armstrong@ee.doe.gov).

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 or Email: [Laura.Barhydt@hq.doe.gov](mailto:Laura.Barhydt@hq.doe.gov).

**SUPPLEMENTARY INFORMATION:** DOE proposes to incorporate by reference the following industry standards into part 429:

(1) International Organization for Standardization (ISO)/International Electrotechnical Commission (IEC), ISO/IEC Guide 17025:2005(E), “General requirements for the competence of calibration and testing laboratories,” Third edition, December 1, 1990;

(2) International Organization for Standardization (ISO)/International Electrotechnical Commission (IEC), ISO/IEC Guide 27, Guidelines for corrective action to be taken by a certification body in the event of misuse of its mark of conformity”, First edition, March 1, 1983;

(3) International Organization for Standardization (ISO)/International Electrotechnical Commission (IEC), ISO/IEC Guide 17026:2015, “Conformity assessment—Example of a certification scheme for tangible products,” First edition, February 1, 2015;

(4) International Organization for Standardization (ISO)/International Electrotechnical Commission (IEC), ISO/IEC Guide 17065:2012, “Conformity assessment—Requirements for bodies certifying products, processes and services,” First edition, September 15, 2012.

Copies of these ISO/IEC Guides can be obtained from the International Organization for Standardization, Chemin de Blandonnet 8, 1214 Vernier, Genève, Switzerland, or by going to <http://www.iso.org/iso/home/store.htm>.

See section IV.M for a further discussion of these standards.

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## I. Authority and Background

Title III of the Energy Policy and Conservation Act of 1975, as amended (“EPCA” or, in context, “the Act”) sets forth a variety of provisions designed to improve energy efficiency. Part A of Title III (42 U.S.C. 6291–6309) provides for the Energy Conservation Program for Consumer Products Other Than Automobiles. The National Energy Conservation Policy Act (NECPA), Public Law 95–619, amended EPCA to add Part B of Title III, which established an energy conservation program for certain industrial equipment. (42 U.S.C. 6311–6317)<sup>1</sup> Included among the

various equipment types addressed by EPCA<sup>2</sup> are electric and small electric motors.

As relevant here, DOE’s energy conservation program under EPCA consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. The testing requirements consist of test procedures that manufacturers of covered products must use as the basis for: (1) Certifying to DOE that their products comply with the applicable energy conservation standards adopted under EPCA; and (2) making representations about the efficiency of those products. Similarly, DOE must use these test procedures to determine whether the products comply with any relevant standards promulgated under EPCA.<sup>3</sup> Further, 42 U.S.C. 6299–6305, 6316, and 6317 authorize DOE to enforce compliance with the energy conservation standards related to a variety of consumer products and commercial equipment, including electric motors and small electric motors.

This document proposes to move the current compliance- and certification-related procedures and requirements for electric motors into DOE’s regulations at 10 CFR part 429. It also proposes adding product-specific provisions for small electric motors at 10 CFR part 429.

The provisions related to the compliance, certification, and enforcement (“CCE”) of electric motors in this proposal are based on the existing compliance certification procedures for electric motors. Under 42 U.S.C. 6316(c), DOE must require manufacturers of electric motors for which energy conservation standards are established at 42 U.S.C. 6313(b) to certify, through an “independent testing or certification program nationally recognized in the United States” that those electric motors meet the applicable standard. DOE codified this requirement by developing a regulatory process for laboratory accreditation (for independent testing) and for the recognition and withdrawal of recognition for certification programs nationally recognized in the U.S. Under 10 CFR 431.17(a)(5), a manufacturer can establish compliance either through: (1)

A certification program that DOE has classified as nationally recognized,<sup>4</sup> or (2) testing in an accredited laboratory for which the accreditation body was the National Institute of Standards and Technology/National Voluntary Laboratory Accreditation Program (“NIST/NVLAP”), a laboratory accreditation body having a mutual recognition arrangement with NIST/NVLAP, or an organization classified by DOE as an accreditation body pursuant to 10 CFR 431.19. Existing DOE regulations detail the certification program national recognition process at 10 CFR 431.20–431.21 and laboratory accreditation at 10 CFR 431.18–431.19.

On May 4, 2012, DOE published certain compliance testing regulations for small electric motors. *See* 77 FR 26608 (“2012 test procedure”) (codified at 10 CFR 431.445, 431.447, 431.448). Under these regulations, manufacturers of small electric motors have the option of self-certifying the efficiency of their small electric motors or using a certification program nationally recognized in the U.S. to certify the efficiency of these motors. *See* 10 CFR 431.445. In the 2012 test procedure, DOE noted that there were no existing certification programs for small electric motors. 77 FR at 26630. Since then, DOE has recognized two certification programs for small electric motors. *See* 78 FR 72077 (December 2, 2013) (recognition of UL) and 79 FR 24700 (May 1, 2014) (recognition of CSA). DOE also noted in the 2012 test procedure that it would work with NIST/NVLAP on small electric motor laboratory accreditation programs. *See* 77 FR at 26630.

EPCA sets different labeling requirements for electric motors and small electric motors. For electric motors in general, EPCA directed DOE to prescribe labeling requirements, taking into consideration NEMA Standards Publication MG1–1987. (42 U.S.C. 6315(d)) Consistent with this requirement, DOE established labeling requirements for electric motors on October 5, 1999 (October 1999 final rule). *See* 64 FR 54114. In contrast, although EPCA directs DOE to prescribe labeling requirements for those small electric motors for which the Secretary of Energy has prescribed energy efficiency standards, the statute does not require DOE to consider MG1–1987. (42 U.S.C. 6317(d))

<sup>1</sup> of EPCA were codified as parts A and A–1, respectively, in the United States Code.

<sup>2</sup> All references to EPCA in this document refer to the statute as amended through the Energy Efficiency Improvement Act of 2015, Public Law 114–11 (April 30, 2015).

<sup>3</sup> The test procedures for electric motors are described in appendix B to subpart B of 10 CFR part 431; the test procedures for small electric motors are described in 10 CFR 431.444.

<sup>4</sup> To date, DOE has only classified Canadian Standards Association (CSA) and Underwriters Laboratories, Inc. (UL) as certification programs nationally recognized in the U.S.

<sup>1</sup> For editorial reasons, Parts B (consumer products) and C (commercial equipment) of Title III

## II. Summary of the Proposal

This proposal seeks to revise DOE's certification and enforcement regulations for electric motors and small electric motors to encourage compliance, achieve energy savings, and help ensure a fair and equitable competitive field among all manufacturers. As summarized below, the proposal would conform the existing CCE requirements for electric motors to the same structure and substance already used with respect to DOE's CCE regulations found at 10 CFR part 429 for all other consumer products and commercial and industrial equipment. It also proposes the use of product-specific sampling plans and certification mechanisms for electric motors.

For small electric motors, this proposal also provides product-specific sampling plans and certification mechanisms. DOE is proposing to adopt labeling requirements for small electric motors similar to those for electric motors.

### *A. Conformance With Existing Certification, Compliance and Enforcement Regulations*

This proposal would make the provisions for electric motors and small electric motors consistent with the general provisions already in place for all other EPCA-covered products and equipment found in 10 CFR part 429, subpart A (general provisions), subpart B (certification), and subpart C (enforcement). The proposed rule would: (1) Move and amend certification testing, sampling, and certification provisions specific to electric motors, (2) move the sampling and certification testing provisions specific to small electric motors, and (3) add certification provisions specific to small electric motors.

This proposal would also add new paragraphs (h) and (i) to 10 CFR 429.70, which would address the use of alternative methods for determining energy efficiency or energy use (also known as alternative efficiency determination methods, or "AEDMs") for electric motors and small electric motors. The proposal would move and amend existing AEDM provisions for electric motors and for small electric motors. The proposal would move and amend the administrative process for recognizing certification programs to new sections 10 CFR 429.73 and 429.75. The proposal would add an administrative process for recognizing testing laboratories, either directly or through recognition of accreditation organizations, to new sections 10 CFR 429.74 and 429.75. Finally, the

proposed rule would move the electric motor labeling requirements from 10 CFR 431.31 to a new 10 CFR 429.76 and add labeling requirements for small electric motors. The proposal also would add a definition for "independent" to describe how DOE evaluates the independence of testing laboratories and certification programs. The proposed definition of the term "independent" would replace the currently defined term "independent laboratory" found at 10 CFR 431.2.

Finally, the proposed rule would amend the procedures applicable to electric motor and small electric motor manufacturers and private labelers who are involved in an enforcement action with DOE by applying the process already codified at 10 CFR part 429, subpart C. DOE notes that it anticipates publishing in the near future a notice of proposed rulemaking to amend part 429 for all products, which could impact the proposals in this rule. Therefore, for the purposes of this proposed rule, the Department is only soliciting comments on 10 CFR part 429 as it pertains to electric motors. DOE is not re-opening the application of part 429 as it pertains to manufacturers of any other covered product or equipment.

### *B. Changes to Existing Electric Motor Certification, Compliance, Enforcement and Labeling Regulations*

This proposal would retain the subpart that separately addresses test methodology and standards for electric motors (10 CFR part 431, subpart B).

Regarding the definitions applicable to electric motors in § 431.12, the proposal would revise the current "basic model" definition as applied to electric motors to more closely align with the definition used for other DOE-regulated products and equipment, add a definition for "equipment class" to accompany the "basic model" definition, and remove definitions related to accreditation as a result of the proposed changes regarding laboratory accreditation. The proposal would also address how to treat electric motors that are capable of operation at voltages other than 230 or 460 volts with respect to testing and representations of energy efficiency. Finally, the current CCE and labeling provisions for electric motors would be removed from 10 CFR part 431, subpart B. More specifically, the current Subpart U would be removed and reserved so that all CCE and labeling requirements for electric motors would be located together in 10 CFR part 429.

### *C. Changes to Existing Small Electric Motor Regulations*

This proposal would retain the subpart that addresses standards and the testing methodology for small electric motors (10 CFR part 431, subpart X). The provisions addressing sampling of units for testing, including sampling statistics, test facility requirements, and the certification requirements, are being addressed in this rule.

For the definitions applicable to small electric motors in § 431.442, this proposal would revise the existing definition of "basic model" to more closely align with the definition used for other DOE-regulated products and equipment, and add a definition for "equipment class" to accompany the "basic model" definition. Finally, the proposal would amend 10 CFR 431.446 to explain how DOE would apply the exemption for small electric motors that are installed in another type of covered product or equipment.

## III. Discussion of Specific Revisions and Additions to Electric Motor and Small Electric Motor Certification, Compliance, Enforcement and Labeling Regulations

In this portion of the notice, DOE details all of the new and amended provisions of this proposed rule. DOE proposes to both amend and add new sections to 10 CFR part 429 and to remove or amend portions of 10 CFR part 431, subparts B, U, and X. These proposed changes are discussed separately below.

### *A. General Changes*

In addition to the reorganization described in detail later in this document, this proposal would change the existing electric motor regulations at 10 CFR part 431, subpart B in several ways. The portions of the existing electric motor regulations that pertain to certification, compliance, and enforcement would be amended and moved to 10 CFR part 429. It would also amend other sections of 10 CFR part 431, subpart B to ensure the regulatory structure comprising 10 CFR part 431, subpart B and 10 CFR part 429 remains coherent. This proposal would also amend the "Purpose and Scope" in § 431.11 by removing references to labeling and compliance, which this proposal would address in part 429.

Additionally, the existing definition of "basic model" would become similar to the definitions used for other DOE-regulated products and equipment and would eliminate an ambiguity found in the current regulation. The definition currently specifies that basic models of

electric motors are all units of a given type manufactured by the same manufacturer, which have the same *rating*, and have electrical characteristics that are essentially identical, and do not have any differing physical or functional characteristics that affect energy consumption or efficiency. (10 CFR 431.12) For the purposes of this definition, the term “rating” is specified to mean one of 113 combinations of horsepower, poles, and open or enclosed construction. (*See id.*) The reference to 113 combinations dates from the Department’s implementation of the Energy Policy Act of 1992 (“EPACT 1992”) (Pub. L. 102–486), which set initial standards for motors based on that categorization. Since then, EISA 2007 and DOE’s regulations have established standards for additional motor categories. *See* 10 CFR 431.25. To clarify that the concept of a “basic model” reflects the categorization in effect under the prevailing standard, as it stands today and as it may evolve in future rulemakings, the proposed rule would refer only to the combinations of horsepower (or standard kilowatt equivalent), number of poles, and open or enclosed construction for which 10 CFR 431.25 prescribes standards; it would drop the current reference to 113 such combinations.

In addition, the proposal would modify the basic model definition for electric motors by replacing the “rating” term with the term “equipment class,” which also would be defined. The term “equipment class” would have a meaning similar to the notion of “rating” in the current regulation but, as noted, would clearly encompass the full range of equipment classes for which DOE ultimately sets standards. It will also limit confusion between the use of the term “rating” in this specific case and the use of the term as it applies to represented values of other individual characteristics of an electric motor, such as its rated horsepower, voltage, torque, or energy efficiency.<sup>5</sup> The proposed basic model definition would retain the current language about a “basic model” having essentially identical electrical characteristics without any differing physical or functional characteristics

that affect energy consumption or efficiency.

Similarly, the existing small electric motor regulations at 10 CFR part 431, subpart X would be changed by this proposed rule in several ways. The portions of the existing small electric motor regulations that pertain to certification testing would be amended and moved to 10 CFR part 429. This proposal would amend or remove other sections of 10 CFR part 431, subpart X to ensure coherence between 10 CFR part 431, subpart X and 10 CFR part 429.

As with electric motors, for small electric motors, this proposal would revise the existing definition of “basic model” to make it similar to the definitions used for other DOE-regulated products and equipment. The existing “basic model” definition found at 10 CFR 431.442 would remain largely intact except the proposal would replace the term “rating” and its definition in the current regulations with the term “equipment class” and its accompanying definition. The current language about a “basic model” having essentially identical electrical characteristics without any differing physical or functional characteristics that affect energy consumption or efficiency is retained in the proposed “basic model” definition.

The proposal would add a new definition for “equipment class” under 10 CFR 431.442. Similar to the “ratings” concept currently in DOE’s “basic model” definition, each small electric motor “equipment class” would be the combination of each small electric motor group (*i.e.*, capacitor-start, capacitor-run; capacitor-start, induction-run; or polyphase), horsepower (or standard kilowatt equivalent), and number of poles, for which 10 CFR 431.446 prescribes average full-load efficiency standards.

#### B. Compliance Certification Numbers

This proposed rule would replace the currently used compliance certification (“CC”) number for electric motors with a new Manufacturer’s Identification Number (“MIN”). Under current DOE regulations at 10 CFR 431.36(c), electric motor manufacturers must obtain a compliance certification number (“CC number”) to affix to the permanent nameplate of an electric motor for which standards are prescribed under 10 CFR 431.25. A CC number is a unique number assigned by DOE for any brand name, trademark, or other label name under which a manufacturer or private labeler distributes covered electric motors and for which the manufacturer or private labeler submits

compliance certifications to DOE under 10 CFR 431.36. While the CC number is unique to a specific manufacturer or private labeler’s brand name, trademark, or other label name, it is not unique to individual basic models and does not uniquely identify the original equipment manufacturer (“OEM”).

DOE has determined that the current system has certain disadvantages, including the inability to trace a unit back to a specific OEM. Nonetheless, the use of such a numbering system, where the numbers are unique to brand and manufacturer combinations, would enable DOE to readily identify the OEM for a given unit, which would facilitate DOE enforcement of applicable energy conservation standards. Without sufficient information identifying the OEM and brand name for covered electric motors, DOE can neither efficiently ascertain whether a manufacturer or private labeler has certified compliance for a given, covered electric motor, nor necessarily identify the responsible parties when responding to third-party claims that a given, covered electric motor does not comply with applicable energy conservation standards. The currently used CC numbers are not assigned on this basis and cannot provide this requisite information. By using the MIN system proposed in this document, DOE seeks to remedy this problem. The MIN system would require a single party (such as an OEM or a private labeler) to first request and obtain from DOE a MIN that would be listed in the certification report and stamped on the nameplate of a covered electric motor before its distribution in commerce.

Under the proposed version of 10 CFR 431.17, DOE would provide a unique MIN for each OEM-brand name combination. The term “original equipment manufacturer” or “OEM” would be defined as the manufacturer that produces or assembles an electric motor covered by a certification of compliance. DOE would issue a MIN for use only with a single OEM-brand name combination. No overlap with other OEM-brand name combinations would be permitted. In other words, once DOE has issued a MIN for a particular OEM-brand name combination, that MIN will be the only MIN applicable to those electric motors manufactured by that OEM and labeled under that brand name. Further, in the event the brand name to which a MIN is applicable is discontinued, the OEM would notify DOE within 30 days of the discontinuance, after which time the MIN would become invalid for use on any newly produced units. As described in the proposed § 431.17(b)(4), the MIN

<sup>5</sup> In this document, DOE uses the verb “to rate” to refer to a manufacturer determining a value through measurements or use of an AEDM and then setting the represented value for that characteristic. Any use of the term “rating” to refer to the combination of characteristics under the current basic model definition will be clearly identified. All other occurrences of “rating” refer to a manufacturer’s rated (*i.e.*, represented) values. A rated or represented value is the value that the manufacturer uses in its marketing, labeling, and certification of compliance.

could not be transferred to another entity or used on the nameplates of basic models manufactured by an OEM other than the OEM associated with the MIN. In accordance with the proposed § 431.17(d), MIN requests would be submitted to DOE either electronically at <http://www.regulations.doe.gov/ccms> or via email at: [MotorMINRequest@ee.doe.gov](mailto:MotorMINRequest@ee.doe.gov).

For small electric motors, due to the significant volume of manufacturer-basic model combinations in today's small electric motor market and that market's dynamic nature, DOE is proposing that small electric motor manufacturers also must first request and obtain from DOE a MIN for use with each specific OEM-brand name combination before distributing a covered small electric motor in commerce. As described in detail previously for electric motors, under the proposed 10 CFR 431.447, DOE would provide a unique MIN for each OEM-brand name combination. Although the process for manufacturers of small electric motors to obtain a MIN would be the same, DOE is proposing to issue different MINs for electric motor manufacturer-brand name combinations and small electric motor manufacturer-brand name combinations. In other words, there would be no overlapping MINs because different MINs would be used with each manufacturer-brand combination for electric motors and small electric motors—with each small electric motor manufacturer having a unique MIN that is separate from each electric motor manufacturer MIN.

DOE requests comments on this proposal, particularly with respect to the amount of time needed for manufacturers to transition to MINs. DOE also requests comment regarding whether the OEM-brand relationship is confidential business information, and whether a list of MINs and associated OEMs and brands should be posted on DOE's Certification Compliance Management System ("CCMS") Web site. DOE also requests comment on whether, if the OEM-brand relationship is confidential business information, the brand-MIN listing should be published. To evaluate whether the OEM-brand relationship is confidential business information, DOE specifically requests comment on whether the OEM-brand relationship is held in confidence by the OEM, private labeler, and importer; whether the OEM-brand relationship is available in public sources; whether disclosure of the information is likely to cause substantial harm to the competitive position of the OEM, private labeler, or importer; and the nature of that harm.

DOE is proposing that a MIN may not be transferred to another entity. DOE requests comment regarding how much time would be required to transition a MIN on a nameplate to a new MIN if an OEM were acquired by another company or underwent some other corporate reorganization that would require the assignment and use of a new MIN.

### C. Electric Motor Certification and Compliance

This proposal would amend sections of 10 CFR part 429 by removing language that currently excludes electric motors from coverage under this part. Part 429 includes subpart A (General Provisions), subpart B (Certification), and subpart C (Enforcement). After the proposed removal of this exclusionary language, part 429 would apply to all covered products and equipment, including electric motors and small electric motors.

DOE requests comment on this proposed change, which would impact the certification and enforcement procedures applicable to electric motor manufacturers and private labelers. These changes, as well as changes to labeling and sampling provisions, are discussed in the subsections that follow.

#### 1. Certification Testing

As described in section I of this proposed rule, DOE codified at 10 CFR 431.17(a)(5) the statutory requirement prescribing that manufacturers must certify electric motors as compliant with the applicable standard through the use of an "independent testing or certification program nationally recognized in the United States." (42 U.S.C. 6316(c)) In its October 1999 final rule establishing certification, labeling and test procedures for electric motors, DOE explained that testing conducted in a laboratory accredited by a body such as NIST/NVLAP would satisfy the "independent testing" requirement under the statute. 64 FR 54124. The accreditation requirements applicable to testing laboratories for electric motors are at 10 CFR 431.18, and the specific provisions for DOE recognition of accreditation bodies are at 10 CFR 431.19. DOE has found through examination of certification information submitted by manufacturers that most independent testing laboratories that currently conduct electric motor efficiency testing are accredited by NIST/NVLAP. Among the manufacturers that did not appear to use a NIST/NVLAP accredited laboratory, nearly all appear to have used a certification program classified by DOE as nationally recognized. Because

manufacturers are not currently required to report the specific laboratory or certification program that was used for their testing, DOE typically does not receive this information. Accordingly, DOE has reached these conclusions based on communications with manufacturers and other information submitted concurrently with certifications of compliance, such as test reports.

Laboratories accredited by NIST/NVLAP are governed by the National Voluntary Laboratory Accreditation Program "Procedures and General Requirements" NIST Handbook 150-10 (February 2007) and Lab Bulletin LB-42-009. (See 10 CFR 431.18(b).) NIST Handbook 150-10 (via incorporation by reference of "Procedures and General Requirements" NIST Handbook 150 (February 2006)) describes the level of independence that a laboratory must have in relation to the organization for which it is conducting testing. The requirements include organizational arrangements that are necessary for in-house laboratories and additional levels of independence that must be demonstrated for third-party laboratories.

An organization can petition DOE to be classified as a nationally recognized certification program. (See 10 CFR 431.20(a)) DOE evaluates such petitions based on several criteria, including: (1) The standards and procedures for conducting and administering a certification program; (2) independence from electric motor manufacturers, importers, distributors, private labelers or vendors; (3) the qualifications to operate the certification system; and (4) expertise in the DOE's electric motor test procedures. 10 CFR 431.20(b). After a petition is submitted, DOE publishes the petition in the **Federal Register** and solicits comments on whether the petition should be granted, after which the petitioner has the option of responding to any adverse comments before DOE announces an interim determination, followed by a final determination. 10 CFR 431.21. The Department can also withdraw recognition if DOE believes that the certification program is failing to meet the above-referenced criteria. A recognized program may also voluntarily withdraw its program from recognition. (See 10 CFR 431.21(g).) Since the October 1999 final rule, DOE has recognized two organizations as nationally recognized certification programs, CSA Group ("CSA") and UL Verification Services ("UL"), both of which were recognized in final determinations published on December

27, 2002. See 67 FR 79480 and 67 FR 79490.

Consistent with the requirements of 42 U.S.C. 6316(c), this proposal continues to offer the option of using an independent testing or certification program nationally recognized in the U.S. However, DOE is proposing to add further specificity regarding which parties can test electric motors and certify compliance with the applicable energy conservation standards to DOE. This proposal provides three options in this regard: (1) A manufacturer can have the electric motor tested using a testing program that is nationally recognized in the United States (as described in § 429.74 of this proposal) and then certify on its own behalf or have a third party submit the manufacturer's certification report; (2) a manufacturer can test the electric motor at a testing laboratory other than a testing program that is nationally recognized and then have a certification program that is nationally recognized in the United States (as described in § 429.73 of this proposal) certify the efficiency of the electric motor; or (3) a manufacturer can use an alternative efficiency determination method ("AEDM," discussed in section III.E of this proposed rule) and then have a third-party certification program that is nationally recognized in the United States (as described in § 429.73 of this proposal) certify the efficiency of the electric motor. These options are included in the proposed testing and sampling provisions applicable to electric motors in § 429.63. Under this regulatory structure, a manufacturer cannot both test in its own laboratories and directly submit the certification of compliance to DOE for its own electric motors.

This document proposes a definition for "independent" that would pertain to the testing program evaluation criteria and the certification program evaluation criteria as described in the proposed §§ 429.74(c) and (d) and 429.73(c) and (d), respectively. The term, "independent," would refer to an entity that is not controlled by, or under common control with, electric motor manufacturers, importers, private labelers, or vendors. Control, for these purposes, would mean ownership of or the power to vote 25 percent of the shares of any single class of securities of a company, or the power to control the election of a majority of directors of a company. "Independent" would also mean that the testing laboratory has no affiliation or financial ties or contractual agreements, apparently or otherwise, with such entities that would: (1) Hinder the ability of the laboratory to

evaluate fully or report the measured or calculated energy efficiency of any electric motor, or (2) create any potential or actual conflict of interest that would undermine the validity of said evaluation. This definition is largely based on the descriptions of independence currently in 10 CFR 431.19(b)(2) and 431.19(c)(2).

In the existing regulations, DOE addresses the requirement to use an independent testing program nationally recognized in the United States by requiring that testing laboratories be accredited by NIST/NVLAP, a laboratory accreditation program having a mutual recognition program with NIST/NVLAP, or an organization classified by DOE as an accreditation body. 10 CFR 431.18. DOE is proposing to revise these requirements by creating a system by which testing programs may attain recognition, similar to the existing provisions for certification programs. In DOE's view, a key criterion for a testing program to receive recognition will be demonstrating independence, as previously described. Another criterion will be demonstrating the ability to perform testing in accordance with the DOE test procedure, which may or may not be adequately reflected through accreditation.<sup>6</sup> Accordingly, DOE proposes to remove the definitions of "accreditation," "accreditation body," "accreditation system," and "accredited laboratory" from 10 CFR 431.12. Further, DOE proposes to remove the definition of "independent laboratory" from 10 CFR 431.2.

DOE believes that "independent" as defined in this proposed rule is a more appropriate interpretation of the statutory language found in 42 U.S.C. 6316(c) than the agency's prior application of this provision. The 1999 rule assumed that a laboratory could be meaningfully independent, in a way that would satisfy the statutory criterion, while being owned by a manufacturer, so long as the laboratory was NIST/NVLAP certified. In light of experience since that time, DOE is concerned that this premise is not justified. Testing at a manufacturer's own laboratory allows the opportunity for a manufacturer to gain a competitive advantage by administering the testing in such a manner that could yield better results. It also further exacerbates the differential treatment between those businesses that are financially able to own their own test facilities and small

businesses that may not have the capital to afford such large investments. Of course, a reasonable contract under which an otherwise independent laboratory conducts a test would not, on its own, cause the laboratory not to be independent of the manufacturer.

In this proposal, DOE also allows for the option of testing in a manufacturer's own laboratory if the manufacturer uses a third-party certification program, as described above. DOE believes this combination of the three options explained above to determine the efficiency and losses for electric motors subject to DOE's test procedures and standards provides manufacturers with the most flexibility while satisfying the statute. DOE recognizes that the concerns expressed in the rulemaking that culminated in the October 1999 final rule may still apply. See, e.g., 61 FR 60455–60456 (November 27, 1996). At that time, DOE noted that there were few test facilities that could meet this level of independence and noted the concerns of commenters that test facilities could not handle the necessary volume of testing given the potential for "thousands" of basic models. Nonetheless, DOE believes that the proposed change should have little practical impact on manufacturers' current practices due to the volume of motors rated using AEDMs and/or through participation in certification programs. DOE understands that most models are rated based on modeling and thus will be subject to the AEDM provisions, which are virtually unchanged by this proposal.

Instead, the changes should provide more clarity to manufacturers about the testing required, which should increase the consistency between representations based on the three testing options discussed in the next section. DOE does not expect these changes to have any impact on manufacturer ratings (*i.e.*, energy efficiency representations) or compliance, because, in principle, an independent testing laboratory (under the proposed definition of "independent") should obtain measurements for a given sample of motors similar to those an in-house NIST/NVLAP-certified laboratory would have reached.

## 2. Submittal of a Certification Report

As stated above, under this proposal, a manufacturer of electric motors regulated under 10 CFR part 431 would have three options when testing and certifying compliance with energy conservation standards: (1) A manufacturer can have the electric motor tested using a testing program that is nationally recognized in the

<sup>6</sup> Accreditation means recognition by an accreditation body that a laboratory is competent to test the efficiency of electric motors according to the scope and procedures given in the Test Method B of IEEE Std 112–2004 and CSA 390–10. See 10 CFR 431.12.

United States (as described in § 429.74 of this proposal) and then certify on its own behalf or have a third party submit the manufacturer's certification report; (2) a manufacturer can test the electric motor at a testing laboratory other than a testing program that is nationally recognized and then have a certification program that is nationally recognized in the United States (as described in § 429.73 of this proposal) certify the efficiency of the electric motor; or (3) a manufacturer can use an alternative efficiency determination method ("AEDM," discussed in section III.E of this proposed rule) and then have a third-party certification program that is nationally recognized in the United States (as described in § 429.73 of this proposal) certify the efficiency of the electric motor.

A manufacturer that chooses the first option must have its electric motors tested through a testing program that is nationally recognized under the proposed provisions of 10 CFR 429.74. Under this first option, after a manufacturer retains an independent testing laboratory to conduct electric motor testing, the manufacturer can use those test results to certify compliance to DOE itself or through a third-party representative, or the manufacturer may still choose to employ the services of a nationally recognized certification program.

A manufacturer using a nationally recognized testing program may use a third-party representative to complete certification reports on its behalf under the certification provisions at § 429.12(g) and (h). A third-party representative may be any party authorized by the manufacturer to complete the reports on the manufacturer's behalf; common third-party representatives are foreign OEMs and private testing laboratories. The third-party representative would certify the accuracy of the information it submits but is only performing the ministerial function of completing the report. A manufacturer using a testing program could employ the services of a certification program that is nationally recognized in the United States (under the proposed § 429.73) to submit the certification reports for the manufacturer. In that situation, the certification program would be acting as a third-party representative and may or may not be employed by the manufacturer to certify the compliance of the motors (*i.e.*, issue a certificate of conformity).

A manufacturer that chooses the second option tests its electric motors at the manufacturer's own testing laboratory or at any other testing

laboratory that does not meet the proposed definition of "independent." In DOE's view, a supervised witness test at a manufacturer-owned laboratory does not meet the proposed definition of independent because the lab has financial ties to the manufacturer and would, therefore, fall under the second option. The manufacturer would employ a certification program that is nationally recognized in the United States (under the proposed § 429.73) to certify the efficiency of the electric motor basic models. The petition process and requirements for DOE to recognize third-party certification programs as nationally recognized in the U.S. would be part of new sections 10 CFR 429.73 and 429.75, and are more fully discussed in section III.F of this proposed rule.

A manufacturer that chooses the third option would conduct its testing to validate its AEDM at any testing laboratory. The manufacturer would apply the AEDM to determine the efficiency of its basic models, as long as the AEDM regulations are followed, but would be required to employ a third-party certification program that is nationally recognized in the United States to certify the efficiency of the electric motor basic models to DOE.

Under all three options, a manufacturer must itself certify to DOE the compliance of each basic model of the motors it manufactures and distributes in commerce in the U.S. As discussed in the October 1999 final rule, the statute requires a manufacturer to certify the compliance to DOE. That certification, in turn, must be based on the use of a nationally recognized, independent testing program or a nationally recognized certification program. A nationally recognized certification program would verify the reliability of testing, such as by reviewing a laboratory's protocols and procedures. But the nationally recognized certification program would not necessarily itself make the declaration to DOE that a manufacturer's motor complies with the applicable standard or has a given efficiency. The manufacturer itself remains responsible for stating that declaration, either directly or through a representative authorized to do so. See 64 FR at 54124 (October 5, 1999).

DOE anticipates that manufacturers using certification programs may often authorize their certification programs to provide the necessary declarations on their behalf. Indeed, some manufacturers may not often want to submit certifications directly. Nevertheless, DOE seeks comment regarding the conditions under which

DOE should accept a certification submitted directly by a manufacturer that used a certification program to fulfill the certification testing requirements. DOE also requests comment regarding whether DOE should, in those cases, require the certification report to include a certificate of conformity or whether DOE should only require the certification report to identify the certification program used (with a certificate of conformity available from the certification program upon request by DOE).

DOE proposes conforming changes to 10 CFR part 431, including removal of existing provisions regarding the determination of efficiency (10 CFR 431.17), testing laboratories (10 CFR 431.18), DOE recognition of accreditation bodies (10 CFR 431.19), DOE recognition of certification programs (10 CFR 431.20), and procedures for the withdrawal of recognition for accreditation bodies and certification programs (10 CFR 431.21). The new provisions regarding certification of efficiency and associated requirements would be addressed in 10 CFR 429.63 (certification of electric motors), 429.70 (AEDMs), 429.73 (requirements for certification programs), and 429.74 (requirements for testing programs) and 429.75 (procedures related to independent testing programs and certification programs). DOE also proposes to remove 10 CFR 431.14, as the reference citations were provided solely for convenience.

DOE seeks comments on the three proposed options for manufacturers to use when conducting certification testing for electric motor compliance with energy conservation standards.

### 3. Sampling Plan

The current sampling requirements for electric motors were established through the October 1999 final rule. 64 FR at 54129. The current regulations require that each basic model must either be tested or rated using an AEDM. (10 CFR 431.17(a)) § 431.17 goes on to specify the requirements for use of an AEDM, including requirements for substantiation (*i.e.*, the initial validation) and verification of an AEDM. Those requirements ensure the accuracy and reliability of the AEDM both prior to use and then through ongoing verification checks on the estimated efficiency. (10 CFR 431.17(a)(4)) This verification can be achieved in one of three ways: through participation in a certification program; by additional, periodic testing in an independent lab; or by verification by a professional engineer. (10 CFR



431.17(a)(4) For basic models that are not rated with an AEDM, paragraph (a)(5) of § 431.17 explains that a manufacturer may choose between either having a certification program certify a basic model's efficiency or conducting testing in an accredited laboratory. (10 CFR 431.17(a)(5)) It also explains that the motors tested to substantiate (*i.e.*, validate) an AEDM must either be in a certification program or must have been tested in an accredited laboratory.

Paragraph (b) of 10 CFR 431.17 provides further clarity regarding testing if a certification program is not used. Paragraph (b)(1) explains the criteria for selecting basic models (in an accredited laboratory) for certification testing and to substantiate (*i.e.*, validate) an AEDM. (See 10 CFR 431.17(b)(1), (b)(3)) Paragraph (b)(2) provides the criteria for selecting units for testing, including a minimum sample size of 5 units in most cases. For manufacturers using AEDMs, paragraph (b)(2) applies to those basic models selected for substantiating (*i.e.*, validating) the AEDM. (See 10 CFR 431.17(b)(2) and (3)) For manufacturers testing each basic model, paragraph (b)(2) applies to each basic model. (For manufacturers using a certification program, these selection and sampling requirements are specified in the certification program's operational documents.)

#### Rated Efficiency

Before distribution in commerce, electric motors manufacturers and private labelers of electric motors subject to energy conservation standards must submit a Compliance Certification to the Department that includes, among other things, a nominal full-load efficiency for each basic model. Provisions for determining a basic model's efficiency through testing or with an AEDM are currently described in 10 CFR 431.17. Included in this section are provisions to verify the nominal full-load efficiency of a basic model for which a certification program is not used. As part of these requirements, a sample (in most cases, five or more) must be tested for each basic model. The results of that sample are then evaluated to ensure that the average measured full-load efficiency of the sample is no less than a prescribed margin from the represented nominal full-load efficiency of the basic model, where the margin is part of a mathematical formula described in § 431.17(b)(2). The basic model is also evaluated using a second formula to verify that the measured efficiency of the least efficient tested motor in the sample is no less than a prescribed

margin from the represented nominal full-load efficiency. (See 10 CFR 431.17(b).)

DOE imposes one set of sampling provisions for manufacturers to use when rating their products and a second set of sampling provisions for DOE to use when evaluating the compliance of those products. The sampling provisions for determining a represented value (*e.g.*, nominal efficiency) reflect the fact that an important function of represented values is to inform prospective purchasers how efficiently various products operate. In light of that purpose, DOE designed the regulation with respect to the represented value so that purchasers are more likely than not to get a unit that actually performs as efficiently as advertised. The enforcement statistical formulas are designed to determine if a basic model is compliant with the applicable energy conservation standard and are weighted in favor of the manufacturer to minimize the likelihood of erroneous noncompliance determinations. The certification statistical formulas are designed to protect purchasers; the enforcement statistical formulas are designed to protect manufacturers. DOE emphasizes that not every, individual unit of a motor basic model must be at or above the standard; however, the represented nominal efficiency must not exceed the population mean. NEMA previously stated that DOE's proposed requirement that the average efficiency of any sample to not be less than the represented efficiency places an unreasonable burden on manufacturers and would require that all electric motors be designed to substantially exceed the represented value in order to assure that any sample would pass the compliance test. (EE–RM–96–400, NEMA, No. 38 at pg. 3) The part 429 requirements ensure the tests of each basic model, whether for determining the model's efficiency or for the substantiation (*i.e.*, initial validation) of an AEDM, are based on a sample of units that is large enough to account for reasonable manufacturing variability among individual units of the basic model or variability in the test methodology such that the test results for the overall sample will be reasonably representative of the efficiency of the whole population of production units of that basic model. Under these certification statistical formulas, manufacturers can increase their sample size to narrow the margin of error.

After reviewing these various provisions for determining efficiency, DOE is concerned that its current provisions give rise to too high a risk

that a manufacturer may state a nominal efficiency for a basic model that is greater than the actual population mean for that model. In the previous rulemaking, DOE adopted a formula under which a manufacturer could represent an efficiency of "RE" (*i.e.*, represented efficiency) only if the average full load losses of the sample are less or equal to 105 percent of the full load losses corresponding to the represented value, and if the minimum full load losses are less than or equal to 115 percent of the full load losses corresponding to the represented value. Because these formulas do not require the average full load efficiency of the sample to be at least equal to the represented value, DOE is concerned that these formulas create too large a likelihood that the average efficiency of a manufacturer's production of given basic model will actually be below the model's stated efficiency.<sup>7</sup>

Accordingly, DOE is proposing to adopt a variety of modifications to decrease that likelihood. DOE recognizes that these proposed changes might impact the ratings that manufacturers assign to their models and whether a given model would be deemed compliant with the standards. Whether and how the changes would affect a particular basic model, in either of these respects, would depend on the detailed distribution of efficiencies for units of that model. That distribution might vary by manufacturer or model. Therefore, although NEMA has previously represented that the actual population mean for a basic model will always be above the rated nominal efficiency (*see* NEMA, Docket EE–RM–96–400 Comment 23, p. 1), DOE is proposing to allow manufacturers to continue to use the current formulas for determining nominal efficiency and compliance until June 1, 2017. These new formulas would be used to demonstrate compliance with the standards for which compliance was required as of June 1, 2016.

DOE is proposing to adopt sampling provisions similar to those for other types of equipment for certifications of compliance with the 2016 standards and for representations of efficiency as of June 1, 2017. In past comments, NEMA has suggested that these sampling provisions would force manufacturers to "over design" the performance of their motors. *See* 64 FR 54129. However, if tests on a small sample produce a mean sample efficiency that is lower than

<sup>7</sup> The full load losses corresponding to a value of full load efficiency (FLE) are equal to the horsepower of the motor multiplied by (100/FLE–1).

what a manufacturer believes to be the true mean across manufactured units, the regulations would permit the manufacturer to enlarge the sample. The mean of a larger sample would tend to have smaller departures from the population mean.

Specifically, DOE proposes to adopt a sampling plan for certification testing of electric motors similar to those used for other consumer products and commercial equipment. Under the proposal, the represented efficiency could be no greater than the lesser of the arithmetic mean of the tested sample or the lower 97.5 percent one-tailed confidence limit of the true mean divided by 0.95. As further clarification, to determine the appropriate representative efficiency of a basic model, the results of at least five samples would be used to calculate both the arithmetic mean and the lower 97.5 percent one-tailed confidence limit of the true mean divided by 0.95. These two values are compared and whichever is lower creates an upper bound on the represented efficiency. For example, if the arithmetic mean is the lower value, then the represented efficiency of a basic model must be greater than or equal to the standard (the applicable nominal efficiency found at 10 CFR 431.25), but no higher than the arithmetic mean of the sample. Manufacturers can then determine the nominal full-load efficiency of a basic model by selecting an efficiency from the “nominal efficiency” column of Table 12–10, NEMA MG1–2009 that is not greater than the representative efficiency of the basic model.

In addition, the general sampling plan provisions at 10 CFR 429.11 would apply to both electric motors and small electric motors under the proposal (with the current minimum number of units per basic model that must be tested (five) superseding the general minimum sample size). The sampling provisions at 10 CFR 429.11 are also amended to state that if fewer than the minimum number of units required for testing is manufactured, each unit must be tested.

DOE proposes to insert the formulas from 10 CFR 431.17(b)(2)(i) and (ii) into a new section 10 CFR 429.138, which would contain product-specific provisions dealing with verification of representations. Because part 429 currently does not address any products with labeling requirements, DOE has no parallel provisions. This provision would be used to evaluate whether a representation is permitted for purposes of the prohibited acts related to labeling and representations. See section III.H.3 of this proposed rule for discussion.

Different sampling provisions apply during enforcement testing to determine noncompliance with the energy conservation standards. Those sampling provisions are discussed in detail in section III.H.3 of this proposed rule.

DOE requests comments on these proposals, specifically the proposed confidence intervals.

#### Use of Certification Programs

As discussed in section III.F.1 of this proposed rule, DOE is proposing to require that any motor rated using an AEDM must be certified by a nationally recognized certification program. DOE is proposing to make explicit that a certification program must conduct ongoing verification testing. DOE requests comment regarding whether DOE should more explicitly require specific sampling provisions for use in verification testing by certification programs and, if so, what those sampling requirements should be.

DOE is not proposing to change the current requirement to test a minimum of five units of a basic model to determine the represented efficiency (rating) of the basic model. DOE is also retaining the current provision that allows for testing of fewer than five individual units of a basic model if fewer than five units will be produced over a period of about 180 days, which is intended to address low-volume models. However, DOE is clarifying that the smaller sample size is only allowed for models rated based on testing (not for models used to substantiate (*i.e.*, validate) an AEDM).

DOE is also not proposing to change the requirement that at least five units of each basic model must be tested to substantiate (*i.e.*, validate) an AEDM. These two provisions combined ensure that an AEDM is based on testing of at least five units of at least five basic models. DOE is not proposing to change the requirements for selection of the basic models used to substantiate (*i.e.*, validate) an AEDM but is proposing to remove the note: “[c]omponents of similar design may be substituted without requiring additional testing if the represented measures of energy consumption continue to satisfy the applicable sampling provision” because the basic model concept permits manufacturers to test representative units and group similar models without additional testing.

#### Use of Testing Programs

Similarly, DOE is not proposing to change the current requirement to test a minimum of five units of a basic model to determine the represented efficiency (rating) of the basic model. DOE is also

retaining the current provision that allows for testing of fewer than five individual units of a basic model if fewer than five units will be produced over a period of about 180 days, which is intended to address low-volume models. DOE is clarifying that, if testing is conducted through an independent testing program that is nationally recognized, then each basic model must be tested.

#### 4. Certification

While the current regulations in 10 CFR part 431 only require electric motor manufacturers to certify compliance before a basic model is distributed in commerce for the first time (see 10 CFR 431.36), this proposal would also require electric motor manufacturers to certify compliance annually. (See 76 FR 12422, 12424–12425 (March 11, 2007) for a discussion of the rationale for this change.) Although annual certification would be required, additional testing would not be required as long as the represented nominal efficiency continued to remain valid (*e.g.*, the manufacturer did not make changes to a given basic model that would result in a less efficient motor). A manufacturer could conduct periodic testing of the basic model as part of its quality assurance process, but it would be at the discretion of the manufacturer. There would be no requirement to perform additional testing (apart from any verification testing requirements associated with the use of an AEDM or certification body).

As part of these proposed changes, DOE would also require electric motor manufacturers to certify their products using the more detailed certification report at 10 CFR 429.12(b) in place of the current certification report described at 10 CFR part 431, appendix C to subpart B. Importers, which are manufacturers under EPCA, would be required to certify the compliance of the electric motors they import. Under the proposed rule, private labelers would no longer be required to certify the compliance of the products they label. See 76 FR at 12427 (March 11, 2007) for a discussion of the rationale for this change.

Currently, DOE’s regulations provide a manufacturer with two methods for submitting a certification to DOE that its electric motors comply with the prescribed energy conservation standards, as identified in § 431.36(d): (1) They can submit the certification electronically using the Certification Compliance Management System (“CCMS”) found at <http://www.regulations.doe.gov/ccms>; or (2) they can submit a hard copy of the

completed certification form via certified mail. (See 10 CFR part 429, subpart B, appendix C (providing an exemplary copy of the certification form.))

In this proposed rule, both 10 CFR 431.36 and 10 CFR part 431, appendix C to subpart B would be removed, which would eliminate the option of submitting a hard-copy certification report. In place of these provisions, the proposed rule would make electric motors subject to the general certification report requirements found at 10 CFR 429.12 and add certification report parameters for electric motors in paragraph (c) of the proposed 10 CFR 429.63. The general certification report requirements already contained in 10 CFR 429.12 require that, before distributing in U.S. commerce any basic model of a covered product or equipment subject to standards under EPCA, and annually thereafter, each manufacturer must submit a certification report to DOE certifying that each basic model meets the applicable energy conservation standard. In accordance with 10 CFR 429.12(h), all such reports must be submitted to DOE electronically using CCMS. The general components of each certification report are listed at 10 CFR 429.12(b) and (c) and are similar to the parameters currently reported by electric motor manufacturers.

DOE's current CCE regulations for products and equipment other than electric motors require certification of the compliance of each basic model (10 CFR 429.12), unlike DOE's current electric motor regulations in 10 CFR 431.36, which require the filing of a certification report for the least efficient basic model within each "rating" (as defined at 10 CFR 431.12).<sup>8</sup> This proposal would require the filing of certification reports for all basic models of electric motors. See 10 CFR 429.12(d). In other words, a manufacturer would need to certify any new basic model (but not each individual model) prior to distribution in commerce and to file certification reports every year thereafter. Discontinued basic models would be required to be reported on the annual report when production has ceased and the manufacturer is no longer offering the basic model for sale. See 10 CFR 431.12(f).

The proposed electric motors-specific certification report requirements would largely reflect the type of information already currently reported by electric

motor manufacturers and includes: the electric motor equipment category as described at 10 CFR 431.25 (e.g., fire pump electric motors); the horsepower on which the electric motor basic model was tested; the number of poles; the enclosure type (i.e., open or enclosed); the rated voltage; the operating frequency; whether the basic model is subject to specific test procedure provisions listed in section 4 of appendix B to subpart B of part 431 and, if so, which provision(s); the represented nominal full-load efficiency and the represented total losses; the sampling methodology used; whether the represented values are based on testing in an independent testing laboratory or a nationally recognized certification program; and the name of the independent testing laboratory or nationally recognized certification program. Additionally, the manufacturer identification number or "MIN" applied to the relevant basic model must be provided. (See section III.A of this proposed rule for discussion of the proposal for a MIN.) The general certification report requirements at 10 CFR 429.12(b) would also apply to electric motors under this proposal.<sup>9</sup> (The represented full-load efficiency to be reported as part of a certification report is discussed earlier in this section.)

To conform with the proposed shifting of the compliance certification provisions for electric motors to 10 CFR part 429, DOE proposes to (1) amend 10 CFR 431.35 ("Applicability of certification requirements") to reflect that certification procedures are set forth in 10 CFR 429.12 and 429.63, (2) remove 431.36 ("Compliance certification"), and (3) remove appendix C to subpart B of part 431. The certification report requirements would be located at 10 CFR 429.12 and 429.63. DOE provides templates in Excel format at <https://www.regulations.doe.gov/ccms/templates>.<sup>10</sup>

<sup>9</sup>These requirements include: manufacturer's name and address; private labeler's name and address (if applicable); brand name; basic model number and individual manufacturer's model numbers covered by that basic model; whether the submission is for a new model, a discontinued model, a correction to a submitted model, a carryover model, or a model in violation of a voluntary industry certification program; the test sample size; whether certification is based on a test procedure waiver; whether certification is based on exception relief from DOE's Office of Hearing and Appeals; and whether certification is based on an AEDM. See 10 CFR 429.12(b).

<sup>10</sup>DOE will provide a revised template in Excel format for certification of electric motors and a new template for small electric motors after DOE has finalized certification requirements for this equipment; however, commenters may wish to familiarize themselves with existing templates for

DOE proposes that manufacturers would be permitted to continue certifying compliance for electric motors based on the current sampling provisions until July 1, 2017. As all electric motors subject to energy conservation standards that are currently distributed in commerce should have already been previously tested and certified by manufacturers, DOE proposes that manufacturers would submit the first certification report under the new certification provisions by November 1, 2016, if the final rule is issued by October 1, 2016, or otherwise by July 1, 2017—in which case, the certification would be based on testing in accordance with the new sampling plan. Any new basic models to be introduced to the U.S. market would be required to be tested using the new sampling plan and certification requirements starting 30 days following the publication of a final rule.

DOE requests comments on these proposals.

#### D. Small Electric Motor Certification and Compliance

This section, like the prior section, addresses each aspect of certifying small electric motors as compliant with the applicable energy conservation standards. Compliance with the energy conservation standards for certain small electric motors has been required since March 2015. DOE is proposing certification requirements specific to small electric motors. Existing provisions regarding the determination of efficiency (10 CFR 431.445), recognition of nationally recognized certification programs (10 CFR 431.447), and procedures for the withdrawal of recognition for accreditation bodies and certification programs (10 CFR 431.448) would be removed under this proposal. The new provisions regarding certification of efficiency and associated requirements would, consistent with DOE's overall approach for consolidating the locations of its certification and compliance provisions, be placed in 10 CFR 429.64, 429.70, 429.73, 429.74, and 429.75.

##### 1. Certification Testing

In the 2012 test procedure final rule, DOE noted that there were no existing certification programs or independent testing laboratory accreditation programs for small electric motors. 77 FR 26630. Since that time, two entities have been recognized by DOE for classification as nationally recognized certification programs for small electric

electric motors and other products to understand better the proposals in this rule.

<sup>8</sup>Manufacturers are not currently required to certify to DOE the compliance of basic models within the same "rating" (as defined at 10 CFR 431.12) that are more efficient than the certified basic model.

motors: UL Verification Services (78 FR 72077 (December 2, 2013)) and CSA Group (79 FR 24700 (May 1, 2014)). DOE has also identified three test laboratories that are accredited by the NIST/NVLAP program to perform the IEEE 114–2010 test procedure, which DOE requires when testing single-phase small electric motors.<sup>11</sup> These labs are also accredited to perform IEEE 112–2004 Method B, which is the required DOE test method for polyphase small electric motors of greater than 1 horsepower. When testing polyphase small electric motors of 1 horsepower or less, DOE requires the use of IEEE 112–2004 Method A. Although DOE has not identified any laboratories accredited by NVLAP to perform Method A testing, NVLAP’s listing of labs accredited to perform IEEE 114 testing also covers the CSA equivalent to Method A.<sup>12</sup>

In light of these developments, and to conform the small electric motor regulations with those proposed for electric motors, DOE is proposing that small electric motor manufacturers follow the same efficiency testing and certification procedures, which would be included in the testing and sampling provisions applicable to small electric motors in § 429.64. As described in detail previously, manufacturers would have three options when testing and certifying compliance with energy conservation standards: (1) A manufacturer could test the small electric motor using a testing program nationally recognized in the United States (as described in § 429.74 of this proposal) and then certify that motor on its own behalf or have a third party submit the manufacturer’s certification report; (2) a manufacturer could test the small electric motor at a testing laboratory other than a nationally recognized testing program and then have a third-party certification program that is nationally recognized in the United States (under § 429.73 of the proposal) certify the efficiency of the motor; or (3) a manufacturer could use an AEDM (as discussed in section III.E of this proposed rule) to model the energy efficiency performance of the

<sup>11</sup> The list of test laboratories accredited by NVLAP to perform energy efficiency testing of electric motors, as of June 10, 2016, is available in the docket at <https://www.regulations.gov/#/documentDetail;D=EERE-2014-BT-CE-0019-0002>.

<sup>12</sup> Small electric motor test procedures are detailed at 10 CFR 431.444. In this section, DOE identifies the C747 procedure as the CSA equivalent test method for testing of polyphase small electric motors of less than or equal to 1 horsepower. Although the NVLAP accreditation is not explicit, the C747 accreditation covers testing of both single-phase small electric motors and polyphase small electric motors of less than or equal to 1 horsepower.

small electric motor and then have a third-party certification program that is nationally recognized in the United States (under § 429.73 of the proposal) certify the efficiency of the motor on the manufacturer’s behalf. DOE notes that, unlike with electric motors (*see* 42 U.S.C. 6316(c)), the statute does not require manufacturers of small electric motors to certify that a small electric motor meets the applicable standard through an independent testing or certification program nationally recognized in the United States. Therefore, DOE could adopt another framework<sup>13</sup> for certification testing of small electric motors and is proposing the same framework as electric motors only for consistency.

DOE requests comments on this proposal.

DOE notes that Baldor had previously submitted a letter to DOE identifying a number of issues related to the certification of small electric motors. (Baldor, No. 1) In its letter, Baldor indicated that DOE’s regulations specifying additional instructions when a certification program is not used found at § 431.445(c) are unclear. Baldor stated that there is no provision in § 431.445(c) requiring basic models to be tested in accordance with the DOE test procedure. (Baldor, No. 1 at p. 5) While DOE believes that the language at 10 CFR 431.444 makes clear that the efficiency of small electric motors must be determined with the DOE test procedure, this proposed rule moved and reorganized the provisions for certification testing to § 429.64. DOE welcomes comments regarding the clarity of the text proposed for § 429.64.

## 2. Sampling Plan

In general, DOE requires represented values to be determined by the application of basic statistical concepts. Baldor requested that DOE clarify some of these concepts. Specifically, Baldor commented that the term “population” used in the definition of average full-load efficiency was unclear. (Baldor, No. 1 at p. 2) The terms “population” and “sample” are standard statistical concepts. A population of objects consists of all the objects that are relevant in a particular study.<sup>14</sup> A population of small electric motors

<sup>13</sup> Based on the comments received, DOE would consider adopting provisions akin to those for most other types of covered products/equipment, which rely entirely upon manufacturer self-certification. Another possibility would be to adopt provisions akin to those for certain lighting products, which require all certification testing to be conducted by an accredited laboratory.

<sup>14</sup> Wilcox, Rand R. *Basic Statistics: Understanding Conventional Methods and Modern Insights*. New York: Oxford UP, 2009: 4. Print.

consists of all the small electric motors produced for a basic model. As Baldor states, testing all the units of a basic model to determine the mean of the full-load efficiency of the total population is not practical. (Baldor, No. 1 at pp. 2 and 3) For this reason, DOE only requires manufacturers to test a sample of the population in order to make inferences about the basic model’s population. DOE assumes that its covered products have a normal efficiency distribution and uses Student’s t-distribution to estimate numerical characteristics of a population. This document proposes to require using a sampling plan specific to small electric motors to allow a manufacturer to make representations of average full-load efficiency and other energy consumption metrics for its basic models.

DOE believes it is likely that the sources of variation in the testing of small electric motors that would affect the statistical validity of small electric motor testing results will be substantially similar to those for electric motors. This belief is based on the fact that small electric motors and electric motors overlap considerably in structure, function, input materials, and manufacturing processes—all of which contribute to variability in overall equipment performance in a similar manner for both electric motors and small electric motors. In addition, small electric motors are tested using methods similar to those for electric motors. On this basis, DOE proposes to adopt certification testing sampling requirements for small electric motors similar to those for electric motors.

Specifically, DOE proposes that the represented efficiency cannot exceed the lesser of the arithmetic mean of the tested sample or the lower 97.5 percent confidence limit of the true mean divided by 0.95. The represented total losses would be no lower than the greater of the arithmetic mean or the upper 97.5 percent confidence limit of the true mean divided by 0.95. In addition, as required with electric motors, at least 5 units per basic model must be tested to determine the represented efficiency (rating) of the basic model. For low-volume models with fewer than five individual units of a basic model produced over a period of about 180 days, DOE proposes to require that each unit manufactured be tested and the manufacturer must certify the average full-load efficiency for the low-volume basic model. This certification sampling plan would be placed in a new § 429.64.

Different sampling provisions apply during enforcement testing to determine noncompliance with the energy

conservation standards. Those sampling provisions are discussed in detail in section III.H.3 of this proposed rule.

DOE requests comment on this proposal.

### 3. Certification Reports

There are currently no regulatory requirements governing the submission of certification reports specifically for small electric motors. This document proposes product-specific certification provisions for small electric motors that would appear in a new § 429.64(c). The general certification report requirements are described more fully in section III.C.3 of this proposed rule. The proposed certification report requirements that would apply specifically to small electric motors include: small electric motor type as described at 10 CFR 431.446(a), the horsepower on which the basic model was tested, the number of poles, the represented average full-load efficiency, the represented total losses, the MIN applied to the basic model, whether the represented values are based on testing in an independent testing laboratory or nationally recognized certification program, and the name of the independent testing laboratory or nationally recognized certification. DOE requests comment on the product-specific certification requirements proposed for small electric motors.

In its letter, Baldor stated that there is no requirement that a manufacturer obtain approval of compliance from DOE before entering any small electric motor into commerce. (Baldor, No. 1 at p. 7) DOE confirms that it does not issue any notice of approval once a manufacturer has certified compliance of its basic models. Manufacturers are responsible for ensuring that their products are compliant with the applicable provisions found at 10 CFR parts 429 and 431. As part of the certification report, DOE requires a manufacturer to submit a compliance statement acknowledging its responsibility.

DOE proposes to require manufacturers of small electric motors to submit the first certification report 90 days after publication of a final rule.<sup>15</sup>

#### *E. Alternative Methods for Determining Energy Efficiency or Energy Use*

Under current DOE regulations for both electric motors and small electric

motors, a manufacturer can determine that the electric motor or small electric motor complies with energy conservation standards either through testing or through the use of an AEDM for determining energy efficiency or energy use that meets the requirements of 10 CFR 431.17(a)(2) and (3) for electric motors or 10 CFR 431.445(a)(2) and (3) for small electric motors. DOE proposes to retain these AEDM-based options but to move them from 10 CFR 431.17 and 10 CFR 431.445 to 10 CFR 429.70, the location of the AEDM provisions for other covered products and equipment. Moreover, this proposed rule would adjust the structure of the AEDM requirements for electric motors and small electric motors to more closely conform to the general format of the other 10 CFR 429.70 provisions, including appropriate references to other sections of part 429 and part 431 where required, although the requirements for using an AEDM for electric motors and small electric motors effectively remain the same. Further, DOE proposes to change the term “substantiation” to “validation” to better align the relevant terminology with the AEDM provisions in 10 CFR 429.70. Finally, DOE proposes to modify one of the requirements for selecting small electric motor basic models for validation testing. Within the context of the certification scheme described previously, manufacturers using an AEDM in lieu of testing would be required to rate their motors using an AEDM and certify compliance of their basic models through a nationally recognized certification program for those basic models of electric motors and small electric motors not tested.

DOE received a letter from Baldor requesting that DOE clarify the substantiation (*i.e.*, validation) requirements for AEDMs for small electric motors. Baldor stated that there are no requirements as to how to select the basic models used for substantiation (*i.e.*, validation), there are no requirements specifying the minimum number of units tested for each basic model, and there is no defined test procedure for measuring the efficiency of each basic model. Baldor commented that the AEDM provisions could be improved by directly referencing the requirements for selecting basic models found at 10 CFR 431.445(c)(1). (Baldor, No. 1 at pp. 4 and 6)

As part of this proposal to move the AEDM provisions to § 429.70, DOE is reorganizing these provisions for clarity. As previously stated, in today’s notice DOE is proposing to use the term “validation” instead of

“substantiation.” Section 429.70(i)(2) specifies how to validate an AEDM. This section states how many basic models are required for validation, explicitly references the test procedure for small electric motors, and explains how the test results must compare to the results produced by the AEDM. Additionally, § 429.70(i)(3) details specific instructions for selecting basic models for validation.

In addition to reorganizing the AEDM provisions for small electric motors, DOE is proposing to modify one of the requirements for selecting small electric motor basic models for validation testing. Currently, small electric motor manufacturers must adhere to the provisions in 10 CFR 431.445(c)(1) to select basic models for validation testing. One of these provisions states that at least one basic model is selected from each of the frame number series for which the manufacturer is seeking compliance. DOE proposes to change that language to better align with the requirements for electric motors by amending the requirement to state that no two basic models may have the same frame number series. DOE believes that this proposed language would reduce small electric motor manufacturer testing burdens because it would not require a manufacturer to test more than five motor basic models even if the manufacturer is validating an AEDM that will apply to more than five frame number series of motors. DOE requests comment on this proposal.

#### *F. Independent Testing and Certification Programs Classified by DOE as Nationally Recognized*

Under 42 U.S.C. 6316(c), DOE must require manufacturers of electric motors for which energy conservation standards are established at 42 U.S.C. 6313(b) to certify, through an “independent testing or certification program nationally recognized in the United States” that such electric motor meets the applicable standard. DOE developed a process for national recognition of certification programs, which is codified at 10 CFR 431.20 and 431.21. On May 4, 2012, DOE added the same requirements for small electric motors. *See* 77 FR 26639–26640 (codified at 10 CFR 431.447 and 431.448).

In its prior comments regarding the certification of small electric motors, Baldor stated, “even if a certification program is used . . . it is still mandatory that the average full-load efficiency of any basic model being certified under the program be determined in accordance with DOE test procedure and not in accordance with any different procedures set forth in the

<sup>15</sup> Pursuant to 10 CFR 429.12(i), a manufacturer is not required to submit a certification report for a product subject to an energy conservation standard for which the compliance date has not yet occurred. The certification report must be submitted not later than the compliance date for the energy conservation standard.

certification program.” (Baldor, No. 1 at p. Y) DOE affirms that regardless of whether a certification program is used or not, the average full-load efficiency of each basic model must either be determined in accordance with the DOE test procedure and sampling provisions or by applying an AEDM that meet the requirements set forth in the rule.

#### 1. Petitions for Recognition

The petition requirements for DOE to recognize independent testing and certification programs as nationally recognized in the U.S. are proposed in a new section, 10 CFR 429.73 and .74 respectively. The proposed nationally recognized certification program petition process is nearly identical to the existing petition process in 10 CFR 431.20 (for electric motors) and 431.447 (for small electric motors). The proposal would remove the existing provision that a certification program must be qualified to operate a certification system “in a highly competent manner,” which is a subjective requirement. While DOE believes that this is a necessary attribute of such a program, DOE is proposing instead to specify individual characteristics that are more readily evaluated for a program seeking classification as a nationally recognized certification program. DOE believes this approach would provide improved transparency and equitability among programs. Petition requirements for both electric motors and small electric motors, which are identical except for references to “small electric motor” in lieu of “electric motor,” are both included in the proposed § 429.73.

In its prior comments, Baldor expressed confusion over the purpose of a certification program. It noted that there is no actual requirement in 10 CFR 431.447 that any testing be performed within the structure of the certification body. (Baldor, No. 1 at pp. 4–5)

The purpose of a nationally recognized certification program is to provide independent oversight of a manufacturer’s representations of efficiency. For this reason, DOE is proposing that all nationally recognized certification programs have an ongoing verification testing process. DOE is proposing that petitioners provide documentation of their processes as part of the petition for recognition, including sampling provisions, selection criteria, a process for determining compliance with standards, and a process for reporting failures to DOE. DOE seeks comment regarding whether the UL and CSA small electric motors certification programs meet the criteria specified in this proposal and should remain nationally recognized certification

programs under this proposal. Because DOE based its recognition of these programs in large part on DOE’s prior recognition of their electric motors certification programs, DOE is also seeking comment regarding whether the UL and CSA electric motors certification programs meet the new criteria as specified in this proposal and should remain nationally recognized certification programs under this proposal. DOE requests comment regarding whether, in light of the changes to the petition criteria, the currently recognized certification programs should renew their petitions and DOE should conduct a new review for recognition under the new regulations once this rulemaking is finalized.

In contrast, the purpose of a nationally recognized independent testing program is to ensure that testing is being performed in a consistent manner without bias by personnel who have appropriate technical qualifications, appropriate equipment, and familiarity with DOE regulations. DOE is considering two possible approaches. One option would be for DOE to directly recognize testing facilities. The other alternative would be for DOE to recognize accreditation programs subject to those programs meeting specific criteria. In either instance, petitioners would be required to provide documentation as part of the petition for recognition. Both the accreditation program and the testing facilities would have to demonstrate independence under the proposed definition. The accreditation program and/or DOE would evaluate the capability of the testing facility to conduct repeatable, reliable testing. If DOE were to recognize accreditation programs, DOE would evaluate the capability of the program to accredit testing facilities in a manner consistent with the proposed requirements.

#### 2. DOE Petition for Recognition and Withdrawal

DOE’s proposes to move the procedures for the recognition and withdrawal of recognition of certification programs to 10 CFR 429.75. The proposed procedures for petitioning DOE to review a given recognition or withdrawal are similar to those procedures currently found at 10 CFR 431.21 (for electric motors) and 431.448 (for small electric motors), with a few exceptions, as follows. This proposal would require the submission of these petitions via email. Current requirements provide for a published, interim determination and solicitation of comments on that determination

before announcement of a final determination. (*See, e.g.*, 10 CFR 431.21(d).) Because the current process (and the process proposed here) already allows for public comment on the petition under consideration and provides the petitioner with 10 working days after receipt of comments to respond to these comments, DOE does not believe a second round of comments on a pending petition is necessary and proposes to remove that provision from the current requirements. However, DOE may allow for a second round of comments if deemed necessary based upon specific circumstances. The same processes would apply to the recognition of independent testing programs.

This proposed rulemaking offers a more detailed process for the withdrawal of recognition than is currently provided. If DOE believes that an independent testing or certification program that has been recognized under the proposed §§ 429.73 and 429.74 fails to meet the criteria outlined in that section, DOE may initiate withdrawal of the program after providing written notification to the affected program describing the corrective action that must occur to comply with the criteria in the proposed 10 CFR 429.73(c) and (d) or 429.74(c) and (d) and associated timeframes within which the program must complete the prescribed corrective actions, which in no case will exceed 180 days. The program would be provided 30 days to respond to DOE’s notification of withdrawal if it wishes to dispute DOE’s basis for the determination. After the period for corrective action has passed, DOE will withdraw recognition from that program if the specified corrective action has not been taken. This proposal would also explicitly provide any party aggrieved by an action under this section with the right to file an appeal with DOE’s Office of Hearings and Appeals, as provided in 10 CFR part 1003, subpart C.

Under the proposed § 429.75, independent testing or certification programs would also be permitted to voluntarily withdraw from recognition, which is what current §§ 431.21(g)(2) (for electric motors) and 431.448(g)(2) (for small electric motors) already permit. This proposal would add that the voluntary withdrawal notice to DOE must include the date on which the withdrawal is effective, the product or equipment types covered by the certification program to be withdrawn, and any effect the withdrawal has on the validity of certifications previously issued by the certification program. DOE would also require that withdrawal notifications be received by DOE at least

30 days prior to the effective date of withdrawal. Finally, DOE proposes to continue to publish in the **Federal Register** a notice of withdrawal of recognition, except that the notice would now include all of the required information in the program's voluntary withdrawal notice.

### G. Labeling

Under the current labeling requirements at 10 CFR 431.31, electric motor manufacturers must mark the permanent nameplate of those motors subject to the energy conservation standards in § 431.25 with the motor's nominal full-load efficiency and the CC number issued to the manufacturer pursuant to 10 CFR 431.36(f); manufacturers may also include an optional display with the encircled lowercase letters "ee" or with a comparable designation if the electric motor meets the standards in § 431.25.<sup>16</sup> DOE proposes to retain the requirement for manufacturers of electric motors to include certain information on the nameplates of motors covered by DOE efficiency standards, but with modifications to the current requirements. DOE is also proposing to require labels on small electric motors. These proposals are described in more detail in the following sections.

#### 1. Electric Motors

DOE proposes to require electric motor manufacturers to place on the nameplate the motor's represented full-load efficiency, derived from the electric motor's average full-load efficiency as determined pursuant to § 429.63(a). This proposed approach is similar to the current requirement except that the labels currently must display the electric motor's nominal full-load efficiency. In contrast, this proposal would allow manufacturers to use the represented efficiency rating determined in accordance with § 429.63. DOE would also require that, in place of the CC number currently used on electric motor nameplates, the nameplate bear instead the MIN issued to the manufacturer as described in section III.A of this proposal. DOE proposes to remove the "optional display" provision at 10 CFR 431.31(a)(3). DOE is also proposing that any voltages manufacturers place on the label constitute the motor's rated voltages and that the electric motor must meet the standard at that (or those) rated voltage(s). See section III.I of this

<sup>16</sup> Whether a particular covered motor must comply with the energy conservation standards is based on its date of manufacture (*i.e.*, importation, if manufactured outside the U.S.).

proposed rule for more discussion of this issue. Finally, the proposal would relocate the labeling requirements for electric motors from § 431.31 to a new § 429.76 in 10 CFR part 429.

DOE requests comment regarding whether model number, basic model number, or some other type of design information should be required on the nameplate to permit DOE and customers to tie a certification of compliance to a particular unit being distributed in commerce. DOE also requests comment regarding whether manufacturers could transition to any new nameplate requirements by June 1, 2017.

Additionally, DOE is proposing to retain the current requirement in 10 CFR 431.31(b) that the same information that appears on the motor's nameplate also appear on each page of a catalog that lists the motor and in other materials used to market the motor. However, DOE would not require the MIN to be repeated in catalog and other marking materials. These requirements would be moved to § 429.76 with the other labeling requirements for electric motors.

Section 431.32 of 10 CFR part 431 contains a provision explaining that the labeling requirements of § 431.31 supersede any State regulation and that, pursuant to the Act, all State regulations that require the disclosure for any electric motor of information with respect to energy consumption, other than the information required to be disclosed in accordance with this part, are superseded. This provision would also apply to the requirements proposed in this notice. DOE proposes to retain this provision in the regulations, but to relocate it to the proposed § 429.76 with the other labeling requirements.

#### 2. Small Electric Motors

As required by EPCA, DOE is proposing to require small electric motors to bear a label similar to the existing requirements for electric motors. Specifically, DOE is proposing to require that small electric motors for which standards are prescribed in 10 CFR 431.446 bear a permanent nameplate that is marked clearly with the small electric motor basic model's MIN and represented average full-load efficiency as certified pursuant to 10 CFR 429.64. In this case, "prescribed" means a small electric motor for which a standard has been set, even if compliance with that standard is not yet required. In addition, all orientation, spacing, type sizes, type-faces, and line widths to display this required information would be required to be the same as, or similar to, the display of any other performance data on the motor's

permanent nameplate, with the represented full-load efficiency identified either by the term "Represented Average Full-Load Efficiency" or "Rep. Avg. Full-Load. Eff.", and the MIN presented as "MIN: \_\_\_\_\_".

In considering whether the electric motors regulatory language is appropriate for small electric motors without modification, DOE requests comment regarding whether small electric motors currently, always, bear a "nameplate" or whether other forms of labeling should be permitted. As with electric motors, DOE also requests comment regarding whether DOE should require some specific model, basic model, or other design-specific information to be displayed on the nameplate. Labeling of small electric motors would be required six months following the publication of the final rule. DOE is proposing that only small electric motors manufactured in the U.S. (including motors imported into the U.S.) starting on that date bear a label when distributed in commerce and that this requirement would apply irrespective of when compliance with standards is required (*e.g.*, small electric motors that qualify for the 2017 compliance date would also be subject to the labeling requirement as of six months following publication of the final rule).

### H. Enforcement Provisions for Electric Motors and Small Electric Motors

As for other types of covered products and equipment, DOE's current regulations for electric motors in part 431 prescribe an enforcement process through which DOE determines whether an electric motor manufacturer is in violation of the energy conservation requirements of EPCA. The enforcement provisions for electric motors are currently located at 10 CFR part 431, subpart U. These provisions identify prohibited acts that may subject a manufacturer to civil penalties if the manufacturer is found by DOE to have committed them knowingly. These prohibited acts include distribution in commerce of an electric motor that does not comply with the applicable energy conservation standard. Subpart U also details an enforcement process DOE uses to determine whether a particular motor complies with the applicable energy efficiency standards, the conditions under which a manufacturer must cease distribution of a basic model, remedies for addressing cases of noncompliance, and a process for the assessment and recovery of civil penalties. These provisions are similar to the general enforcement provisions

applicable to other types of products and equipment, including small electric motors, which are found in 10 CFR part 429, subpart C.

DOE is proposing to apply the same enforcement provisions in subpart C to part 429 that apply to all other types of covered products and equipment to electric motors. These provisions are similar to the current provisions in subpart U to part 431, but with certain specific differences, as described in the following sections. There are also several proposed prohibited acts regarding electric motors and small electric motors that reflect the unique statutory provisions for each type of equipment. The proposed rule removes the enforcement provisions currently in place for electric motors from 10 CFR part 431, subpart U, and moves them to a new 10 CFR 429.110 and moves the enforcement sampling provisions to a new appendix D to subpart C of part 429. Subpart U would be reserved in the proposed rule.

#### 1. Prohibited Acts and Remedies

The prohibited acts provisions currently applicable to electric motors differ somewhat from those of other covered products and equipment, namely, by describing specific prohibited acts related to violations of the labeling and advertisement requirements applicable to electric motors. Thus, DOE is proposing to add these prohibited acts, which are currently listed in 10 CFR 431.382(a)(1), (2), and (4), to 10 CFR 429.102. The inclusion of electric motors in § 429.102 would also clarify that four additional prohibited acts not currently specified in § 431.382 also apply to electric motor manufacturers, which, as discussed in the March 7, 2011 CCE final rule (*see* 76 FR at 12440), are within the scope of the prohibited acts specified in EPCA at 42 U.S.C. 6302 (*See* 42 U.S.C. 6316(a).) These include prohibitions against the following actions: Failure to test any covered product or covered equipment subject to an applicable energy conservation standard in conformance with the applicable test requirements prescribed in 10 CFR parts 430 or 431 (§ 429.102(a)(2)); deliberate use of controls or features in a covered product or covered equipment to circumvent the requirements of a test procedure that produce test results that are unrepresentative of a product's energy or water consumption if measured pursuant to DOE's required test procedure (§ 429.102(a)(3)); distribution in commerce by a manufacturer or private labeler of a basic model of covered product or covered equipment after a notice of noncompliance

determination has been issued to the manufacturer or private labeler (§ 429.102(a)(7)); and knowing misrepresentation by a manufacturer or private labeler by certifying an energy use or efficiency rating of any covered product or covered equipment distributed in commerce in a manner that is not supported by test data (§ 429.102(a)(8)).

For small electric motors (and distribution transformers and high-intensity discharge (“HID”) lamps for which standards are set pursuant to 42 U.S.C. 6317), 42 U.S.C. 6316(a) provides that the prohibited acts in 42 U.S.C. 6302 apply to those types of equipment. Prohibited acts at 42 U.S.C. 6302(a) (*i.e.*, distributing in commerce new products/equipment that are not labeled as required and removing or rendering illegible any required label) do not apply to small electric motors because these acts only apply to types of equipment with labeling provisions promulgated pursuant to 42 U.S.C. 6294 and small electric motor labeling provisions are promulgated pursuant to section 6317. Accordingly, in 42 U.S.C. 6317(f)(1)(A), Congress created prohibited acts identical in effect to those found at section 6302(a)(1) and (2) that apply to small electric motors (and distribution transformers and HID lamps). Therefore, it would be a prohibited act for any manufacturer or private labeler to distribute in commerce a unit that is not labeled as required by 10 CFR 429.76, and it would be a prohibited act for a manufacturer or private labeler to remove or render illegible any label required by 10 CFR 429.76. These prohibited acts, which are identical to existing prohibited acts for electric motors that are proposed to be moved to paragraphs 11 and 12 at 10 CFR 429.102, would become enforceable with respect to small electric motors six months after publication of the final rule—*i.e.*, when labeling of small electric motors would be required. DOE notes that there is no statutory prohibited act for small electric motors akin to the prohibited act for electric motors that is proposed to be moved to paragraph 13, restricting representations in advertising materials.

In 42 U.S.C. 6317(f)(1)(B), Congress prohibited the distribution in commerce of a small electric motor that does not comply with the applicable standard. With respect to small electric motors that do not comply with the applicable standard, however, 42 U.S.C. 6302(a)(5) applies through application of 42 U.S.C. 6316(a). Thus, DOE concludes that section 6317(f)(1)(B) creates a new, different prohibited act regarding small electric motors—one that is tied to the

labeling requirement. (See introductory text to 42 U.S.C. 6317(f)(1) “After the date on which a manufacturer must provide a label for a product pursuant to subsection (e) of this section . . .”) DOE is proposing to add a prohibited act to § 429.102 that is specific to small electric motors to reflect the statutorily created prohibited act in 42 U.S.C. 6317(f)(1)(B). It would be a prohibited act for a manufacturer or private labeler to distribute in commerce any new small electric motor required to be labeled under 10 CFR 429.76 that is not in conformity with an applicable standard under 10 CFR 431.446. In most cases, a manufacturer can “sell-through” inventory of units manufactured prior to the compliance date for a new standard. This prohibited act specific for small electric motors would alter the typical transition for products subject to a new energy conservation standard. The statute requires that small electric motors bear a label six months after publication of the final rule. (42 U.S.C. 6317(e)) That means all small electric motors manufactured starting on that date will be required to bear a label. And since the statute makes it a prohibited act to distribute in commerce a small electric motor required to have a label if that small electric motor does not meet the applicable standard, 42 U.S.C. 6317(f)(1)(B), it is a prohibited act for a manufacturer or private labeler to distribute in commerce a new small electric motor if the following criteria are met: (1) The small electric motor was manufactured six months after the date of the final rule in this proceeding, (2) the small electric motor is a kind of motor for which DOE has prescribed a standard, (3) compliance with that standard is now required, and (4) the small electric motor does not meet that standard. Small electric motors not required to bear a label (*i.e.*, manufactured before six months after the publication of the final rule in this proceeding) and manufactured prior to the energy conservation standard compliance date would not be required to meet the standard and could continue to be distributed in commerce in the U.S. That is, “sell-through” would be permitted for motors manufactured prior to 6 months following publication of the final rule and would not be permitted for motors manufactured on or after the compliance date for the labeling provision.

DOE notes that manufacturers of small electric motors that qualify for the delayed compliance date of March 9, 2017, could be subject to the labeling requirement before a standard must be



met, depending on the timing of the final rule. For example, if Manufacturer X manufactures a small electric motor on February 2, 2017, the motor would be required to be labeled (assuming that the final rule in this proceeding is published at least six months prior) under 10 CFR 429.76. If this motor qualifies for the 2017 delayed compliance date and does not conform to the 2017 standard as of that date of manufacture, the manufacturer could distribute this motor in commerce even though the motor would not conform to the standard specified in 10 CFR 431.446. However, as of March 9, 2017, if that small electric motor were still in stock, the manufacturer would be subject to civil penalties for distribution in commerce of that motor.

DOE proposes to add a new paragraph 14 to the list of prohibited acts at 10 CFR 429.102 for this prohibited act as follows: For any manufacturer or private labeler of a small electric motor to distribute in commerce any small electric motor required by [the proposed] § 429.76 to be labeled that is not in conformity with the relevant energy conservation standard found at 10 CFR 431.446.

## 2. Test Notices

Section 431.383 contains the enforcement process for electric motors, which is conducted when a basic model is suspected of noncompliance with the applicable standard. Paragraph (a)(1) of this section requires DOE to provide formal notification to a manufacturer that DOE has received information that one of the manufacturer's basic models may not comply with the applicable efficiency standard and that DOE intends to test the basic model to assess its compliance. This paragraph specifies that a test notice may only be issued after the Secretary or his or her designated representative has examined the underlying test data (or, where appropriate, data as to use of an AEDM) provided by the manufacturer and after the manufacturer has been offered the opportunity to meet with the Department to verify, as applicable, compliance with the applicable efficiency standard, or the accuracy of labeling information, or both. DOE eliminated this process for all other types of products and equipment in the March 2011 CCE rule. For the same reasons stated in that rulemaking (see 76 FR 12422, 12434–12435), DOE proposes to adopt for electric motors the process used in enforcement actions for other types of products or equipment.

In addition, 10 CFR 431.383 provides that, where compliance of a basic model was certified based on an AEDM, the

Department has discretion to pursue the provisions of 10 CFR 431.17(a)(4)(iii) prior to invoking the test notice procedure and that a representative designated by the Secretary shall be permitted to observe any re-validation procedures, and to inspect the results of such re-validation. This process is addressed by the provisions applicable to the use of an AEDM that would be applied to electric motors through adoption of the proposed additions to 10 CFR 429.70 as well as the application of 10 CFR 429.71 to electric motors.

## 3. Enforcement Testing

In the event that DOE has reason to believe an electric motor is noncompliant with the applicable energy conservation standard, DOE may test that electric motor to verify whether it complies with the applicable standard. This process for electric motors currently is specified at 10 CFR 431.383. For all other products and equipment covered by DOE energy conservation standards, the enforcement testing process is in 10 CFR 429.110. DOE intends through this proposal to apply the requirements of § 429.110 to electric motors in place of § 431.383, which would alter the process by which enforcement testing is conducted for electric motors in certain respects. In addition to the process for issuing test notices, DOE notes that using § 429.110 in place of § 431.383 would result in the following changes: The maximum number of units that may be tested would increase from 20 to 21 units; enforcement testing would only be conducted by a laboratory that is accredited to the International Organization for Standardization (ISO)/International Electrotechnical Commission (IEC), "General requirements for the competence of testing and calibration laboratories," ISO/IEC 17025:2005(E); and testing of additional unit(s) as a result of a defective unit in the initial sample would be at DOE's discretion.

In addition, 10 CFR 431.383(f) currently allows a manufacturer to request that DOE conduct additional testing (at the manufacturer's expense). DOE is not proposing to retain this provision in the proposed rule as the additional testing is not allowed for any other covered products or equipment. As stated in the March 7, 2011 CCE final rule, the Department removed the regulatory provision allowing manufacturers to request additional testing because it is both unnecessary—given that manufacturers are free to perform additional testing on their own at any time—and otherwise delays the finality of a compliance determination.

76 FR at 12438. Therefore, once a product has been found noncompliant by DOE as a result of this process, there would be no further option for additional testing.

Regarding enforcement sampling, DOE is proposing to move the current enforcement sampling plan for electric motors to a new appendix D to subpart C of part 429. DOE proposes to modify the new appendix D to reflect the maximum number of units that may be tested is 21. Additionally, DOE proposes to make these enforcement sampling provisions applicable to small electric motors. For small electric motors, DOE notes that 10 CFR 431.445 presents a formula for evaluating compliance. DOE proposes to retain this approach in appendix D, as it better ensures that DOE bases any final determination of compliance on a sufficiently large sample size and mitigates the risk of incorrect determinations of noncompliance. However, DOE requests comments regarding whether the formula currently in 10 CFR 431.445 should be retained for evaluation of representations, similar to the provision for electric motors that DOE has proposed to move to 10 CFR 429.138.

As part of the October 1999 rulemaking, NEMA commented argued that the sampling plan for enforcement testing does not yield an estimate of the true mean full-load efficiency of the population of motors because it incorrectly applies the t-distribution. The confidence interval for the true population mean efficiency should not be anchored to the energy conservation standard. (EE–RM–96–400, NEMA, No. 0J at p. 8) Baldor commented that the DOE statistical formulation has the potential to penalize those manufacturers that minimize the variation in efficiency from motor to motor (standard deviation). Baldor continued to explain that this is particularly true for a set of samples whose mean is slightly below the statutory efficiency. (EE–RM–96–400, Baldor, No. 0E at p. 6) DOE requests comment on alternative methods of evaluating compliance to ensure that manufacturers that can produce motors with low variability are not disadvantaged. DOE will consider adopting an alternative formula based on the comments received.

## 4. Notices of Noncompliance and Penalties

When DOE determines that a basic model of a covered product or type of covered equipment does not comply with the applicable energy conservation standard, or if a manufacturer or private labeler determines that a basic model is

noncompliant, § 429.114 provides that DOE may issue a notice of noncompliance determination to the manufacturer. This notice explains to the manufacturer its obligations to: (1) Immediately cease distribution of the basic model; (2) immediately notify in writing those individuals to whom units of the basic model have been distributed about the finding of noncompliance; and (3) provide DOE with pertinent records about the manufacture and distribution of units of the basic model within 30 days of the proposed rule.

Similarly, § 431.385 requires electric motor manufacturers to: (1) Immediately cease distribution of the noncompliant basic model; (2) give immediate written notification of the determination of noncompliance to all persons to whom the manufacturer has distributed units of the basic model; and (3) provide DOE, within 30 calendar days of the notification, records, reports and other documentation pertaining to the acquisition, ordering, storage, shipment, or sale of a basic model determined to be in noncompliance. An electric motor manufacturer's obligations immediately after a determination of noncompliance would, therefore, be unchanged by applying the provisions of § 429.114 to electric motors in place of § 431.385.

Actions required following a finding of noncompliance are similar in scope between subpart U of part 431 and subpart C of part 429, except for certain minor differences. Section 431.385 provides, in paragraph (a)(4), that a manufacturer may modify a noncompliant model in such manner as to bring it into compliance with the applicable standard. Such modified basic model would then be treated as a new basic model and must be certified in accordance with the provisions of Subpart U, except that, in addition to satisfying those requirements, the manufacturer must also maintain records that demonstrate that modifications have been made to all units of the new basic model prior to distribution in commerce. These requirements are identical to those in § 429.114(d), except that the latter also requires that, after modifying a basic model to be compliant with DOE standards, the manufacturer must also assign new individual model numbers to the models within the basic model. This requirement would also apply to electric motors as a result of the changes proposed in this proposed rule.

Section 429.116 requires that, if DOE determines that independent, third-party testing is necessary to ensure a manufacturer's compliance with the rules of part 429 or part 431, a manufacturer must base its certification

of a basic model under subpart B of part 429 on independent, third-party laboratory testing. No such provision exists in subpart U of part 431, but DOE is proposing to apply this provision to electric motors. Additionally, under section §§ 431.386 and 429.118, DOE has the option to seek a judicial order to stop distribution of a noncompliant model and may assess civil penalties for violations of such provisions. However, § 429.118 allows the use of an injunction for the purposes of enjoining any prohibited act, while § 431.386 applies only to distribution in commerce of noncompliance models. DOE is proposing to apply the broader injunctive authority in § 429.118 to electric motors. Finally, both subpart C of part 429 and subpart U of part 431 define processes for assessing and collecting civil penalties. Except for minor differences in wording and the format of statutory references, the process in § 431.387, which currently applies to electric motors, and §§ 429.122 through 429.132, which apply to other products and equipment, are substantially the same. Thus, DOE intends to apply these sections of part 429 to electric motors.

#### *I. Other Revisions to Existing Electric Motors and Small Electric Motors Regulations*

DOE proposes to add a sentence to 10 CFR 431.25 that would describe testing of electric motors rated for use at multiple voltages, such as on a 230- or 460-volt electrical system, to address questions that DOE has received over the past year. The test procedures specified in appendix B to subpart B of part 431 require the basic model to be tested at the rated voltage, without specifying what to do when a manufacturer elects to include multiple rated voltages on the nameplate and marketing materials. DOE is clarifying in this proposed rule that the basic model of electric motor must be tested and meet energy conservation standards at all of the voltages for which the electric motor is rated by the manufacturer to be used.

For example, some motors are labeled with a voltage rating of 208–230/460 volts, while others are marked as “230/460V Usable at 208V.” In DOE's view, at any voltage at which the manufacturer declares that an electric motor may be installed and operated by making a representation in its literature or its nameplate, the electric motor must meet the standards when measured by the DOE test procedure. DOE proposes that only the lowest efficiency (when tested and rated for multiple voltages) be placed on the nameplate.

DOE requests comment on whether there should be some indication of which rated voltage is the lower efficiency voltage corresponding to the rated efficiency. DOE notes that the certification report on file with DOE will indicate the corresponding voltage. DOE seeks comment on whether the additional information would provide sufficient benefit to purchasers to warrant the additional cost. DOE requests comment regarding whether, for each rated voltage, the manufacturer should also put a corresponding efficiency on the nameplate. DOE requests comment regarding the costs associated with requiring additional information on the nameplate.

DOE requests comment on whether similar provisions should be implemented for basic models of small electric motors as well. As DOE is proposing to require small electric motors to bear a label, DOE requests information as to whether small electric motors will list multiple rated voltages on such label. If comments suggest that DOE should implement similar provisions, then DOE will consider adopting those requirements in the final rule.

This proposed rule would also clarify which small electric motors would be subject to energy conservation standards in 10 CFR 431.446 in light of the statutory exclusion for those small electric motors that are components of covered products or covered equipment.

Small electric motors that are a component of another covered product under 42 U.S.C. 6292(a) or covered equipment under 42 U.S.C. 6311 are not subject to energy conservation standards. (42 U.S.C. 6317(b)(3)) Therefore, a small electric motor that is distributed in commerce (*i.e.*, sold or imported) separately—*i.e.*, not integrated into another covered product/equipment—is subject to the standards. DOE considered another interpretation of this provision—excluding small electric motors “intended” to be used in a covered product/equipment—but DOE rejected that interpretation. This rejection is based on the fact that all small electric motors for which energy conservation standards have been set are general purpose motors—not specific or definite-purpose motors—so no small electric motor that would otherwise be subject to standards has any defining features or characteristics to identify it as “intended” for use in a covered product/equipment. DOE also rejected this interpretation because the plain language of section 6317(b)(3) designates “any small electric motor which is a component” as exempt from standards and a determination of

whether a national standard applies is made at the time of manufacture under EPCA.

The prohibition on distributing in commerce a non-compliant small electric motor in 42 U.S.C. 6317(f)(1)(B) centers on the time of distribution in commerce. Reading 42 U.S.C. 6317(b)(3) in conjunction with 42 U.S.C. 6317(f)(1)(B), the determination of whether a small electric motor meets energy conservation standards would be made no later than when the manufacturer or private labeler of the *small electric motor* distributes the motor in commerce in the U.S. Further, because the purpose of this provision appears to be to exempt small electric motors that are already effectively being regulated through the implementation of a standard for another type of covered product or equipment, DOE interprets this provision as exempting small electric motors that are distributed in commerce as a component of a type of covered product or equipment that is currently subject to a standard. Small electric motors that are a component of a type of covered product or equipment that is not subject to a standard would not be exempt. Therefore, DOE concludes that, if a small electric motor is not already a component (of a covered product/equipment subject to an energy conservation standard) when it is distributed in commerce by the small electric motor manufacturer or private labeler, then it is subject to standards. Similarly, small electric motors imported prior to integration into a unit of another type of covered product/equipment also would be subject to standards upon importation. DOE proposes to add a new paragraph (d) to § 431.446 to explain this exclusion from standards.

#### IV. Procedural Issues and Regulatory Review

##### A. Review Under Executive Orders 12866 and 13563

This regulatory action is not a “significant regulatory action” under section 3(f) of Executive Order 12866. Accordingly, this action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs (“OIRA”) of the Office of Management and Budget (“OMB”). DOE has also reviewed this regulation pursuant to Executive Order 13563, issued on January 18, 2011. 76 FR 3281 (January 21, 2011). Executive Order 13563 is supplemental to and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866.

##### 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 rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel’s Web site (<http://energy.gov/gc/office-general-counsel>).

For manufacturers of electric motor and small electric motors, the Small Business Administration (“SBA”) has set a size threshold, which defines those entities classified as “small businesses” for the purposes of the statute. DOE used the SBA’s small business size standards to determine whether any small entities would be subject to the requirements of the rule. 65 FR 30836, 30848 (May 15, 2000), as amended at 65 FR 53533, 53544 (Sept. 5, 2000) and codified at 13 CFR part 121. The size standards are listed by North American Industry Classification System (“NAICS”) code and industry description and are available at <http://www.sba.gov/content/table-small-business-size-standards>. Electric motor and small electric motor manufacturing is classified under NAICS 335312, “Motor and Generator Manufacturing.” The SBA sets a threshold of 1,000 employees or less for an entity to be considered as a small business for this category.

DOE reviewed the certification and reporting requirements in 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 make certain amendments to the existing certification requirements applicable to electric motors and would establish certification requirements for small electric motors. These proposed changes have potential impacts on electric motor manufacturers who will be required to revise their current certification process to comply with the proposed amendments, and have potential impacts on small electric motor manufacturers who must

commence certification of products subject to an energy conservation standard. Based upon its review of these proposed amendments, DOE believes the changes to the compliance certification (“CC”) number system is the only proposed amendment that would represent an increase in certification burden for electric motor manufacturers. For small electric motor manufacturers, DOE believes that the proposed certification requirements affecting these entities will result in reporting and record-keeping burdens commensurate with the estimates presented in DOE’s review under the Paperwork Reduction Act, as discussed in section IV.C of this proposal.

DOE estimates that there are 13 small business manufacturers of electric motors and 9 of those manufacturers also make small electric motors. The estimate for small business manufacturers of electric motors is based upon the regulatory flexibility analysis conducted as part of the May 29, 2014 final rule establishing amended energy conservation standards for electric motors (79 FR 30934). In that rule, DOE calculated the number of electric motor manufacturers, including the number of manufacturers qualifying as small businesses, based on interviews with electric motor manufacturers and publicly available data. Since the promulgation of this rule, and after further examining the motor industry, which included surveying the motor industry and determining the number of manufacturers remaining, DOE has not discovered the presence of any new manufacturers of electric motors that would necessitate a change to this previous estimate. The estimate for small manufacturers of small electric motors is based on a market survey of publicly available information. DOE evaluated the manufacturers identified in the March 9, 2010 final rule establishing energy conservation standards for small electric motors (75 FR 10874) and manufacturers of electric motors identified in the May 2014 final rule (79 FR 30934) for product offerings meeting the definition of a small electric motor. From its market survey, DOE identified that 9 of the 13 small manufacturers of electric motors also manufacture small electric motors.

DOE then determined the expected impacts of the rule on affected small businesses and whether an IRFA was needed (*i.e.*, whether DOE could certify that this rulemaking would not have a significant economic impact on a substantial number of small entities).

For electric motors, for which DOE identified 13 manufacturers that are small businesses, the incremental

burden associated with this rule is expected to be minimal. DOE already requires that manufacturers of electric motors test their motors according to a prescribed DOE test procedure and certify their efficiency to DOE prior to distributing them in commerce. DOE also has existing labeling requirements for electric motors and requires the use of a CC number on the label of each motor covered by an energy conservation standard. While this rule proposes no changes to the testing or certification requirements that would result in increased burden, and either makes clarifying changes to the regulatory text or relocates certain provisions from part 431 to part 429 without changing their effect, the proposed replacement of the CC number system with manufacturer identification number (“MIN”) system may result in an incremental record-keeping burden, as well as certain financial burden associated with modifying labels on existing products to comply with the proposed requirements. However, because the proposed process for obtaining a MIN is essentially identical to the current process for obtaining a CC number, DOE believes that the one-time incremental burden associated with that change will be very low. With respect to the use of the MIN on product labels, DOE anticipates that the switch from CC numbers to the MIN could result in a one-time incremental burden for those existing models that will need their CC number replaced with a MIN. However, in reviewing the initial rulemaking that created the current requirement for manufacturers to include the CC number on the motor nameplate, DOE found that the estimate of burden was considered to be insignificant, and that no manufacturers provided comments disputing this finding. (See 61 FR 60440, at 60461 (November 27, 1996) and 64 FR 54114, at 54140 (October 5, 1999)) Thus, DOE similarly finds the replacement of the CC number with a MIN on the nameplates of covered electric motors would result in an insignificant incremental burden.

For small electric motors, for which DOE identified 9 manufacturers that are small businesses, the incremental burden associated with this rule is expected to be minimal. DOE currently requires small electric motor manufacturers to test their motors according to a prescribed DOE test procedure, and this document does not propose changes to these requirements that would result in increased burden. This proposal does, however, include certification and labeling requirements for small electric motors. While the

certification and labeling requirements may result in an incremental record-keeping burden, DOE believes that this burden will be negligible. To the extent possible, DOE proposed consistent certification and labeling requirements for electric motors and small electric motors—and since electric motors and small electric motors are similar equipment types, DOE believes that these requirements will present an analogous burden. DOE reviewed its prior rulemakings that created labeling and certification requirements for electric motors manufacturers and found that the estimated burden was considered to be insignificant. No manufacturers disputed this finding. (See 61 FR 60440, at 60461 (November 27, 1996) and 64 FR 54114, at 54140 (October 5, 1999)) Therefore, DOE concludes that these same requirements will not have a significant impact on small business manufacturers of small electric motors.

Based on the criteria outlined above, DOE has determined that the proposed amendments to the certification, compliance, and enforcement requirements for electric motors and small electric motors would not have a “significant economic impact on a substantial number of small entities,” and the preparation of a regulatory flexibility analysis is not warranted. 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).

DOE seeks comment on its estimated additional costs from the proposed changes to the CC number system. Specifically, DOE seeks comment on the impacts of the additional cost of testing on small manufacturers. DOE also seeks comment on its reasoning that the proposed changes would not have a significant impact on a substantial number of small entities.

#### *C. Review Under the Paperwork Reduction Act*

Manufacturers of electric motors must certify to DOE that their equipment complies with any applicable energy conservation standards. This rulemaking adds small electric motor-specific certification provisions. In certifying compliance, manufacturers must test their equipment according to the DOE test procedures for electric motors and small electric motors, including any amendments adopted for those test procedures. The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act

(“PRA”). This requirement has previously been approved by OMB under OMB control number 1910–1400 and was recently renewed to include small electric motors. As indicated in the supporting statement, DOE’s renewal included revisions and expansion of the information collected on the energy and water efficiency of consumer products and commercial equipment manufactured for distribution in commerce in the United States. This proposal is not expected to increase burdens for manufacturers of electric motors or change the burden for manufacturers of small electric motors that otherwise would have been imposed as a result of having to comply with the existing certification requirements. Public reporting burden for the certification was estimated to average 30 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

This proposed rule would require one party to submit a one-time request for a manufacturer’s identification number (“MIN”) for each manufacturer of electric motors or small electric motors. The MIN would be used on motor nameplates to identify the original equipment manufacturer and facilitate DOE’s ability to contact the relevant party in the event of finding a noncompliant motor. DOE expects that completion of the form, including downloading the form, filling out the form, and submitting the form via email, would take approximately 5 minutes. Each manufacturer would only submit one form and would not have to submit a new form unless the contact information changed.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

#### *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.*) 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.

*E. Review Under Executive Order 13132*

Executive Order 13132, "Federalism." 64 FR 43255 (Aug. 10, 1999) imposes certain requirements on Federal 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 the development of 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 the development of such regulations. 65 FR 13735. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this proposed rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297) No further action is 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," imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. 61 FR 4729 (Feb. 7, 1996). 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 section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this proposed rule meets the relevant standards of Executive Order 12988.

*G. Review Under the Unfunded Mandates Reform Act of 1995*

Title II of the Unfunded Mandates Reform Act of 1995 ("UMRA") requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104-4, sec. 201 (codified at 2 U.S.C. 1531). For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed "significant intergovernmental mandate," and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. DOE's policy statement is also available at <http://energy.gov/gc/office-general-counsel>. This proposed rule contains neither an intergovernmental mandate nor a mandate that may result in an expenditure of \$100 million or more in any year, so these requirements do not apply.

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

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105-277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This proposed rule would not have any

impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

*I. Review Under Executive Order 12630*

DOE has determined, under Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights" 53 FR 8859 (Mar. 18, 1988), that this proposed regulation would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

*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 Federal agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed this proposal 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 OIRA at OMB, a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

DOE has tentatively concluded that this proposed rule, which would revise certification and compliance requirements for electric and small

electric motors, is not a significant energy action because the proposed standards are not likely to have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as such by the Administrator at OIRA. Accordingly, DOE has not prepared a Statement of Energy Effects on the proposed rule.

#### *L. Review Under Section 32 of the Federal Energy Administration Act of 1974*

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91; 42 U.S.C. 7101), DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. (15 U.S.C. 788; “FEAA”) Section 32 essentially provides in relevant part that, where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the FTC concerning the impact of the commercial or industry standards on competition. This proposal solely addresses certification provisions for electric motors and small electric motors. This proposal does not require or authorize the use of any commercial standards.

#### *M. Description of Materials Incorporated by Reference*

In this NOPR, DOE proposes to incorporate by reference standards published by the International Organization for Standardization (ISO)/International Electrotechnical Commission (IEC). ISO/IEC 17025:2005(E) specifies general requirements for the competence of testing and calibration laboratories. ISO/IEC Guide 27 specifies methods of indicating conformity with standards for third-party certification systems. ISO/IEC Guide 17026:2015 gives general guidelines for a specific product certification system, including a third-party certification system. ISO/IEC Guide 17065:2012 specifies general requirements for third parties operating a product certification system. For a certification program to be classified by the Department as nationally recognized, it must meet certain criteria, including that the petitioning organization must describe its experience in operating a certification program, such as its experience applying the guidelines contained in ISO/IEC Guides 17025:2005(E), 27, 17026:2015, and 17065:2012.

These ISO/IEC guides are available at [http://www.iso.org/iso/home/store/catalogue\\_ics.htm](http://www.iso.org/iso/home/store/catalogue_ics.htm).

### **V. Public Participation**

#### *A. Submission of Comments*

DOE will accept comments, data, and information regarding this proposed rule no later than the date provided in the **DATES** section at the beginning of this proposed rule. Interested parties may submit comments, data, and other information using any of the methods described in the **ADDRESSES** section at the beginning of this proposed rule.

When submitting comments via regulations.gov, the regulations.gov Web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment itself or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Otherwise, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to regulations.gov information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (“CBI”). Comments submitted through regulations.gov cannot be claimed as CBI. Comments received through the Web site will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section below.

DOE processes submissions made through regulations.gov before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for

up to several weeks. Please keep the comment tracking number that regulations.gov provides after you have successfully uploaded your comment.

*Submitting comments via email, hand delivery/courier, or mail.* Comments and documents submitted via email, hand delivery, or mail also will be posted to regulations.gov. If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information in a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via mail or hand delivery/courier, please provide all items on a CD, if feasible. It is not necessary to submit printed copies. No facsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, that are written in English, and that are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

*Campaign form letters.* Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters’ names compiled into one or more PDFs. This reduces comment processing and posting time.

*Confidential Business Information.* According to 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 via email, postal mail, or hand delivery/courier two well-marked copies: One copy of the document marked confidential including all the information believed to be confidential, and one copy of the document marked non-confidential with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. 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 passage of time; and (7) why disclosure of the information would be contrary to the public interest.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

#### *B. Issues on Which DOE Seeks Comment*

Although DOE welcomes comments on any aspect of this proposal, DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

1. DOE requests comments on its proposal to replace compliance certification (CC) numbers with a Manufacturer Identification Number (MIN) system. In particular, DOE requests comment on the following items:

a. The amount of time needed for manufacturers to transition to MINs.

b. Any additional costs due to the proposal to replace CC numbers with a MIN system.

c. Whether the OEM-brand relationship is confidential business information and whether a list of MINs and associated OEMs and brands should be posted on DOE's CCMS Web site. If the OEM-brand relationship is confidential business information, whether the brand-MIN combination should be published.

d. Whether the OEM-brand relationship is held in confidence by the OEM and importer, whether the OEM-brand relationship is available in public sources, whether disclosure of the information is likely to cause substantial harm to the competitive position of the OEM or importer, and the nature of that harm.

e. As DOE is proposing that a MIN may not be transferred to another entity, how much time would be required to transition a MIN on a nameplate to a new MIN in the event that an OEM was acquired by another company.

2. In this proposal, DOE proposing to define the term "independent" at 10

CFR 431.12 and 431.442 and applying these requirements to the laboratories used by manufacturers for determining the efficiency of their basic modes. As part of this proposal, DOE is revising the requirements currently located in Section 431.18, which require that testing laboratories be accredited by NIST/NVLAP laboratory, accredited by a laboratory accreditation program having a mutual recognition program with NIST/NVLAP, or a laboratory accredited by an organization classified by DOE as an accreditation body. DOE seeks comment regarding whether DOE should also require that independent labs be accredited and what accreditations such laboratories should have.

3. DOE anticipates that manufacturers using certification programs will have their certification programs act as third-party representatives; however, DOE seeks comment regarding whether DOE should accept certification reports directly from manufacturers that use certification programs to fulfill the certification testing requirements.

4. DOE requests comment as to whether DOE should require the certification report to include a certificate of conformity or whether DOE should only require the certification report to identify the certification program used (with a certificate of conformity available from the certification program upon request by DOE).

5. DOE requests comment on its proposal for electric motors manufacturers to test and certify compliance with energy conservation standards by either: (i) Testing the electric motor using a recognized testing program (under § 429.74 of the proposal); (ii) testing the electric motor at a testing laboratory other than a recognized testing program and then have a certification program that is nationally recognized in the United States (under § 429.73 of the proposal) certify the efficiency of the electric motor; or (iii) using an alternative efficiency determination method ("AEDM," discussed in section III.E.) and then have a third-party certification program that is nationally recognized in the United States (under § 429.73 of the proposal) certify the efficiency of the electric motor.

6. As discussed in section III.C.2, DOE is proposing to make explicit that a certification program must conduct ongoing verification testing. DOE requests comment regarding whether DOE should more require specific sampling provisions for use in verification testing by certification

programs, and, if so, what those sampling requirements should be.

7. DOE requests comment on its proposal to retain a minimum sample size of 5 units for basic models rated by testing at an independent laboratory unless fewer than five individual units of a basic model are manufactured over a period of 180 days.

8. DOE requests comment on its proposal to retain the requirement that at least five units of each basic model must be tested to validate an AEDM.

9. DOE requests comment on its proposal to adopt a sampling plan for electric motors similar to those used for other consumer products and commercial equipment. Additionally, DOE requests comment on its proposal to use the formulas from 10 CFR 431.17(b)(2)(i) and 10 CFR 431.17(b)(2)(ii) and add them to 10 CFR 429.138 to verify representations used for labeling.

10. DOE requests comment on its proposal to make the general certification report requirements at 10 CFR 429.12(b) applicable to electric motors and require additional specific reporting requirements including detailed in Section III.C.3 of this proposed rule.

11. DOE requests comment on its proposal that small electric motor manufacturers follow the same efficiency testing and certification procedures as electric motors manufacturers. Unlike with electric motors (*see* 42 U.S.C. 6316(c)), the statute does not require manufacturers of small electric motors to certify that a motor meets the applicable standard through an independent testing or certification program nationally recognized in the United States. Therefore, DOE requests stakeholders suggest other frameworks for certification testing of small electric motors if the stakeholder opposes DOE's proposal for consistency.

12. DOE requests comment on the sampling provisions proposed for small electric motors discussed in detail in section III.D.2.

13. DOE requests comment on its proposal requiring specific reporting requirements for small electric motors detailed in section III.D.3.

14. DOE proposes to add periodic verification testing as a criteria to be a nationally recognized certification program. DOE requests comment regarding whether, in light of the changes to the petition criteria, the currently recognized certification programs should renew their petitions and DOE should conduct a new review once this rulemaking is finalized.

15. DOE requests comment regarding whether model number, basic model number, or some other type of design information should be required on the nameplate to permit DOE and customers to tie a certification of compliance to a particular unit being distributed in commerce.

16. DOE requests comment on time required to transition to new nameplate requirements. Specifically, whether manufacturers could make the proposed changes within six month of publication of a final rule or whether the nameplate changes should be required on all electric motors manufactured on or after June 1, 2016, when compliance with amended standards is required.

17. DOE requests comment regarding whether small electric motors currently, always, bear a "nameplate" or whether other forms of labeling should be permitted. DOE also requests comment regarding whether DOE should require some sort of model, basic model, or other design-specific information to be displayed on the nameplate.

18. DOE requests comments regarding whether the formula currently in 10 CFR 431.445 should be retained for evaluation of representations.

19. DOE proposes that only the lowest efficiency (when tested and rated for multiple voltages) be placed on the nameplate of an electric motor.

a. DOE requests comment on whether there should be some indication of which rated voltage is the lower efficiency voltage corresponding to the rated efficiency.

b. As certification reports will indicate the corresponding voltage, DOE is accepting comment on whether the additional information would provide sufficient benefit to purchasers to warrant the additional cost.

c. DOE requests comment regarding whether, for each rated voltage, the manufacturer should also put a corresponding efficiency on the nameplate and the associated costs of such a requirement.

d. DOE also requests comment on whether small electric motors will include multiple rated voltages on its nameplate and if DOE should adopt similar provisions for small electric motors.

20. DOE requests comment on the change in validation testing requirements for small electric motors described in section III.D.

21. DOE seeks comment on the impacts of the any additional cost of testing on small manufacturers imposed by this proposal. DOE also seeks comment on its reasoning specified in section IV.B that the proposed changes

would not have a significant impact on a substantial number of small entities.

**VI. Approval of the Office of the Secretary**

The Secretary of Energy has approved publication of this notice of proposed rulemaking.

**List of Subjects**

*10 CFR Part 429*

Administrative practice and procedure, Confidential business information, Energy conservation, Incorporation by reference, Reporting and recordkeeping requirements, Test procedures.

*10 CFR Part 431*

Administrative practice and procedure, Confidential business information, Energy conservation, Incorporation by reference, Reporting and recordkeeping requirements, Test procedures.

Issued in Washington, DC, on June 10, 2016.

**Kathleen B. Hogan,**

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

For the reasons set forth in the preamble, DOE is proposing to amend 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 § 429.1 to read as follows:

**§ 429.1 Purpose and scope.**

This part sets forth the procedures to be followed for certification and enforcement of compliance of covered products and equipment with the applicable conservation standards set forth in 10 CFR parts 430 and 431 of this subchapter.

■ 3. Amend § 429.2 by revising paragraph (a) to read as follows:

**§ 429.2 Definitions.**

(a) The definitions found in 10 CFR parts 430 and 431 of this subchapter apply for purposes of this part.

\* \* \* \* \*

■ 4. Amend § 429.4 by revising paragraph (d)(1) and adding paragraphs (d)(2) through (4) to read as follows:

**§ 429.4 Materials incorporated by reference.**

\* \* \* \* \*

(d) \* \* \*

(1) International Organization for Standardization (ISO)/International Electrotechnical Commission (IEC), ("ISO/IEC") Guide 17025:2005(E)", "General requirements for the competence of calibration and testing laboratories," Second edition, May 15, 2005. IBR approved for §§ 429.73, 429.74, and 429.110.

(2) International Organization for Standardization (ISO)/International Electrotechnical Commission (IEC), ("ISO/IEC") Guide 27, "Guidelines for corrective action to be taken by a certification body in the event of misuse of its mark of conformity", First edition, March 1, 1983, IBR approved for § 429.73.

(3) International Organization for Standardization (ISO)/International Electrotechnical Commission (IEC), ("ISO/IEC") Guide 17026:2015, "Conformity assessment—Example of a certification scheme for tangible products," First edition, February 1, 2015, IBR approved for § 429.73.

(4) International Organization for Standardization (ISO)/International Electrotechnical Commission (IEC), ("ISO/IEC ") Guide 17065:2012, "Conformity assessment—Requirements for bodies certifying products, processes and services," First edition, September 15, 2012, IBR approved for § 429.73.

■ 5. Revise § 429.11 to read as follows:

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

(a) When testing of covered products or covered equipment is required to comply with section 323(c) of the Act, or to comply with rules prescribed under sections 324, 325, 342, 344, 345 or 346 of the Act, a sample comprised of production units (or units representative of production units) of the basic model being tested must be selected at random and tested, and must meet the criteria found in §§ 429.14 through 429.64. Any represented values of measures of energy efficiency, water efficiency, energy consumption, or water consumption for all individual models represented by a given basic model must be the same; and

(b) The minimum number of units tested must be no less than two, unless otherwise specified. A different minimum number of units may be specified for certain products in §§ 429.14 through 429.64. If fewer than the number of units required for testing is manufactured, each unit must be tested.



■ 6. Amend § 429.12 by revising paragraphs (b)(6), (b)(13), and (d) to read as follows:

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

\* \* \* \* \*

(b) \* \* \*

(6) For each brand, the basic model number and the manufacturer's individual model number(s) in that basic model with the following exceptions: For external power supplies that are certified based on design

families, the design family model number and the individual manufacturer's model numbers covered by that design family must be submitted for each brand. For walk-in coolers, electric motors, and small electric motors, the basic model number for each brand must be submitted. For distribution transformers, the basic model number or kVA grouping model number (depending on the certification method) for each brand must be submitted. For commercial HVAC, WH, and refrigeration equipment, an

individual manufacturer model number may be identified as a "private model number" if it meets the requirements of § 429.7(b).

\* \* \* \* \*

(13) Product specific information listed in §§ 429.14 through 429.64 of this chapter.

\* \* \* \* \*

(d) *Annual filing.* All data required by paragraphs (a) through (c) must be submitted to DOE annually, on or before the following dates:

Product category	Deadline for data submission
Fluorescent lamp ballasts, Medium base compact fluorescent lamps, Incandescent reflector lamps, General service fluorescent lamps, General service incandescent lamps, Intermediate base incandescent lamps, Candelabra base incandescent lamps, Residential ceiling fans, Residential ceiling fan light kits, Residential showerheads, Residential faucets, Residential water closets, and Residential urinals.	Mar. 1.
Small electric motors	April 1.
Residential water heater, Residential furnaces, Residential boilers, Residential pool heaters, Commercial water heaters, Commercial hot water supply boilers, Commercial unfired hot water storage tanks, Commercial packaged boilers, Commercial warm air furnaces, Commercial unit heaters and Residential furnace fans.	May 1.
Residential dishwashers, Commercial prerinse spray valves, Illuminated exit signs, Traffic signal modules, Pedestrian modules, and Distribution transformers.	June 1.
Room air conditioners, Residential central air conditioners, Residential central heat pumps, Small duct high velocity system, Space constrained products, Commercial package air-conditioning and heating equipment, Packaged terminal air conditioners, Packaged terminal heat pumps, and Single package vertical units.	July 1.
Residential refrigerators, Residential refrigerators-freezers, Residential freezers, Commercial refrigerator, freezer, and refrigerator-freezer, Automatic commercial automatic ice makers, Refrigerated bottled or canned beverage vending machine, Walk-in coolers, and Walk-in freezers.	Aug. 1.
Torchieres, Residential dehumidifiers, Metal halide lamp fixtures, and External power supplies	Sept. 1.
Residential clothes washers, Residential clothes dryers, Residential direct heating equipment, Residential cooking products, and Commercial clothes washers.	Oct. 1.
Electric motors	Nov. 1.

\* \* \* \* \*

■ 7. Add § 429.63 to read as follows:

**§ 429.63 Electric motors.**

(a) *Compliance certification.* A manufacturer may not certify the compliance of an electric motor pursuant to 10 CFR 429.12 unless:

(1) Testing of the electric motor basic model was conducted using a recognized testing program (see § 429.74); or

(2) A third party certification program that is nationally recognized in the United States under § 429.73 has certified the efficiency of the electric motor basic model through issuance of a certificate of conformity for the basic model; or

(3) The efficiency of the electric motor basic model was determined through the application of an AEDM pursuant to the requirements of § 429.70 and a third party certification program that is nationally recognized in the United States under § 429.73 has certified the efficiency of the electric motor basic model through issuance of a certificate of conformity for the basic model.

(4) Under paragraphs (a)(2) and (3) of this section, the manufacturer and the third-party certification program must certify the compliance of the electric motor pursuant to § 429.12.

(b) *Determination of represented value.* Manufacturers must determine the represented value of efficiency, which includes the certified rating, for each basic model of electric motor either by testing, in conjunction with the applicable sampling provisions, or by applying an AEDM.

(1) *Units to be tested.* The requirements of § 429.11 apply except that, for electric motors, a sample of sufficient size is a minimum of five units.

(i) For each basic model, a sample of sufficient size must be randomly selected and tested to ensure that any represented value of full-load efficiency or other measure of energy consumption of a basic model for which consumers would favor higher values shall be less than or equal to the lower of:

(A) The mean of the sample, where:

$$\bar{x} = \frac{1}{n} \sum_{i=1}^n x_i$$

And,  $\bar{x}$  is the sample mean; n is the number of samples; and  $x_i$  is the  $i^{th}$  sample; Or,

(B) The lower 97.5 percent confidence limit (LCL) of the true mean divided by 0.95, where:

$$LCL = \bar{x} - t_{0.975} \left( \frac{s}{\sqrt{n}} \right)$$

And  $\bar{x}$  is the sample mean; s is the sample standard deviation; n is the number of samples; and  $t_{0.975}$  is the t statistic for a 97.5% one-tailed confidence interval with n-1 degrees of freedom (from appendix A to subpart B of part 429).

(ii) Prior to June 1, 2017, a manufacturer may evaluate compliance for electric motors as follows. (A manufacturer must indicate the use of this provision when certifying compliance.)

(A) The average full-load efficiency shall satisfy the condition:

$$\bar{x} \geq \frac{100}{1 + 1.05 \times \left( \frac{100}{RE} - 1 \right)}$$

where “RE” is the rated nominal full-load efficiency for the basic model and  $\bar{x}$  equals:

$$\bar{x} = \frac{1}{n} \sum_{i=1}^n x_i$$

Where  $x_i$  is the measured full-load efficiency of unit  $i$  and  $n$  is the number of units tested.

(B) The lowest full-load efficiency in the sample  $x_{min}$ , which is defined by

$$x_{min} = \min(x_i)$$

shall satisfy the condition:

$$x_{min} \geq \frac{100}{1 + 1.15 \left( \frac{100}{RE} - 1 \right)}$$

Where RE is the rated nominal full-load efficiency.

(2) *Alternative efficiency determination methods.* In lieu of testing, a represented value of efficiency and of total losses for a basic model of electric motor must be determined through the application of an AEDM pursuant to the requirements of § 429.70 and the provisions of this section, where:

(i) The represented value of energy efficiency of any basic model used to validate an AEDM must be calculated under paragraph (b)(1) of this section; and

(ii) Any represented value of energy efficiency or other measure of energy consumption of a basic model for which consumers would favor higher values must be less than or equal to the output of the AEDM and greater than or equal to the Federal standard for that basic model.

(c) *Certification reports.* (1) The requirements of § 429.12 apply to electric motors;

(2) Pursuant to § 429.12(b)(13), a certification report must include the following public, product-specific information for each basic model:

(i) The electric motor category described at 10 CFR 431.25 (e.g., fire pump electric motor);

(ii) The horsepower at which the basic model was tested;

(iii) The number of poles;

(iv) The enclosure type (i.e., open or enclosed);

(v) The rated voltage;

(vi) The operating frequency;

(vii) Whether the basic model is subject to specific test procedure

provisions listed in section 4 of appendix B to subpart B of part 431 and the type of motor and the motor category of such basic model;

(viii) The represented full-load efficiency;

(ix) The represented total losses;

(x) The sampling methodology used per § 429.63(c);

(xi) The manufacturer identification number (MIN) applied to the basic model (see 10 CFR 431.17); and

(xii) Whether the represented values are based on testing conducted in an independent testing laboratory or by a nationally recognized certification program and the name of the nationally recognized testing or certification program.

■ 8. Add § 429.64 to read as follows:

**§ 429.64 Small electric motors.**

(a) *Compliance certification.* A manufacturer may not certify the compliance of a small electric motor pursuant to § 429.12 unless:

(1) Testing of the small electric motor basic model was conducted using a recognized testing program (see § 429.74); or

(2) A third-party certification program that is nationally recognized in the United States under § 429.73 has certified the efficiency of the small electric motor basic model through issuance of a certificate of conformity for the basic model; or

(3) The efficiency of the small electric motor basic model was determined through the application of an AEDM pursuant to the requirements of § 429.70 and a third-party certification program that is nationally recognized in the United States under § 429.73 has certified the efficiency of the small electric motor basic model through issuance of a certificate of conformity for the basic model.

(4) Under paragraphs (a)(2) and (3) of this section, the manufacturer and the third-party certification program must certify the compliance of the small electric motor pursuant to § 429.12.

(b) *Determination of represented value.* Manufacturers must determine the represented value of efficiency, which includes the certified rating, for each basic model of small electric motor either by testing, in conjunction with the applicable sampling provisions, or by applying an AEDM.

(1) *Units to be tested.* The requirements of § 429.11 apply to small electric motors, except that, for small electric motors, a sample of sufficient size is a minimum of five units. For each basic model, a sample of sufficient size must be randomly selected and tested to ensure that:

(i) Any represented value of full-load efficiency or other measure of energy consumption of a basic model for which consumers would favor higher values is less than or equal to the lower of:

(A) The mean of the sample, where:

$$\bar{x} = \frac{1}{n} \sum_{i=1}^n x_i$$

And,  $\bar{x}$  is the sample mean;  $n$  is the number of samples; and  $x_i$  is the  $i^{\text{th}}$  sample; Or,

(B) The lower 97.5 percent confidence limit (LCL) of the true mean divided by 0.95, where:

$$LCL = \bar{x} - t_{0.975} \left( \frac{s}{\sqrt{n}} \right)$$

And  $\bar{x}$  is the sample mean;  $s$  is the sample standard deviation;  $n$  is the number of samples; and  $t_{0.975}$  is the  $t$  statistic for a 97.5% one-tailed confidence interval with  $n-1$  degrees of freedom (from appendix A to subpart B of part 429).

(2) *Alternative efficiency determination methods.* In lieu of testing, a represented value of efficiency and of total losses for a basic model of small electric motor must be determined through the application of an AEDM pursuant to the requirements of § 429.70 and the provisions of this section, where:

(i) The represented value of energy efficiency of any basic model used to validate an AEDM must be calculated under paragraph (b)(1) of this section; and

(ii) Any represented value of energy efficiency or other measure of energy consumption of a basic model for which consumers would favor higher values must be less than or equal to the output of the AEDM and greater than or equal to the Federal standard for that basic model.

(c) *Certification reports.* (1) The requirements of § 429.12 apply to small electric motors; (2) Pursuant to § 429.12(b)(13), a certification report must include the following public product-specific information for each basic model:

(i) The small electric motor category described at 10 CFR 431.446(a) (e.g., capacitor-start induction-run);

(ii) The horsepower on which the rating for the basic model is based;

(iii) The number of poles;

(iv) The represented average full-load efficiency;

(v) The represented total losses;

(vi) The manufacturer identification number (MIN) applied to the basic model (see 10 CFR 431.17);

(vii) Whether the represented values are based on testing in an independent

testing laboratory or nationally recognized certification program; and

(viii) The name of the nationally recognized testing or certification program.

■ 9. Amend § 429.70 by revising paragraph (a) and by adding paragraphs (h) and (i) to read as follows:

**§ 429.70 Alternative methods for determining energy efficiency or energy use.**

(a) *General.* A manufacturer of covered products or covered equipment explicitly authorized to use an AEDM in §§ 429.14 through 429.64 may not distribute any basic model of such product or equipment in commerce unless the manufacturer has determined the energy efficiency of the basic model, either by testing the basic model in conjunction with DOE's certification sampling plans and statistics or by applying an alternative method for determining energy efficiency or energy use (*i.e.* AEDM) to the basic model in accordance with the requirements of this section. In instances where a manufacturer has tested a basic model to validate the AEDM, the represented value of energy efficiency of that basic model must be determined and certified according to results from actual testing in conjunction with this part 429, subpart B certification sampling plans and statistics. In addition, a manufacturer may not knowingly use an AEDM to overrate the efficiency of a basic model.

\* \* \* \* \*

(h) *Alternative efficiency determination method (AEDM) for electric motors—(1) Criteria an AEDM must satisfy.* A manufacturer is not permitted to apply an AEDM to a basic model of electric motor to determine its efficiency pursuant to this section unless:

(i) The AEDM is derived from a mathematical model that estimates the energy efficiency characteristics and losses of the basic model as measured by the applicable DOE test procedure and accurately represents the mechanical and electrical characteristics of that basic model, and

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

(iii) The manufacturer has validated the AEDM, in accordance with paragraph (h)(2) of this section with basic models that meet the current Federal energy conservation standards.

(2) *Validation of an AEDM.* Before using an AEDM, the manufacturer must

validate the AEDM's accuracy and reliability as follows:

(i) Apply the AEDM to at least five basic models that have been selected for testing in accordance with paragraph (h)(3) of this section, and calculate the predicted average full-load efficiency and predicted total power losses for each of these basic models;

(ii) Test at least five units of each of these basic models in accordance with 10 CFR 431.16, and use the measured full-load efficiency of the tested units to determine the average full-load efficiency for each of these basic models in accordance with § 429.63 (Basic models used for validation must be certified pursuant to the provisions of § 429.63(a)(2).); and

(iii) The predicted average full-load efficiency for each such basic model calculated by applying the AEDM pursuant to paragraph (h)(2)(i) of this section must not be more than five percent greater than the measured average full-load efficiency determined from the testing of that basic model pursuant to paragraph (h)(2)(ii) of this section; and

(iv) A manufacturer may not use a basic model with a sample size of fewer than five units to validate an AEDM.

(3) *Selection of basic models for testing.* (i) A manufacturer must select basic models for testing in accordance with the following criteria:

(A) Two of the basic models must be among the five basic models with the highest unit volumes of production by the manufacturer in the prior year. In identifying these five basic models, any basic model of electric motor that does not comply with § 431.25 shall be excluded from consideration.

(B) No two basic models may have the same horsepower rating;

(C) No two basic models may have the same frame number series; and

(D) Each basic model must have the lowest average full-load efficiency among the basic models within the same equipment class.

(ii) In any instance where it is impossible for a manufacturer to select basic models for testing in accordance with all of these criteria, the criteria shall be given priority in the order in which they are listed. Within the limits imposed by the criteria, select basic models randomly.

(4) *Verification of an AEDM.* (i) Each manufacturer that has used an AEDM under this section must have available for inspection by the Department of Energy records showing:

(A) The method or methods used to develop the AEDM;

(B) The mathematical model, the engineering or statistical analysis,

computer simulation or modeling, and any other analytical evaluation of performance data on which the AEDM is based;

(C) Complete test data, product information, and related information that the manufacturer has generated or acquired pursuant to paragraphs (h)(2) and (h)(4)(ii) of this section; and

(D) The calculations used to determine the average full-load efficiency of each basic model to which the AEDM was applied.

(ii) If requested by the Department, the manufacturer must:

(A) Conduct simulations to predict the performance of particular basic models of electric motors specified by the Department;

(B) Provide analyses of previous simulations conducted by the manufacturer; and/or

(C) Conduct testing of basic models selected by the Department.

(i) *Alternative efficiency determination method (AEDM) for small electric motors.* (1) *Criteria an AEDM must satisfy.* A manufacturer is not permitted to apply an AEDM to a basic model of small electric motor to determine its efficiency pursuant to this section unless:

(i) The AEDM is derived from a mathematical model that estimates the energy efficiency characteristics and losses of the basic model as measured by the applicable DOE test procedure and represents the mechanical and electrical characteristics of that basic model, and

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

(iii) The manufacturer has validated the AEDM, in accordance with paragraph (h)(2) of this section with basic models that meet the current Federal energy conservation standards.

(2) *Validation of an AEDM.* Before using an AEDM, the manufacturer must validate the AEDM's accuracy and reliability as follows:

(i) A manufacturer must first apply the AEDM to at least five basic models that have been selected for testing in accordance with paragraph (i)(3) of this section, and calculate the predicted average full-load efficiency for each of these basic models;

(ii) Test at least five units of each of these basic models in accordance with 10 CFR 431.444 and use the measured full-load efficiency of the tested units to determine the measured average full-load efficiency in accordance with § 429.64. (Basic models used for

validation must be certified pursuant to the provisions of § 429.64(a)(2).); and

(iii) The predicted average full-load efficiency for each such basic model calculated by applying the AEDM pursuant to paragraph (i)(2)(i) of this section must not be more than five percent greater than the measured average full-load efficiency determined from the testing of that basic model pursuant to paragraph (i)(2)(ii) of this section; and

(iv) A manufacturer may not use a basic model with a sample size of fewer than five units to validate an AEDM.

(3) *Selection of basic models for testing.* (i) A manufacturer must select basic models for testing in accordance with the following criteria:

(A) Two of the basic models must be among the five basic models with the highest unit volumes of production by the manufacturer in the prior year. In identifying these five basic models, any small electric motor that does not comply with § 431.446 shall be excluded from consideration.

(B) No two basic models may have the same horsepower rating;

(C) No two basic models may have the same frame number series; and

(D) Each basic model must have the lowest average full-load efficiency among the basic models within the same equipment class.

(ii) In any instance where it is impossible for a manufacturer to select basic models for testing in accordance with all of these criteria, the criteria shall be given priority in the order in which they are listed. Within the limits imposed by the criteria, select basic models randomly.

(4) *Verification of an AEDM.* (i) Each manufacturer that has used an AEDM under this section must have available for inspection by the Department of Energy records showing:

(A) The method or methods used to develop the AEDM;

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

(C) Complete test data, product information, and related information that the manufacturer has generated or acquired pursuant to paragraphs (i)(2) and (i)(4)(ii) of this section; and

(D) The calculations used to determine the average full-load efficiency of each basic model to which the AEDM was applied.

(ii) If requested by the Department, the manufacturer must:

(A) Conduct simulations to predict the performance of particular basic

models of small electric motors specified by the Department;

(B) Provide analyses of previous simulations conducted by the manufacturer; and/or

(C) Conduct testing of basic models selected by the Department.

■ 10. Add § 429.73 to subpart B to read as follows:

**§ 429.73 Department of Energy recognition of nationally recognized certification programs for electric motors and small electric motors.**

(a) *Purpose.* This section sets forth the process by which a certification program may be classified by the Department of Energy as being nationally recognized in the United States for the purposes of certifying that basic models of electric motors or small electric motors meet applicable energy conservation standards.

(b) *Petition.* For a certification program to be classified by the Department of Energy as being nationally recognized, the organization operating the program must submit a petition to the Department requesting such classification, in accordance with paragraph (d) of this section and § 429.75. The petition must demonstrate that the program meets the criteria in paragraph (c) of this section.

(c) *Evaluation criteria.* (1) *General.* For a certification program to be classified by the Department as nationally recognized, it must meet the following criteria:

(i) It must have standards and procedures for conducting and administering a certification system that, at a minimum, are consistent with the certification requirements of this part. Such standards and procedures must also include periodic follow-up activities to ensure that basic models of electric motors and small electric motors continue to conform to the efficiency levels for which they were certified and granted a certificate of conformity. Periodic follow-up activities must include: Periodic verification testing, including sampling provisions; selection criteria; a process for determining compliance with standards; and a process for reporting models that perform worse than the applicable standard to DOE; and

(ii) It must be independent of any electric motor or small electric motor manufacturer for which it is providing certification as defined at 10 CFR 431.12 for electric motors and 10 CFR 431.442 for small electric motors.

(2) *Electric motors.* The certification program must be expert in the content and application of the test procedures and methodologies at 10 CFR 431.16 and 10 CFR 429.63.

(3) *Small electric motors.* The certification program must be expert in the content and application of the test procedures and methodologies at 10 CFR 431.444 and 10 CFR 429.64.

(d) *Petition format.* Each petition requesting classification as a nationally recognized certification program must contain a narrative statement as to why the program meets the criteria listed in paragraph (c) of this section, must be signed on behalf of the organization operating the program by an authorized representative, and must be accompanied by documentation that supports the narrative statement. The following provides additional requirements as to the specific criteria:

(1) *Standards and procedures.* The petitioning organization must include a copy of the standards and procedures it uses for operating its certification system and for granting a certificate of conformity, including any accreditations that the petitioning organization holds. These documents must include a program manual or handbook that describes how the program conducts periodic verification testing, including, but not limited to, information such as the percentage of basic models tested annually, the process for selecting basic models for verification testing, the process for selecting or obtaining units for testing, any controls to ensure that tested units are production units or are representative of production units, etc.

(2) *Independent status.* The petitioning organization must describe how it is independent (as defined at 10 CFR 431.12 for electric motors and 10 CFR 431.442 for small electric motors) from electric motor or small electric motor manufacturers, importers, distributors, private labelers, vendors, and trade associations.

(3) *Qualifications to operate a certification system.* The petitioning organization must describe its experience in operating a certification system. The experience should be discussed in detail and substantiated by supporting documents. Of particular relevance would be documentary evidence that establishes experience in running a certification program, such as the application of guidelines contained in the ISO/IEC Guide 17065:2012 (incorporated by reference, see § 429.4), ISO/IEC Guide 27 (incorporated by reference, see § 429.4), and ISO/IEC Guide 17026:2015, (incorporated by reference, see § 429.4), as well as experience in overseeing compliance with the guidelines contained in ISO/IEC Guide 17025:2005(E) (incorporated by reference, see § 429.4).

(4) *Expertise in test procedures*—(i) *General*. This part of the petition should include items such as, but not limited to, a description of prior projects and qualifications of staff members. Of particular relevance would be documentary evidence that establishes experience in laboratory calibration procedures such as those guidelines contained in ISO/IEC Guide 17025:2005(E) (incorporated by reference, see § 429.4), and with energy efficiency testing of the equipment to be certified.

(ii) *Electric motors*. The petition should set forth the program's experience with the test procedures and methodologies detailed in 10 CFR 431.16 and § 429.63.

(iii) *Small electric motors*. The petition should set forth the program's experience with the test procedures and methodologies detailed in 10 CFR 431.444 and § 429.64.

(5) *Laboratory requirements*. The petition must include documentary evidence that establishes experience in applying and maintaining laboratory calibration procedures, such as those contained in ISO/IEC Guide 17025:2005(E) (incorporated by reference, see § 429.4), to energy efficiency testing of the equipment to be certified.

(e) *Disposition*. The Department will evaluate the petition in accordance with § 429.75, and will determine whether the applicant meets the criteria in paragraphs (c) and (d) of this section for classification as a nationally recognized certification program.

■ 11. Add § 429.74 to subpart B to read as follows:

**§ 429.74 Department of Energy recognition of independent testing programs for electric motors and small electric motors.**

(a) *Purpose*. This section sets forth the process by which a testing program may be classified by the Department of Energy as being nationally recognized in the United States for the purposes of certifying that basic models of electric motors or small electric motors meet applicable energy conservation standards.

(b) *Petition*. For a testing program to be classified by the Department of Energy as being nationally recognized, the organization operating the program must submit a petition to the Department requesting such classification, in accordance with § 429.75. A petition for recognition of an independent testing program must include the information specified in paragraph (d) of this section. The petition must demonstrate that the

program meets the criteria in paragraph (c) of this section.

(c) *Evaluation criteria for independent testing programs*. (1) *General*. For a testing program to be classified by the Department as nationally recognized, it must meet the following criteria:

(i) It must have standards and procedures for conducting and administering an accreditation system that, at a minimum, ensures compliance with the testing requirements of this part and part 431. Such standards and procedures must also include periodic follow-up activities to ensure that the testing facilities continue to generate test results that are reliable and reproducible. Periodic follow-up activities must include: verification that testing is conducted in accordance with DOE regulatory requirements, including sampling provisions; assurance that independence is maintained; and that appropriate laboratory procedures are followed, including lab accreditation to ISO/IEC Guide 17025:2005(E) (incorporated by reference, see § 429.4) and to the DOE test method.

(ii) It must be independent of any electric motor or small electric motor manufacturer as defined at 10 CFR 431.12 for electric motors and 10 CFR 431.442 for small electric motors.

(iii) It must demonstrate the ability to accredit testing facilities as meeting the following additional criteria: test facilities must be independent of electric motor or small electric motor manufacturers, importers, distributors, private labelers, vendors, and trade associations; test facilities must have the expertise necessary to conduct testing in accordance with the DOE test procedure, test facilities must have appropriate equipment, and recordkeeping and calibration procedures.

(2) *Electric motors*. The testing program must be expert in the content and application of the test procedures and methodologies at 10 CFR 431.16 and 10 CFR 429.63.

(3) *Small electric motors*. The testing program must be expert in the content and application of the test procedures and methodologies at 10 CFR 431.444 and 10 CFR 429.64.

(d) *Petition format*. Each petition requesting classification as a nationally recognized testing program must contain a narrative statement as to why the program meets the criteria listed in paragraph (c) of this section, must be signed on behalf of the organization operating the program by an authorized representative, and must be accompanied by documentation that supports the narrative statement. The

following provides additional requirements as to the specific criteria:

(1) *Standards and procedures*. The petitioning organization must include a copy of the standards and procedures it uses for operating its accreditation system and for granting a testing facility accreditation, including any accreditations that the petitioning organization holds. These documents must include a program manual or handbook that describes how the program conducts periodic assessments to ensure the testing facility continues to meet the required criteria, including, but not limited to, the number of motors tested annually to ensure repeatable results, the process for verifying the labs methods for selecting or obtaining units for testing, any controls to ensure that tested units are production units or are representative of production units, etc.

(2) *Independent status*. The petitioning organization must describe how it is independent (as defined at 10 CFR 431.12 for electric motors and 10 CFR 431.442 for small electric motors) from electric motor or small electric motor manufacturers, importers, distributors, private labelers, vendors, and trade associations and the methods it uses to ensure that testing facilities recognized are also independent.

(3) *Qualifications to operate a testing program*. The petitioning organization must describe its experience in operating an accreditation system for testing facilities. The experience should be discussed in detail and substantiated by supporting documents. Of particular relevance would be documentary evidence that establishes experience in running an accreditation program, such as the application of guidelines contained in the ISO/IEC Guide 17065:2012 (incorporated by reference, see § 429.4), ISO/IEC Guide 27 (incorporated by reference, see § 429.4), and ISO/IEC Guide 17026:2015, (incorporated by reference, see § 429.4), as well as experience in overseeing compliance with the guidelines contained in ISO/IEC Guide 17025:2005(E) (incorporated by reference, see § 429.4).

(4) *Expertise in test procedures*—(i) *General*. This part of the petition should include items such as, but not limited to, a description of prior projects and qualifications of staff members. Of particular relevance would be documentary evidence that establishes experience in laboratory calibration procedures such as those guidelines contained in the ISO/IEC Guide 17025:2005(E) (incorporated by reference, see § 429.4), and with energy efficiency testing of the equipment to be certified. The petitioning organization is

responsible for having expertise so as to be qualified to assess the expertise of recognized testing facilities.

(ii) *Electric motors.* The petition should set forth the program's experience with the test procedures and methodologies in 10 CFR 431.16 and § 429.63.

(iii) *Small electric motors.* The petition should set forth the program's experience with the test procedures and methodologies 10 CFR 431.444 and § 429.64.

(5) *Laboratory requirements.* The petition must include documentary evidence that establishes experience in applying and maintaining laboratory calibration procedures, such as those contained in ISO/IEC Guide 17025:2005(E) (incorporated by reference, see § 429.4) to energy efficiency testing of the equipment to be certified.

(e) *Disposition.* The Department will evaluate the petition in accordance with § 429.75, and will determine whether the applicant meets the criteria in paragraphs (c) and (d) of this section for classification as a nationally recognized certification program.

■ 12. Add § 429.75 to subpart B to read as follows:

**§ 429.75 Procedures for recognition and withdrawal of recognition of independent testing or certification programs.**

(a) *Filing of petition.* Any petition submitted to the Department pursuant to § 429.73(a) or § 429.74(a), shall be entitled "Petition for Recognition" ("Petition") and must be submitted to the Assistant Secretary for Energy Efficiency and Renewable Energy, U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585-0121, or via email to [email address TBD]. In accordance with the provisions set forth in 10 CFR 1004.11, any request for confidential treatment of any information contained in such a Petition or in supporting documentation must be accompanied by a copy of the Petition or supporting documentation from which the information claimed to be confidential has been deleted.

(b) *Public notice and solicitation of comments.* DOE shall publish in the **Federal Register** the petition from which confidential information, as determined by DOE, has been deleted in accordance with 10 CFR 1004.11 and shall solicit comments, data and information on whether the Petition should be granted. The Department shall also make available for inspection and copying the Petition's supporting documentation from which confidential information, as determined by DOE, has

been deleted in accordance with 10 CFR 1004.11. Any person submitting written comments to DOE with respect to a petition shall also send a copy of such comments to the petitioner.

(c) *Responsive statement by the petitioner.* A petitioner may, within 10 business days of receipt from DOE of a copy of any comments submitted in accordance with paragraph (b) of this section, respond to such comments in a written statement submitted to the Assistant Secretary for Energy Efficiency and Renewable Energy. A petitioner may address more than one set of comments in a single responsive statement.

(d) *Optional second round of public comment.* If, after reviewing comments on the Petition and the petitioner's response, DOE determines that a second round of comments is necessary to resolve conflicting information or gather additional information crucial to DOE's decision, DOE may solicit through a **Federal Register** notice additional comments, data and information on whether the Petition should be granted.

(e) *Public announcement of final determination.* The Assistant Secretary for Energy Efficiency and Renewable Energy shall, as soon as practicable, publish in the **Federal Register** a notice of final determination on the petition.

(f) *Additional information.* DOE may, at any time during the recognition process, request additional relevant information or conduct an investigation concerning the petition. DOE's determination on a petition may be based solely on the petition and supporting documents, or may also be based on such additional information as DOE deems appropriate.

(g) *Withdrawal of recognition—(1) Withdrawal by the Department.* If DOE believes that a program that has been recognized under §§ 429.73 or 429.74 is failing to meet the criteria of paragraphs (c) and (d) of that section, DOE may initiate withdrawal of recognition as follows:

(i) DOE will provide a written notification to the affected program citing the basis or bases for its belief that corrective action is warranted. The notification will indicate the time period within which the program must complete such corrective actions and report the status of completion to DOE. In no case shall the time allowed for corrective action exceed 180 days from the date of the notice (inclusive of the 30 days allowed under paragraph (g)(1)(ii) of this section for disputing the bases for DOE's notification of withdrawal).

(ii) If the program wishes to dispute any bases identified in the notification,

the program must respond to DOE within 30 days of receipt of the notification.

(iii) If, after the time period for corrective action has expired, DOE believes that the applicable criteria that were identified in the notification under paragraph (i) have not been met, DOE will withdraw its recognition from that program and provide a formal written notification to the program of such action. DOE shall identify the effective date of withdrawal in the notice required by paragraph (g)(3) of this section, which in no case shall be more than 30 days following the publication date of the notice.

(iv) In order to exhaust administrative remedies, any person aggrieved by an action under this section must file an appeal with the DOE's Office of Hearings and Appeals as provided in 10 CFR part 1003, subpart C, within 30 days of receipt of the notice of DOE's withdrawal of recognition.

(2) *Voluntary withdrawal.* A program may, under 10 CFR 429.75, unilaterally withdraw its recognition by advising DOE in writing of such withdrawal. It must also advise manufacturers utilizing the certification program of such withdrawal. Any notice provided to DOE or to manufacturers pursuant to this paragraph must identify the date on which the withdrawal is effective, the equipment types covered by the program to be withdrawn, and any effect the withdrawal has on the validity of certifications, recognition, or accreditation previously issued by the program. In no case shall such notification occur less than 30 days prior to the effective date of withdrawal.

(3) *Notice of withdrawal of recognition.* DOE will publish in the **Federal Register** a notice of any withdrawal of recognition that occurs pursuant to this paragraph. Such notice will identify the effective date of withdrawal, the product or equipment types covered by the program being withdrawn, and any effect the withdrawal has on the validity of certifications or other recognition previously issued by the program.

■ 13. Add § 429.76 to subpart B to read as follows:

**§ 429.76 Labeling and other representations.**

(a) *General.* If a basic model is a type of covered product or equipment for which DOE requires a label, the label must be in conformance with the requirements of this section.

(b) *Electric motors—(1) Required information.* All units produced of any basic model of electric motor for which standards are prescribed in § 431.25 of

this chapter must bear a permanent nameplate that is marked clearly with the following information:

(i) The electric motor's represented full-load efficiency as certified pursuant to § 429.63. If a motor is rated at multiple voltages, then only display the lowest represented full-load efficiency as certified pursuant to § 429.63; and

(ii) The manufacturer identification number (MIN) applicable to that unit. Such MIN must be on the nameplate of an electric motor at the time of its distribution in commerce.

(2) *Display of required information.* All orientation, spacing, type sizes, typefaces, and line widths to display this required information must be the same as or similar to the display of any other performance data on the motor's permanent nameplate. The represented full-load efficiency must be identified either by the term "Represented Full-Load Efficiency" or "Rep. Full-Load. Eff." The MIN must be in the form "MIN: \_\_\_\_\_".

(3) *Disclosure of efficiency information in marketing materials.* The electric motor's represented full-load efficiency as certified pursuant to § 429.63 must be prominently displayed:

(i) On each page of a catalog that lists the motor; and

(ii) In other materials used to market the motor.

(4) *Preemption of State regulations.* The provisions of this paragraph supersede any State regulation to the extent required by section 327 of the Act (42 U.S.C. 6297), as applied to electric motors via section 345 of the Act (42 U.S.C. 6316). Pursuant to the Act, all State regulations that require the disclosure for any electric motor of information with respect to energy consumption, other than the information required to be disclosed in accordance with this paragraph, are superseded.

(c) *Small electric motors—(1) Required information.* All units produced of any basic model of small electric motor for which standards are prescribed in § 431.446 of this chapter must bear a permanent nameplate that is marked clearly with the following information:

(i) The small electric motor's represented average full-load efficiency as certified pursuant to § 429.64; and

(ii) The manufacturer identification number (MIN) applicable to that unit. Such MIN must be on the nameplate of a small electric motor at the time of its distribution in commerce.

(2) *Display of required information.* All orientation, spacing, type sizes, typefaces, and line widths to display

this required information must be the same as or similar to the display of any other performance data on the motor's permanent nameplate. The represented average full-load efficiency must be identified either by the term "Represented Average Full-Load Efficiency" or "Rep. Avg. Full-Load. Eff." The MIN must be in the form "MIN: \_\_\_\_\_".

■ 14. Amend § 429.102 by revising the section heading and by adding paragraphs (a)(11) through (14) to read as follows:

**§ 429.102 Prohibited acts.**

(a) \* \* \*

(11) Distribution in commerce by a manufacturer or private labeler of any covered equipment which is not labeled in accordance with this part;

(12) Removal from any covered equipment or rendering illegible, by a manufacturer, distributor, retailer, or private labeler, any label required to be provided under this part;

(13) Advertisement of an electric motor, by a manufacturer, distributor, retailer, or private labeler, in a catalog from which the equipment may be purchased, without including in the catalog all information as required by § 429.76(b)(3), provided, however, that this shall not apply to an advertisement of an electric motor in a catalog if distribution of the catalog began before the effective date of the labeling rule applicable to that motor; or

(14) For any manufacturer or private labeler of a small electric motor to distribute in commerce any small electric motor required by § 429.76 to be labeled that is not in conformity with the relevant energy conservation standard found at 10 CFR 431.446.

■ 15. Amend § 429.110 by revising paragraphs (c)(1)(i) and (ii), (c)(3), and (e)(6) through (8) to read as follows:

**§ 429.110 Enforcement testing.**

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(i) *Manufacturer's warehouse, distributor, or other facility affiliated with the manufacturer.* DOE will select a batch sample at random in accordance with the provisions in paragraph (e) of this section and the conditions specified in the test notice. DOE will randomly select an initial test sample of units from the batch sample for testing in accordance with appendices A through D of this subpart. DOE will make a determination whether an alternative sample size will be used in accordance with the provisions in paragraph (e) of this section.

(ii) *Retailer or other facility not affiliated with the manufacturer.* DOE

will select an initial test sample of units at random that satisfies the minimum number of units necessary for testing in accordance with the provisions in appendices A through D of this subpart and the conditions specified in the test notice. Depending on the results of the testing, DOE may select additional units for testing from a retailer in accordance with appendices A through D of this subpart. If the full sample is not available from a retailer, DOE will make a determination whether an alternative sample size will be used in accordance with the provisions in paragraph (e) of this section.

\* \* \* \* \*

(3) The resulting test data shall constitute official test data for the basic model. Such test data will be used by DOE to make a determination of compliance or noncompliance if a sufficient number of tests have been conducted to satisfy the requirements of paragraph (e) of this section and appendices A through D of this subpart.

\* \* \* \* \*

(e) \* \* \*

(6) For electric motors and small electric motors, DOE will use an initial sample size of at least five units and follow the sampling plans in appendix D of this subpart (Sampling Plan for Enforcement Testing of Electric Motors and Small Electric Motors). If fewer than five units of a basic model are available for testing when the manufacturer receives the test notice, then:

(i) DOE will test the available unit(s); or

(ii) If one or more other units of the basic model are expected to become available within 30 calendar days, the Department may instead, at its discretion, test either:

(A) The available unit(s) and one or more of the other units that subsequently become available (for a total sample of at least five); or

(B) At least five of the other units that subsequently become available.

(7) Notwithstanding paragraphs (e)(1) through (e)(6) 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 has unusual testing requirements or has limited production, DOE may in its discretion decide to base the determination of compliance on the testing of fewer than the otherwise required number of units.

(8) When DOE makes a determination in accordance with paragraph (e)(6) to test less than the number of units specified in paragraph (e)(1) through (e)(6) of this section, DOE will base the compliance determination on the results

of such testing in accordance with appendix B of this subpart (Sampling Plan for Enforcement Testing of Covered Equipment and Certain Low-Volume Covered Products) using a sample size ( $n_1$ ) equal to the number of units tested.

(9) For the purposes of this section, available units are those that are available for distribution in commerce within the United States.

■ 16. Add § 429.138 to read as follows:

**§ 429.138 Electric motors representations.**

(a) *Purpose.* This provision is used to evaluate whether a representation is permitted for purposes of the prohibited acts related to labeling and representations.

(b) *Electric motors.* Any represented value of nominal full-load efficiency must satisfy the condition:

$$RE \leq 100 \left( \frac{1.05\bar{x}}{100 + 0.05\bar{x}} \right)$$

Where, RE is the represented nominal full-load efficiency and the average full-load efficiency of the sample,  $\bar{x}$  is defined by:

$$\bar{x} = \frac{1}{n} \sum_{i=1}^n x_i$$

Where  $x_i$  is the measured full-load efficiency of unit  $i$  and  $n$  is the number of units tested. And, the lowest measured full-load efficiency in the sample,  $x_{min}$ , which is defined by:

$$\bar{x}_{min} = \min(x_i)$$

must satisfy the condition

$$x_{min} \geq \frac{100}{1 + 1.15 \left( \frac{100}{RE} - 1 \right)}$$

Where RE is the represented nominal full-load efficiency.

■ 17. Add appendix D to subpart C of part 429 to read as follows:

**Appendix D to Subpart C of Part 429—Sampling Plan for Enforcement Testing of Electric Motors and Small Electric Motors**

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

Step 2. Compute the mean ( $\bar{X}_1$ ) of the measured energy performance of the  $n_1$  units in the first sample as follows:

$$\bar{X}_1 = \frac{1}{n_1} \sum_{i=1}^{n_1} X_i$$

where  $X_i$  is the measured full-load efficiency of unit  $i$ .

Step 3. Compute the sample standard deviation ( $S_1$ ) of the measured energy efficiency of the  $n_1$  units in the first sample as follows:

$$S_1 = \sqrt{\frac{\sum_{i=1}^{n_1} (X_i - \bar{X}_1)^2}{n_1 - 1}}$$

Step 4. Compute the standard error ( $SE(\bar{X}_1)$ ) of the mean full-load efficiency of the first sample as follows:

$$SE(\bar{X}_1) = \frac{S_1}{\sqrt{n_1}}$$

Step 5. Compute the lower control limit ( $LCL_1$ ) for the mean of the first sample using RE as the desired mean as follows:

$$(LCL_1) = RE - tSE(\bar{X}_1)$$

where: RE is the applicable standard full-load efficiency when the test is to determine compliance with the applicable statutory standard, or is the represented average full-load efficiency when the test is to determine compliance with the labeled efficiency value, and  $t$  is the 2.5th percentile of a  $t$ -distribution for a sample size of  $n_1$ , which yields a 97.5 percent confidence level for a one-tailed  $t$ -test.

Step 6. Compare the mean of the first sample ( $\bar{X}_1$ ) with the lower control limit ( $LCL_1$ ) to determine one of the following:

(i) If the mean of the first sample is below the lower control limit, then the basic model is in non-compliance and testing is at an end.

(ii) If the mean is equal to or greater than the lower control limit, no final determination of compliance or non-compliance can be made; proceed to Step 7.

Step 7. Determine the recommended sample size ( $n$ ) as follows:

$$n = \left[ \frac{tS_1(120 - 0.2RE)}{RE(20 - 0.2RE)} \right]^2$$

where  $S_1$ , RE and  $t$  have the values used in Steps 3 and 5, respectively. The factor

$$\frac{120 - 0.2RE}{RE(20 - 0.2RE)}$$

is based on a 20 percent tolerance in the total power loss at full-load and fixed output power.

Given the value of  $n$ , determine one of the following:  $\bar{X}_1$

(i) If the value of  $n$  is less than or equal to  $n_1$  and if the mean energy efficiency of the first sample ( $\bar{X}_1$ ) is equal to or greater than the lower control limit ( $LCL_1$ ), the basic model is compliant and testing is at an end.

(ii) If the value of  $n$  is greater than  $n_1$ , the basic model is in non-compliance. The size of a second sample  $n_2$  is determined to be the smallest integer equal to or greater than the difference  $n - n_1$ . If the value of  $n_2$  so calculated is greater than  $21 - n_1$ , set  $n_2$  equal to  $21 - n_1$ .

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

$$\bar{X}_2 = \frac{1}{n_1 + n_2} \sum_{i=1}^{n_1+n_2} X_i$$

Step 9. Compute the standard error ( $SE(\bar{X}_2)$ ) of the mean full-load efficiency of the  $n_1$  and  $n_2$  units in the combined first and second samples as follows:

$$SE(\bar{X}_2) = \frac{S_1}{\sqrt{n_1 + n_2}}$$

(Note that  $S_1$  is the value obtained above in Step 3.)

Step 10. Set the lower control limit ( $LCL_2$ ) to,

$$(LCL_2) = RE - tSE(\bar{X}_2)$$

where  $t$  has the value obtained in Step 5, and compare the combined sample mean ( $\bar{X}_2$ ) to the lower control limit ( $LCL_2$ ) to find one of the following:

(i) If the mean of the combined sample ( $\bar{x}_2$ ) is less than the lower control limit ( $LCL_2$ ), the basic model is in non-compliance and testing is at an end.

(ii) If the mean of the combined sample ( $\bar{X}_2$ ) is equal to or greater than the lower control limit ( $LCL_2$ ), the basic model is not found to be in non-compliance and testing is at an end.

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

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

Authority: 42 U.S.C. 6291–6317.

**§ 431.2 [Amended]**

■ 19. Amend § 431.2 by removing the definition of “Independent laboratory”.

■ 20. Revise § 431.11 to read as follows:

**§ 431.11 Purpose and scope.**

This subpart contains energy conservation requirements for electric motors, including test procedures, energy conservation standards, and related requirements prescribed or authorized by EPCA. This subpart does not cover “small electric motors,” which are addressed in subpart X of this part.

■ 21. Amend § 431.12 by:

■ a. Removing the definitions of “Accreditation”, “Accreditation body”, “Accreditation system”, and “Accredited laboratory”;

■ b. Revising the definition of “Basic model;” and

■ c. Adding, in alphabetical order, the definitions of “Equipment class” and “Independent”.

The revisions and additions read as follows:

**§ 431.12 Definitions.**

\* \* \* \* \*



*Basic model* means, with respect to an electric motor, all units of a given type of electric motor (or class thereof) manufactured by a single manufacturer, and which are part of the same equipment class, have electrical characteristics that are essentially identical, and do not have any differing physical or functional characteristics that affect energy consumption or efficiency.

\* \* \* \* \*

*Equipment class* means one of the combinations of an electric motor's horsepower (or standard kilowatt equivalent), number of poles, and open or enclosed construction, with respect to which § 431.25 prescribes nominal full-load efficiency standards.

\* \* \* \* \*

*Independent* means, in the context of a testing laboratory or certification program, an entity that is not controlled by, or under common control with, electric motor manufacturers, importers, private labelers, or vendors, and that has no affiliation, financial ties, or contractual agreements, apparently or otherwise, with such entities that would:

(1) Hinder the ability of the laboratory or program to evaluate fully or report the measured or calculated energy efficiency of any electric motor, or

(2) Create any potential or actual conflict of interest that would undermine the validity of said evaluation.

\* \* \* \* \*

#### § 431.14 [Removed]

■ 22. Remove § 431.14.

■ 23. Revise § 431.16 to read as follows:

#### § 431.16 Test procedures for measurement of energy efficiency.

For purposes of this part and EPCA, the test procedures for measuring the energy efficiency of an electric motor shall be the test procedures specified in appendix B to this subpart B. For each basic model of electric motor for which a manufacturer wishes to make a representation of the motor's ability to be installed and operated at multiple voltages, the electric motor must meet each of the energy conservation standards at the voltages for which the manufacturer has claimed it can be installed and operated.

■ 24. Revise § 431.17 to read as follows:

#### § 431.17 Manufacturer identification numbers.

(a) For the purposes of compliance with the labeling requirements of 10 CFR 429.76, before an electric motor may be distributed in commerce, DOE must issue a manufacturer identification

number (MIN) in accordance with this paragraph for display on the permanent nameplate of each unit of a basic model of electric motor for which part 431 prescribes an energy conservation standard. For purposes of this section, "original equipment manufacturer" (OEM) means the manufacturer that produces or assembles a unit; only one OEM is responsible for the manufacture (production or assembly) of a unit.

(b) *Issuance of manufacturer identification numbers.* (1) Before a certification report is submitted for a basic model, a MIN must be requested from DOE for use with each specific brand name to be listed in the certification report.

(2) DOE will provide a unique MIN for each OEM-brand name combination, subject to the following provisions:

(i) DOE will not issue a MIN for use with the same brand name if a MIN has already been issued for that combination of OEM and brand name, and

(ii) DOE will issue a MIN for use only with a single OEM-brand name combination.

(3) Once DOE has issued a MIN for a particular OEM-brand name combination, that MIN shall be the only MIN applicable to all electric motors manufactured by the OEM and labeled under that brand name.

(4) A MIN issued by DOE may not be transferred to another entity or used on the nameplates of basic models other than the OEM and brand name associated with the MIN to which DOE initially issued the MIN.

(c) *Discontinuance of manufacturer identification numbers.* In the event the brand name(s) to which a MIN is applicable ceases to be manufactured, the OEM must notify DOE of such discontinuation within 30 days of the discontinuation, after which time the MIN will terminate and be invalid for use on nameplates of electric motors manufactured after such date.

(d) *Method of submitting requests and notifications.* MIN requests required by paragraph (a) of this section or MIN discontinuance notifications required by paragraph (c) of this section must be submitted to DOE either electronically at <http://www.regulations.doe.gov/ccms> (CCMS) or via email to [MotorMINRequest@ee.doe.gov](mailto:MotorMINRequest@ee.doe.gov). The applicable form for each action online is available at <http://www.regulations.doe.gov/forms>.

#### §§ 431.18, 431.19, 431.20, and 431.21 [Removed]

■ 25. Remove §§ 431.18, 431.19, 431.20 and 431.21.

■ 26. Section 431.25 is amended by adding paragraph (m) to read as follows:

#### § 431.25 Energy conservation standards and effective dates.

\* \* \* \* \*

(m) *Rated voltages.* A basic model of electric motor for which there are energy conservation standards must comply with such standards at all of the voltages for which the motor is rated by the manufacturer to be used.

#### §§ 431.31 and 431.32 [Removed]

■ 27. Remove §§ 431.31 and 431.32 and the undesignated center heading "Labeling" preceding them.

■ 28. Revise § 431.35 to read as follows:

#### § 431.35 Applicability of certification requirements.

Sections 429.12 and 429.63 of this chapter set forth the procedures for manufacturers to certify that electric motors comply with the applicable energy efficiency standards set forth in this subpart.

#### § 431.36 [Removed]

■ 29. Remove § 431.36.

#### Appendix C to Subpart B of Part 431— [Removed]

■ 30. Remove appendix C to subpart B of part 431.

#### Subpart U—[Removed and Reserved]

■ 31. Remove and reserve subpart U, consisting of §§ 431.381 through 431.387 and appendix A to subpart U of part 431.

■ 32. Amend § 431.442 by:

■ a. Revising the definition of "Basic model"; and

■ b. Adding, in alphabetical order, definitions of "Equipment class" and "Independent."

The revisions and additions read as follows:

#### § 431.442 Definitions.

\* \* \* \* \*

*Basic model* means, with respect to a small electric motor, all units of a given type of small electric motor (or class thereof) manufactured by a single manufacturer, and which are part of the same equipment class, have electrical characteristics that are essentially identical, and do not have any differing physical or functional characteristics which affect energy consumption or efficiency.

\* \* \* \* \*

*Equipment class* means one of the combinations of a small electric motor's type (*i.e.*, capacitor-start capacitor-run, capacitor-start induction-run, or polyphase), horsepower (or standard kilowatt equivalent), and number of

poles, with respect to which § 431.446 prescribes average full-load efficiency standards.

\* \* \* \* \*

*Independent* means, in the context of a testing laboratory or nationally recognized certification program, an entity that is not controlled by or under common control with small electric motor manufacturers, importers, private labelers, or vendors, and that has no affiliation, financial ties, or contractual agreements, apparently or otherwise, with such entities that would:

(1) Hinder the ability of the laboratory or program to evaluate fully or report the measured or calculated energy efficiency of any small electric motor, or

(2) Create any apparent or actual conflict of interest that would undermine the validity of said evaluation. For purposes of this definition, financial ties or contractual agreements between an electric motor manufacturer, importer, private labeler or vendor and a testing laboratory or certification program exclusively for testing or certification services does not negate an otherwise independent relationship.

\* \* \* \* \*

**§ 431.445 [Removed]**

■ 33. Remove § 431.445.

■ 34. Amend § 431.446 by adding paragraph (c) to read as follows:

**§ 431.446 Small electric motors energy conservation standards and their effective dates.**

\* \* \* \* \*

(c) A small electric motor that is installed as a component of a unit of an

enumerated type of covered product under 42 U.S.C. 6302(a) or covered equipment under 42 U.S.C. 6311 at the time of distribution in commerce by the small electric motor manufacturer or private labeler is not subject to the standards specified in paragraph (a) of this section.

■ 35. Revise § 431.447 to read as follows:

**§ 431.447 Manufacturer Identification Numbers.**

(a) For the purposes of compliance with the labeling requirements of 10 CFR 429.76, before a small electric motor may be distributed in commerce, DOE must issue a manufacturer identification number (MIN) in accordance with this paragraph. For purposes of this section, “original equipment manufacturer” (OEM) means the manufacturer that produces or assembles the small electric motor at issue.

(b) *Issuance of manufacturer identification numbers.* (1) Before a certification report is submitted for a basic model, a MIN must be requested from DOE for use with each specific brand name to be listed in the certification report.

(2) DOE will provide a unique MIN for each OEM-brand name combination, subject to the following provisions:

(i) DOE will not issue a MIN for use with the same brand name if a MIN has already been issued for that combination of OEM and brand name, and

(ii) DOE will issue a MIN for use only with a single OEM-brand name combination.

(3) Once DOE has issued a MIN for a particular OEM-brand name combination, that MIN shall be the only MIN applicable to all small electric motors manufactured by the OEM and labeled under that brand name.

(4) A MIN issued by DOE may not be transferred to another entity or used on the nameplates of basic models other than the OEM associated with the MIN to which DOE initially issued the MIN.

(c) *Discontinuance of manufacturer identification numbers.* In the event the brand name(s) to which a MIN is applicable ceases to be manufactured, the OEM must notify DOE of such discontinuance within 30 days of the discontinuance, after which time the MIN will terminate and be invalid for use on nameplates of small electric motors distributed in commerce in the United States.

(d) *Method of submitting requests and notifications.* MIN requests required by paragraph (a) of this section or MIN discontinuance notifications required by paragraph (c) of this section must be submitted to DOE either electronically at <http://www.regulations.doe.gov/ccms> (CCMS) or via email to [MotorMINRequest@ee.doe.gov](mailto:MotorMINRequest@ee.doe.gov). The applicable form for each action online is available at <https://www.regulations.doe.gov/ccms/forms/>.

**§ 431.448 [Removed]**

■ 36. Remove § 431.448.

[FR Doc. 2016-14479 Filed 6-23-16; 8:45 am]

BILLING CODE 6450-01-P