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**DEPARTMENT OF ENERGY**

**10 CFR Part 429**

**[Docket No. EERE-2015-BT-CE-0019]**

**RIN: 1990-AA44**

**ENERGY CONSERVATION PROGRAM: CERTIFICATION AND ENFORCEMENT—  
IMPORT DATA COLLECTION**

**AGENCY:** Office of the General Counsel, Department of Energy.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The U.S. Department of Energy (DOE) is proposing a requirement that a person importing into the United States any covered product or equipment subject to an applicable energy conservation standard provide, prior to importation, a certification of admissibility to the DOE for the covered product or equipment. The certification would be submitted to DOE through the U.S. Customs and Border Protection's Automated Commercial Environment (ACE).

**DATES:** DOE will accept comments, data, and information regarding this notice of proposed rulemaking (NOPR) no later than [INSERT DATE 45 DAYS AFTER PUBLICATION]. See section V, "Public Participation," of this NOPR for details.

**ADDRESSES:** Any comments submitted must identify the NOPR for Import Data Collection, and provide docket number EERE-2015-BT-CE-0019 and/or regulatory information number (RIN) number 1990-AA44. 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. E-mail: [ImportData2015CE0019@ee.doe.gov](mailto:ImportData2015CE0019@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-5B, 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. It is not necessary to include printed copies.

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://regulations.gov). All documents in the docket are listed in the [regulations.gov](http://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.regulations.gov/#!docketDetail;D=EERE-2015-BT-CE-0019>. This web page will contain a link to the docket for this notice on the regulations.gov site. The regulations.gov web page will contain simple instructions on how to access all documents, including public comments, in the docket. See section V for information on how to submit comments through regulations.gov.

For further information on how to submit a comment, review other public comments and the docket, or to request a public meeting, 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. E-mail: [ashley.armstrong@ee.doe.gov](mailto:ashley.armstrong@ee.doe.gov); or Mr. Steven Goering, U.S. Department of Energy, Office of the General Counsel, Forrestal Building, GC-32, 1000 Independence Avenue,

SW., Washington, DC 20585-0121. Telephone: 202–286-5691. E-mail:  
steven.goering@hq.doe.gov.

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### **I. Authority and Background**

Title III, Part B<sup>1</sup> of the Energy Policy and Conservation Act of 1975 (EPCA or the Act), Public Law 94-163 (*codified at* 42 U.S.C. 6291-6317) sets forth a variety of provisions designed to improve energy efficiency and established the Energy Conservation Program for Consumer

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

Products Other Than Automobiles.<sup>2</sup> Part C<sup>3</sup> of title III (42 U.S.C. 6311-6317) establishes an energy conservation program for certain industrial and commercial equipment. The Act provides DOE authority to enforce certain prohibited acts listed in section 6302(a), including EPCA's prohibition on the importation of covered products and equipment that do not conform to applicable energy conservation standards. (42 U.S.C. 6302(a)(5), 6303, 6316(a),(b))<sup>4</sup>

EPCA further provides that any covered product or equipment “offered for importation in violation of section 6302 of this title shall be refused admission into the customs territory of the United States under rules issued by the Secretary of the Treasury,” except under certain terms and conditions authorized under those rules. (42 U.S.C. 6301) Under the regulations issued by the Department of Treasury and the U.S. Customs and Border Protection (CBP), if the DOE or the Federal Trade Commission “notifies CBP that a covered import does not comply with an applicable energy conservation or energy labeling standard, CBP will refuse admission to the covered import, or pursuant to paragraph (d) of this section, CBP may allow conditional release of the covered import so that it may be brought into compliance.” (19 CFR 12.50(b))

In addition, EPCA authorizes DOE to require importers of covered products and equipment “to submit information or reports” with respect to energy efficiency, energy use, or water use of covered products and equipment “as the Secretary determines may be necessary . . . to insure compliance with the requirements of this part.” (42 U.S.C. 6296(d))

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<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 (Apr. 30, 2015).

<sup>3</sup> For editorial reasons, upon codification in the U.S. Code, Part C was redesignated Part A-1.

<sup>4</sup> Section 6302(a)(5) states that it is unlawful for any “manufacturer” to “distribute in commerce” products that do not conform to applicable energy conservation standards. Section 6291 defines the term “manufacturers” so as to include importers, and states that “to distribute in commerce” means, among other things, “to import.” (42 U.S.C. 6291(10), (12), (16)).

In its current form, 10 CFR 429.5 requires that persons importing covered products or covered equipment comply with the provisions of 10 CFR parts 429, 430, and 431. Part 429 requires, among other things, that importers of covered products or covered equipment subject to an applicable energy conservation standard<sup>5</sup> submit a certification report to DOE prior to distributing their products in U.S. commerce. The certification report must provide specific information for each basic model, including the product or equipment type, the brand name, and the basic model number, as well as specific energy use information. (10 CFR 429.12(b)). Importers are currently required to submit certifications on product-specific templates to DOE's Compliance and Certification Management System (CCMS), which assigns each certification submission a unique attachment identification number. (10 CFR 429.12(h)).

In prior rulemakings, the DOE has received comments from a number of interested parties urging DOE to work with CBP to enforce EPCA and its implementing regulations. For example, in 1996, the National Electrical Manufacturers Association (NEMA) called on the DOE to “provide sufficient guidelines to Customs Officers in order to facilitate enforcement of requirements similar to those placed on U.S. manufacturers.” (Docket No. EE-RM-96-400, NEMA, No. 38 at p. 15). More recently, in April 2011, in response to a DOE Request for Information concerning “Increased Scope of Coverage for Electric Motors,” NEMA and the Appliance Standards Awareness Project (ASAP), addressed this issue in joint comments supported by the American Council for an Energy-Efficient Economy, the Alliance to Save

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<sup>5</sup> Under DOE regulations, “energy conservation standard” is defined as any standard “meeting the definitions of that term in 42 U.S.C. 6291(6) and 42 U.S.C. 6311(18) as well as any other water conservation standards and design requirements found” in 10 CFR Parts 429, 430, or 431. (10 CFR 429.2(b))

Energy, Natural Resources Defense Council, Northeast Energy Efficiency Partnerships, Northwest Energy Efficiency Alliance and the Northwest Power and Conservation Council. The commenters estimated that more effective enforcement of standards vis-à-vis imported electric motors could produce as much as one billion kilowatt-hours in incremental savings each year, and further noted that “manufacturers who comply are placed at a competitive disadvantage. . . . Therefore, we strongly urge DOE to work with Customs to expedite efforts for improved monitoring and enforcement with respect to imported motors. Without improved enforcement, the benefits of both existing standards and future standards are jeopardized.” (Docket No. EERE-2010-BT-STD-0027, ASAP, NEMA, No. 20 at p. 5).

On February 19, 2014, the President issued Executive Order 13659, Streamlining the Export/Import Process for America's Businesses (EO 13659), which requires certain federal agencies to significantly enhance their use of technology to modernize and simplify the trade processing infrastructure. Specifically, EO 13659 requires applicable government agencies to use CBP's International Trade Data System (ITDS), and its supporting systems, such as the Automated Commercial Environment (ACE), to create a “single window” through which businesses will electronically submit import-related data for clearance. EO 13659 envisions and is working toward a simpler, more efficient portal for trade use, to the benefit of both the trade and those government agencies with related authorities and responsibilities.

Based upon its specific authority to require the submission of information by importers and its broader authority to regulate the importation of covered products and equipment, DOE seeks in this proposed rule to require importers to provide a certification of admissibility to DOE

prior to importation of products or equipment subject to DOE regulations. Importers would be required to submit the certification to DOE through ACE, which currently is being deployed to support electronic data filing through its Automated Broker Interface (ABI).

## **II. Summary of the Notice of Proposed Rulemaking**

In this NOPR, DOE proposes to require that importers of covered products or equipment subject to an applicable energy conservation standard set forth in 10 CFR Part 430 or 431<sup>6</sup> and falling under specified classifications of the Harmonized Tariff Schedule of the United States<sup>7</sup> provide a certification of admissibility for each shipment of such products or equipment before their arrival at a U.S. port of entry. Importers of such covered products or equipment are currently required to submit annual certifications to DOE that the products or equipment they intend to import are compliant with all applicable energy conservation standards, using CCMS. DOE proposes that, if an importer has already submitted its required certification report to DOE, the importer would provide a certification of admissibility with only the information necessary to tie the shipment back to its most recent CCMS submission. Any importer that has not already filed its required annual certification would be required to provide more detailed information regarding the covered product or equipment contained in the shipment.

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<sup>6</sup> 10 CFR Parts 430 and 431 do not apply to covered products or equipment imported for export from the United States, provided that such products or equipment “or any container in which it is enclosed, when distributed in commerce, bears a stamp or label stating ‘NOT FOR SALE FOR USE IN THE UNITED STATES’” and “such product is, in fact, not distributed in commerce for use in the United States.” (10 CFR 429.6). *See also* CBP Ruling No. HQ W231173 (“equipment subject to the standards set by the Department of Energy under 10 CFR 430.32 that are not in compliance with those standards, may be imported into the United States for the purpose of exportation, and placed in either a foreign trade zone or customs bonded warehouse pursuant to that purpose”), available at <http://rulings.cbp.gov/index.asp?ru=w231173&qu=CBP+Ruling+HQ+W231173&vw=detail>.

<sup>7</sup> <http://www.usitc.gov/tata/hts/index.htm>.

### III. Discussion

#### A. Relevant Harmonized Tariff Schedule Codes

All importers must provide the appropriate code for the products or equipment they are importing as explained in the Harmonized Tariff Schedule of the United States, Annotated for Statistical Reporting Purposes, (HTS) which is published by the U.S. International Trade Commission pursuant to section 1207 of the Omnibus Trade and Competitiveness Act of 1988 (Public Law 100-418; 19 U.S.C. 3007) (Trade Act). The HTS code is meant in part to allow CBP to make classification distinctions of U.S. interest. Consistent with this practice, DOE would require importers of shipments containing covered products and equipment falling under specified classifications of the HTS to file a certification of admissibility with DOE. The relevant HTS codes that would require a certification filing to DOE are presented in Table III.1.<sup>8</sup>

Table III.1 – HTS Codes of Products and Equipment Requiring Certification of Admissibility

<b>HTS Code (2014)</b>	<b>HTS Product Description (2014)</b>
3922	Baths, shower baths, sinks, washbasins, bidets, lavatory pans, seats and covers, flushing cisterns and similar sanitary ware, of plastics
6910	Ceramic sinks, washbasins, washbasin pedestals, baths, bidets, water closet bowls, flush tanks, urinals and similar sanitary fixtures
7011.10	Glass envelopes (including bulbs and tubes), open, and glass parts thereof, without fittings, for electric lamps, cathode-ray tubes or the like: For electric lighting
7321	Stoves, ranges, grates, cookers (including those with subsidiary boilers for central heating), barbecues, braziers, gas rings, plate warmers and similar nonelectric domestic appliances, and parts thereof, of iron or steel
7322.90.0015	Air heaters, not electrically heated, incorporating a motor-driven fan or blower
7322.90.0030	Hot air distributors, not electrically heated, incorporating a motor-driven fan or blower.
7322.90.0045	Parts of air heaters and hot air distributors

<sup>8</sup> The HTS codes that would require a certification to DOE would be updated to reflect the then-current version of the HTS.

<b>HTS Code (2014)</b>	<b>HTS Product Description (2014)</b>
8402	Steam or other vapor generating boilers (other than central heating hot water boilers capable also of producing low pressure steam); super-heated water boilers; parts thereof:
8403	Central heating boilers (other than those of heading 8402) and parts thereof
8413	Pumps for liquids, whether or not fitted with a measuring device; liquid elevators; part thereof
8414	Air or vacuum pumps, air or other gas compressors and fans; ventilating or recycling hoods incorporating a fan, whether or not fitted with filters; parts thereof
8415	Air conditioning machines, comprising a motor-driven fan and elements for changing the temperature and humidity, including those machines in which the humidity cannot be separately regulated; parts thereof
8416	Furnace burners for liquid fuel, for pulverized solid fuel or for gas; mechanical stokers, including their mechanical grates, mechanical ash dischargers and similar appliances; parts thereof
8417	Industrial or laboratory furnaces and ovens, including incinerators, nonelectric, and parts thereof
8418	Refrigerators, freezers and other refrigerating or freezing equipment, electric or other; heat pumps, other than the air conditioning machines of heading 8415; parts thereof
8419.11.00	Instantaneous gas water heaters
8419.19.0020	Instantaneous water heaters, non-electric
8419.81.50	Cooking stoves, ranges and ovens
8421.12.0000	Clothes-dryers (centrifugal)
8422.11.00	Dishwashing machines, of the household type
8422.19.00	Dishwashing machines, other
8422.90	Parts of dishwashing machines
8427.10	Self-propelled trucks powered by an electric motor
8428	Other lifting, handling, loading or unloading machinery (for example, elevators, escalators, conveyors, teleferics)
8429	Self-propelled bulldozers, angledozers, graders, levelers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers:
8430	Other moving, grading, leveling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores; pile-drivers and pile-extractors; snowplows and snowblowers
8431	Parts suitable for use solely or principally with the machinery of headings 8425 to 8430
8432	Agricultural, horticultural or forestry machinery for soil preparation or cultivation; lawn or sports ground rollers; parts thereof

<b>HTS Code (2014)</b>	<b>HTS Product Description (2014)</b>
8433	Harvesting or threshing machinery, including straw or fodder balers; grass or hay mowers; machines for cleaning, sorting or grading eggs, fruit or other agricultural produce, other than machinery of heading 8437; parts thereof
8434	Milking machines and dairy machinery, and parts thereof:
8435	Presses, crushers and similar machinery, used in the manufacture of wine, cider, fruit juices or similar beverages; parts thereof:
8436	Other agricultural, horticultural, forestry, poultry-keeping or bee-keeping machinery, including germination plant fitted with mechanical or thermal equipment; poultry incubators and brooders; parts thereof
8437	Machines for cleaning, sorting or grading seed, grain or dried leguminous vegetables, and parts thereof; machinery used in the milling industry or for the working of cereals or dried leguminous vegetables, other than farm type machinery; parts thereof
8438	Machinery, not specified or included elsewhere in this chapter, for the industrial preparation or manufacture of food or drink, other than machinery for the extraction or preparation of animal or fixed vegetable fats or oils; parts thereof
8439	Machinery for making pulp of fibrous cellulosic material or for making or finishing paper or paperboard (other than the machinery of heading 8419); parts thereof
8440	Bookbinding machinery, including book-sewing machines, and parts thereof
8441	Other machinery for making up paper pulp, paper or paperboard, including cutting machines of all kinds, and parts thereof
8442	Machinery, apparatus and equipment (other than the machine tools of headings 8456 to 8465), for preparing or making plates, cylinders or other printing components; plates, cylinders and other printing components; plates, cylinders and lithographic stones
8443	Printing machinery used for printing by means of plates, cylinders and other printing components of heading 8442; other printers, copying machines and facsimile machines, whether or not combined; parts and accessories thereof
8444	Machines for extruding, drawing, texturing or cutting man-made textile materials.
8445	Machines for preparing textile fibers; spinning, doubling or twisting machines and other machinery for producing textile yarns; textile reeling or winding (including weft winding) machines and machines for preparing textile yarns for use on the machines
8446	Weaving machines (looms)

<b>HTS Code (2014)</b>	<b>HTS Product Description (2014)</b>
8447	Knitting machines, stitch-bonding machines and machines for making gimped yarn, tulle, lace, embroidery, trimmings, braid or net and machines for tufting
8448	Auxiliary machinery for use with machines of heading 8444, 8445, 8446 or 8447 (for example, dobbies, Jacquards, automatic stop motions and shuttle changing mechanisms); parts and accessories suitable for use solely or principally with the machines of this heading or of heading 8444, 8445, 8446 or 8447 (for example, spindles and spindle flyers, card clothing, combs, extruding nipples, shuttles, healds and heald-frames, hosiery needles)
8449	Machinery for the manufacture or finishing of felt or nonwovens in the piece or in shapes, including machinery for making felt hats; blocks for making hats; parts thereof
8450	Household- or laundry-type washing machines, including machines which both wash and dry; parts thereof
8451	Machinery (other than machines of heading 8450) for washing, cleaning, wringing, drying, ironing, pressing (including fusing presses), bleaching, dyeing, dressing, finishing, coating or impregnating textile yarns, fabrics or made up textile articles and machines for applying the paste to the base fabric or other support used in the manufacture of floor coverings such as linoleum; machines for reeling, unreeling, folding, cutting or pinking textile fabrics; parts thereof
8452	Sewing machines, other than book-sewing machines of heading 8440; furniture, bases and covers specially designed for sewing machines; sewing machine needles; parts thereof
8453	Machinery for preparing, tanning or working hides, skins or leather or for making or repairing footwear or other articles of hides, skins or leather, other than sewing machines; parts thereof
8454	Converters, ladles, ingot molds and casting machines, of a kind used in metallurgy or in metal foundries, and parts thereof
8455	Metal-rolling mills and rolls therefor; parts thereof
8456	Machine tools for working any material by removal of material, by laser or other light or photon beam, ultrasonic, electro-discharge, electro-chemical, electron-beam, ionic-beam or plasma arc processes; water-jet cutting machines
8457	Machining centers, unit construction machines (single station) and multistation transfer machines, for working metal
8458	Lathes (including turning centers) for removing metal
8459	Machine tools (including way-type unit head machines) for drilling, boring, milling, threading or tapping by removing metal, other than lathes (including turning centers) of heading 8458
8460	Machine tools for deburring, sharpening, grinding, honing, lapping, polishing or otherwise finishing metal or cermets by

HTS Code (2014)	HTS Product Description (2014)
	means of grinding stones, abrasives or polishing products, other than gear cutting, gear grinding or gear finishing machines [listed in prior subheadings]
8461	Machine tools for planing, shaping, slotting, broaching, gear cutting, gear grinding or gear finishing, sawing, cutting-off and other machine tools working by removing metal or cermets, not elsewhere specified or included
8462	Machine tools (including presses) for working metal by forging, hammering or die-stamping; machine tools (including presses) for working metal by bending, folding, straightening, flattening, shearing, punching or notching; presses for working metal
8463	Other machine tools for working metal or cermets, without removing material
8464	Machine tools for working stone, ceramics, concrete, asbestos-cement or like mineral materials or for cold working glass
8465	Machine tools (including machines for nailing, stapling, glueing or otherwise assembling) for working wood, cork, bone, hard rubber, hard plastics or similar hard materials
8466	Parts and accessories suitable for use solely or principally with the machines of headings 8456 to 8465, including work or tool holders, self-opening dieheads, dividing heads and other special attachments for machine tools; tool holders for any type of tool for working in the hand
8467.21.00, 8467.22.00, 8467.29.00, 8467.81.0000, 8467.89	Tools for working in the hand (with self-contained electric motor)
8469	Typewriters other than printers of heading 8443; word processing machines
8470	Calculating machines and pocket-size data recording, reproducing and displaying machines with calculating functions; accounting machines, postage-franking machines, ticket-issuing machines and similar machines, incorporating a calculating device; cash registers
8471	Automatic data processing machines and units thereof; magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such data, not elsewhere specified or included
8472	Other office machines (for example, hectograph or stencil duplicating machines, addressing machines, automatic banknote dispensers, coin-sorting machines, coin-counting or wrapping machines, pencil-sharpening machines, perforating or stapling machines)
8473	Parts and accessories (other than covers, carrying cases and the like) suitable for use solely or principally with machines of headings 8469 to 8472

<b>HTS Code (2014)</b>	<b>HTS Product Description (2014)</b>
8474	Machinery for sorting, screening, separating, washing, crushing, grinding, mixing or kneading earth, stone, ores or other mineral substances, in solid (including powder or paste) form; machinery for agglomerating, shaping or molding solid mineral fuels
8475	Machines for assembling electric or electronic lamps, tubes or flashbulbs, in glass envelopes; machines for manufacturing or hot working glass or glassware; parts thereof
8476	Automatic goods-vending machines (for example, postage stamp, cigarette, food or beverage machines), including money-changing machines; parts thereof
8477	Machinery for working rubber or plastics or for the manufacture of products from these materials, not specified or included elsewhere in this chapter; parts thereof
8478	Machinery for preparing or making up tobacco, not specified or included elsewhere in this chapter; parts thereof
8479	Machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter; parts thereof
8481.80.1020	Bath and shower faucets (of copper)
8481.80.1030	Sink and lavatory faucets (of copper)
8481.80.30	Other taps, cocks, valves and similar appliances (of iron or steel)
8481.80.5060	Bath, shower, sink and lavatory faucets (of other materials)
8486	Machines and apparatus of a kind used solely or principally for the manufacture of semiconductor boules or wafers, semiconductor devices, electronic integrated circuits or flat panel displays; machines and apparatus specified in Note 9 (C) to this chapter; parts and accessories
8501	Electric motors and generators (excluding generating sets)
8502.40.0000	Electric rotary converters
8504	Electrical transformers, static converters (for example, rectifiers) and inductors; parts thereof
8508.11,8508.19, 8508.70	Vacuum cleaners; parts thereof: With self-contained electric motor
8509	Electromechanical domestic appliances, with self- contained electric motor, other than vacuum cleaners of heading 8508; parts thereof
8510	Shavers, hair clippers and hair-removing appliances, with self-contained electric motor; parts thereof
8511.40.0000	Starter motors and dual purpose starter-generators
8511.90.60	Other parts of electrical ignition or starting equipment
8512	Electrical lighting or signaling equipment (excluding articles of heading 8539), windshield wipers, defrosters and demisters, of a kind used for cycles or motor vehicles; parts thereof
8514	Industrial or laboratory electric furnaces and ovens (including those functioning by induction or dielectric loss); other industrial

HTS Code (2014)	HTS Product Description (2014)
	or laboratory equipment for the heat treatment of materials by induction or dielectric loss; parts thereof
8515	Electric (including electrically heated gas), laser or other light or photon beam, ultrasonic, electron beam, magnetic pulse or plasma arc soldering, brazing or welding machines and apparatus, whether or not capable of cutting; electric machines and apparatus for hot spraying of metals or cermets; parts thereof
8516	Electric instantaneous or storage water heaters and immersion heaters; electric space heating apparatus and soil heating apparatus; electrothermic hairdressing apparatus (for example, hair dryers, hair curlers, curling tong heaters) and hand dryers
8517	Telephone sets, including telephones for cellular networks or for other wireless networks; other apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network
8518	Microphones and stands therefor; loudspeakers, whether or not mounted in their enclosures; headphones and earphones, whether or not combined with a microphone, and sets consisting of a microphone and one or more loudspeakers; audio-frequency electric amplifiers; electric sound amplifier sets; parts thereof
8519	Sound recording or reproducing apparatus
8521	Video recording or reproducing apparatus, whether or not incorporating a video tuner
8525	Transmission apparatus for radio-broadcasting or television, whether or not incorporating reception apparatus or sound recording or reproducing apparatus; television cameras, digital cameras and video camera recorders
8527	Reception apparatus for radio broadcasting, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock
8528	Monitors and projectors, not incorporating television reception apparatus; reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus
8529	Parts suitable for use solely or principally with the apparatus of headings 8525 to 8528
8530	Electrical signaling, safety or traffic control equipment for railways, streetcar lines, subways, roads, inland waterways, parking facilities, port installations or airfields (other than those of heading 8608); parts thereof
8539	Electrical filament or discharge lamps, including sealed beam lamp units and ultraviolet or infrared lamps; arc lamps; parts thereof
8543	Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof

<b>HTS Code (2014)</b>	<b>HTS Product Description (2014)</b>
8549	Other electrical parts of machinery or apparatus, not specified or included elsewhere in this chapter
8601	Rail locomotives powered from an external source of electricity or by electric accumulators (batteries)
8602	Other rail locomotives; locomotive tenders
8603	Self-propelled railway or tramway coaches, vans and trucks, other than those of heading 8604
8604	Railway or tramway maintenance or service vehicles, whether or not self-propelled (for example, workshops, cranes, ballast tampers, trackliners, testing coaches and track inspection vehicles)
8605	Railway or tramway passenger coaches, not selfpropelled; luggage vans, post office coaches and other special purpose railway or tramway coaches, not selfpropelled (excluding those of heading 8604)
8607	Parts of railway or tramway locomotives or rolling stock: Truck assemblies, axles and wheels, and parts thereof
8608	Railway or tramway track fixtures and fittings; mechanical (including electro-mechanical) signaling, safety or traffic control equipment for railways, tramways, roads, inland waterways, parking facilities, port installations or airfields; parts of the foregoing
8701	Tractors (other than tractors of heading 8709)
8702	Motor vehicles for the transport of ten or more persons, including the driver
8703	Motor cars and other motor vehicles principally designed for the transport of persons (other than those of heading 8702), including station wagons and racing cars
8704	Motor vehicles for the transport of goods
8705	Special purpose motor vehicles, other than those principally designed for the transport of persons or goods (for example, wreckers, mobile cranes, fire fighting vehicles, concrete mixers, road sweepers, spraying vehicles, mobile workshops, mobile radiological units)
8707	Bodies (including cabs), for the motor vehicles of headings 8701 to 8705
8708	Parts and accessories of the motor vehicles of headings 8701 to 8705
8709	Works trucks, self-propelled, not fitted with lifting or handling equipment, of the type used in factories, warehouses, dock areas or airports for short distance transport of goods; tractors of the type used on railway station platforms; parts of the foregoing vehicles

<b>HTS Code (2014)</b>	<b>HTS Product Description (2014)</b>
8710	Tanks and other armored fighting vehicles, motorized, whether or not fitted with weapons, and parts of such vehicles
8713	Carriages for disabled persons, whether or not motorized or otherwise mechanically propelled
8714	Parts and accessories of vehicles of headings 8711 to 8713
8802	Other aircraft (for example, helicopters, airplanes); spacecraft (including satellites) and suborbital and spacecraft launch vehicles
8803	Parts of goods of heading 8801 or 8802
8805	Aircraft launching gear; deck-arrestor or similar gear; ground flying trainers; parts of the foregoing articles
8901	Cruise ships, excursion boats, ferry boats, cargo ships, barges and similar vessels for the transport of persons or goods
8902	Fishing vessels; factory ships and other vessels for processing or preserving fishery products..
8904	Tugs and pusher craft
8905	Light-vessels, fire-floats, dredgers, floating cranes, and other vessels the navigability of which is subsidiary to their main function; floating docks; floating or submersible drilling or production platforms
8906	Other vessels, including warships and lifeboats other than row boats
8905	Binoculars, monoculars, other optical telescopes, and mountings therefor; other astronomical instruments and mountings therefor, but not including instruments for radio-astronomy; parts and accessories thereof
9006	Photographic (other than cinematographic) cameras; photographic flashlight apparatus and flashbulbs other than discharge lamps of heading 8539; parts and accessories thereof
9007	Cinematographic cameras and projectors, whether or not incorporating sound recording or reproducing apparatus; parts and accessories thereof
9008	Image projectors, other than cinematographic; photographic (other than cinematographic) enlargers and reducers; parts and accessories thereof
9010	Apparatus and equipment for photographic (including cinematographic) laboratories, not specified or included elsewhere in this chapter; negatoscopes; projection screens; parts and accessories thereof
9014	Direction finding compasses; other navigational instruments and appliances; parts and accessories thereof
9015	Surveying (including photogrammetrical surveying), hydrographic, oceanographic, hydrological, meteorological or geophysical instruments and appliances, excluding compasses; rangefinders; parts and accessories thereof

<b>HTS Code (2014)</b>	<b>HTS Product Description (2014)</b>
9018	Instruments and appliances used in medical, surgical, dental or veterinary sciences, including scintigraphic apparatus, other electro-medical apparatus and sight-testing instruments; parts and accessories thereof
9019	Mechano-therapy appliances; massage apparatus; psychological aptitude-testing apparatus; ozone therapy, oxygen therapy, aerosol therapy, artificial respiration or other therapeutic respiration apparatus; parts and accessories thereof
9022	Apparatus based on the use of X-rays or of alpha, beta or gamma radiations, whether or not for medical, surgical, dental or veterinary uses, including radiography or radiotherapy apparatus, X-ray tubes and other X-ray generators, high tension generators, control panels and desks, screens, examination or treatment tables, chairs and the like; parts and accessories thereof
9023	Instruments, apparatus and models, designed for demonstrational purposes (for example, in education or exhibitions), unsuitable for other uses, and parts and accessories thereof
9024	Machines and appliances for testing the hardness, strength, compressibility, elasticity or other mechanical properties of materials (for example, metals, wood, textiles, paper, plastics), and parts and accessories thereof
9027	Instruments and apparatus for physical or chemical analysis (for example, polarimeters, refractometers, spectrometers, gas or smoke analysis apparatus); instruments and apparatus for measuring or checking viscosity, porosity, expansion, surface tension or the like; instruments and apparatus for measuring or checking quantities of heat, sound or light (including exposure meters); microtomes; parts and accessories thereof
9030	Oscilloscopes, spectrum analyzers and other instruments and apparatus for measuring or checking electrical quantities, excluding meters of heading 9028; instruments and apparatus for measuring or detecting alpha, beta, gamma, X-ray, cosmic or other ionizing radiations; parts and accessories thereof
9031	Measuring or checking instruments, appliances and machines, not specified or included elsewhere in this chapter; profile projectors; parts and accessories thereof
9033	Parts and accessories (not specified or included elsewhere in this chapter) for machines, appliances, instruments or apparatus of chapter 90
9105.11	Alarm clocks (electrically operated)
9105.19	Other clocks
9207	Musical instruments, the sound of which is produced, or must be amplified, electrically (for example, organs, guitars, accordions)
9209	Parts (for example, mechanisms for music boxes) and accessories (for example, cards, discs and rolls for mechanical

<b>HTS Code (2014)</b>	<b>HTS Product Description (2014)</b>
	instruments) of musical instruments; metronomes, tuning forks and pitch pipes of all kinds
9401	Seats (other than those of heading 9402), whether or not convertible into beds, and parts thereof
9402	Medical, surgical, dental or veterinary furniture (for example, operating tables, examination tables, hospital beds with mechanical fittings, dentists' chairs); barbers' chairs and similar chairs, having rotating as well as both reclining and elevating movements; parts of the foregoing articles
9405	Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated nameplates and the like, having a permanently fixed light source, and parts thereof not elsewhere specified or included
9406	Illuminated signs, illuminated nameplates and the like
9504	Video game consoles and machines, articles for arcade, table or parlor games, including pinball machines, bagatelle, billiards and special tables for casino games; automatic bowling alley equipment; parts and accessories thereof
9506	Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; swimming pools and wading pools; parts and accessories thereof
9508	Merry-go-rounds, boat-swings, shooting galleries and other fairground amusements; traveling circuses and traveling menageries; traveling theaters; parts and accessories thereof
9518	Tailors' dummies and other mannequins; automatons and other animated displays used for shopwindow dressing.

DOE requests comment on the requirement that importers importing covered products or equipment subject to DOE energy conservation standards that are within the above listed HTS codes provide a certification of admissibility to DOE. Further, DOE requests comment as to whether covered products or equipment subject to or being considered for energy conservation standards are currently imported using other HTS codes.

## B. Applicability of provision

The requirement for a certification of admissibility would apply to all covered products and equipment subject to a DOE energy conservation standard set forth in 10 CFR Part 430 or 431. The requirement would apply to all such products and equipment contained in the shipment, either as a final product or a component part of a final product. For example, an importer would need to submit an electronic record for all covered electric motors as defined in 10 CFR 431.12, provided that the electric motor is subject to a standard, regardless of whether the electric motor will be imported as a stand-alone product or as a component part of another product not subject to DOE regulations (a treadmill, for example). Similarly, an importer of a laptop computer that is bundled with an external power supply would be required to submit a certification of admissibility for the external power supply.

If the shipment contains any such covered products or equipment, the importer would be required to state whether the product or equipment has been certified to DOE as compliant with all applicable energy conservation standards and, if so, the CCMS ticket number, the CCMS attachment identification number assigned to the certification submission, and the line number in the submission corresponding to the basic model certified. As discussed above, EPCA authorizes the Secretary of Energy to require importers of covered products and equipment “to submit information or reports to the Secretary” with respect to energy efficiency, energy use, or water use of covered products and equipment. (42 U.S.C. 6296(d)(1)) 10 CFR Part 429 requires, among other things, that importers submit a certification report to DOE prior to distributing their products in U.S. commerce, and the failure to properly certify covered products and covered equipment subject to DOE energy conservation standards is a prohibited act under

those regulations. 10 C.F.R. 429.12, 429.102(a)(1). Part of the certification report is a statement whereby the manufacturer (including an importer) certifies that the basic models listed in the certification report comply with the applicable energy conservation standard and have been tested according to the applicable test requirements. 10 C.F.R. 429.12. DOE requests comment on its proposal to require, for a shipment that contains covered products or equipment subject to a DOE energy conservation standard, that the importer state whether the product or equipment has been certified to DOE as compliant with all applicable energy conservation standards and, if so, provide the CCMS ticket number, the CCMS attachment identification number assigned to the certification submission, and the line number in the submission corresponding to the basic model certified.

If any covered product or equipment contained in the shipment has not been certified to DOE through CCMS, the importer would be required to include in its certification of admissibility; (1) the type of product or equipment; (2) the brand name of the covered product or equipment; (3) the individual model number of the covered product or equipment; (4) the original equipment manufacturer (OEM) of the covered product or equipment; and (5) a contact name and e-mail address for the importer of record.

Currently, 10 CFR Part 429 uses the terms “individual model number,” “manufacturer’s individual model number,” and “manufacturer’s model number” interchangeably and, of the three terms, only defines the term “manufacturer’s model number.” For clarity, DOE proposes to replace the term “manufacturer’s model number” with the term “individual model number” in the definitions at 10 C.F.R. 429.2.<sup>9</sup>

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<sup>9</sup> DOE anticipates that it would subsequently amend any relevant product-specific sections as necessary to harmonize with these proposed definitional changes.

DOE initially considered requiring importers to provide all of the product-specific information specified above for all covered products and equipment subject to energy conservation standards. However, importers are already required to provide this information to DOE, prior to importation, when certifying that basic models of covered product and equipment meet applicable energy conservation standards. (10 CFR 429.12(a)) DOE proposes, therefore, to collect this additional information only regarding imported covered products and equipment subject to energy conservation standards that the importer has not certified to DOE as meeting applicable energy conservation standards. DOE believes this would be less burdensome to importers who have certified the basic models of covered products and equipment being imported, and therefore have already provided this information to DOE. DOE requests comment on its proposal to collect this additional information only regarding imported covered products and equipment subject to energy conservation standards that the importer has not certified to DOE as meeting applicable energy conservation standards.

Currently, importers are not required, in certifying a covered product or equipment that is a component product of a final product, to provide the brand name and individual model number of the final product. Thus, an importer may certify a basic model once in CCMS but import that basic model as a component of a variety of different final products. In order to facilitate, as necessary, identification of covered products or equipment being imported as a component of a final product, DOE proposes that, if a certified covered product or equipment is a component product of a final product being imported, the certification of admissibility must include the brand name and individual model number of the imported final product. DOE requests comment

on this proposal. This information would be required regarding any covered product or equipment being imported as a component of another product, whether or not the covered product or equipment has been certified to DOE as meeting applicable energy conservation standards. DOE expects that it would be less of a reporting burden to provide the final product information during the importation process rather than as part of a complete certification through CCMS.

As an alternative to this proposal, DOE would consider requiring this information from all manufacturers, including importers, as part of the process of certifying covered products or equipment. That requirement would not be adopted in this rulemaking, but rather in a separate rulemaking that DOE is preparing to revise its certification, compliance, and enforcement regulations applicable to consumer products and commercial and industrial equipment. *See* RIN: [1904-AD26](#). DOE requests comment regarding whether the reporting burden on importers would be less to provide this information as part of the certification of admissibility or as part of a compliance certification report submitted through CCMS.

As in the case of products or equipment that are not “covered,” importers of products or equipment that are “covered” but not subject to standards (either DOE has not set standards or compliance with standards is not yet required) would not be required to provide a certification of admissibility. For example, although EPCA defines “covered equipment” to include “electric motors” (42 U.S.C. 6311(1)(A)), a small electric motor that is a component of a covered product or covered equipment is not subject to DOE energy conservation standards. (42 USC 6317(b)(3)). In addition, certain electric motors, such as NEMA Design C and IEC Design H,

are not currently subject to the energy conservation standards for electric motors. 10 CFR 431.25.

The regulations issued by the Department of Treasury and CBP pursuant to EPCA, discussed herein, provide that, “[u]pon a determination that a covered import is not in compliance with applicable energy conservation or labeling standards, DOE . . . , will provide CBP with a written or electronic notice that identifies the importer and contains a description of the noncompliant covered import that is sufficient to enable CBP to identify the subject merchandise and refuse admission thereof into the customs territory of the United States.” (19 CFR 12.50(c)) The requirement for a certification of admissibility would ensure that DOE is aware of all shipments containing covered products and equipment subject to energy conservation standards prior to importation into the United States. This information will allow DOE to notify CBP if an importer is attempting to import a covered product or equipment that DOE has determined fails to meet the applicable energy conservation standard. Requiring importers to state whether the covered product or equipment being imported has been certified to DOE would allow DOE to identify importers that have not complied with these requirements, including potentially the failure to test; ensure that the product or equipment does, in fact, meet the applicable standards; and, if not, take appropriate enforcement action.

DOE requests comment on the proposed requirement that importers submit a certification of admissibility to DOE for all covered products and equipment subject to energy conservation standards contained in the shipment, either as a final product or a component part of a final product.

C. Information to be collected regarding products not previously certified to DOE as compliant with applicable energy conservation standards

If the product or equipment is covered and subject to a DOE energy conservation standard, and the basic model of the product or equipment has not been certified to DOE as compliant with all applicable energy conservation standards, then the certification of admissibility must include: (1) the type of product or equipment; (2) the brand name of the covered product or equipment; (3) the individual model number of the covered product or equipment; (4) whether the covered product or equipment is a final product or a component part of a final product and, if the covered product or equipment is a component, the brand name and individual model number of the final product; (5) the original equipment manufacturer (OEM) of the covered product or equipment, and in the case of electric motors, the Compliance Certification number;<sup>10</sup> and (6) a contact name and e-mail address for the importer of record. In the interest of the Single Window Initiative that is part of the *Beyond the Border Action Plan on Perimeter Security and Economic Competitiveness* between the Canada Border Services Agency and CBP, the requested information is similar to that collected by Canada under Part VI, section 13, of their Energy Efficiency Regulations. (Regulations Amending the Energy Efficiency Regulations (1996), SOR/2011-182)<sup>11</sup>

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<sup>10</sup> Under current regulations, DOE provides manufacturers of covered electric motors with a unique “Compliance Certification number.” 10 CFR §431.36(f). DOE anticipates issuing a rule regarding compliance certification of electric motors in the near future. DOE may make conforming changes to a final rule in this rulemaking as appropriate based on any regulatory changes made in that rulemaking. See [RIN:1904-AD25](#).

<sup>11</sup> Available at <http://laws-lois.justice.gc.ca/eng/regulations/SOR-94-651/page-2.html#h-3>. Canada collects the following five pieces of information: (1) the name of the product using one of the names set forth in their regulations; (2) the model number or unique motor identifier of the product, as the case may be; (3) the brand, if any, of the product; (4) the address of the dealer; and (5) whether the product is being imported for sale or lease in Canada without modification, sale or lease in Canada after being modified to comply with the applicable energy efficiency standard, or use as a component for incorporation into any other product that is to be exported from Canada.

1. Type of product or equipment

The specific products and equipment covered by DOE regulations found in 10 CFR Parts 430 and 431 are divided into various types. DOE regulations refer to these types by the headers found in the applicable sections of 10 CFR Part 429, Subpart B. For example, to identify the type of product or equipment being imported, an importer would provide one of the following three-digit codes<sup>12</sup> presented in Table III.2.

Table III.2 – Three-Digit Product Type Codes

<b>Product Type</b>	<b>Three-Digit Code</b>
Refrigerators, refrigerator-freezers and freezers.	014
Room air conditioners.	015
Central air conditioners and heat pumps.	016
Water heaters.	017
Furnaces.	018
Dishwashers.	019
Clothes washers.	020
Clothes dryers.	021
Direct heating equipment.	022
Kitchen ranges and ovens.	023
Pool heaters.	024
Television sets.	025
Fluorescent lamp ballasts.	026
General service fluorescent lamps.	027
Faucets.	028
Showerheads.	029
Water closets.	030
Urinals.	031
Ceiling fans.	032
Ceiling fan light kits.	033
Torchieres.	034
Compact fluorescent lamps.	035

<sup>12</sup> This table is illustrative only. For example, the table does not reflect product types for which standards are being considered, but have not yet been adopted.

<b>Product Type</b>	<b>Three-Digit Code</b>
Dehumidifiers.	036
External power supplies.	037
Battery chargers.	038
Electric motors.	039
Commercial warm air furnaces.	041
Commercial refrigerators, freezers, and refrigerator-freezers.	042
Commercial heating, ventilating, air conditioning (HVAC) equipment.	043
Commercial water heating equipment.	044
Automatic commercial ice makers.	045
Commercial clothes washers.	046
Distribution transformers.	047
Illuminated exit signs.	048
Traffic signal modules and pedestrian modules.	049
Commercial unit heaters.	050
Commercial pre-rinse spray valves.	051
Refrigerated bottled or canned beverage vending machines.	052
Walk-in coolers and walk-in freezers.	053
Metal halide lamp ballasts and fixtures.	054
Light emitting diodes.	056
Furnace fans.	058
Pumps.	059
Commercial packaged boilers.	060
Portable air conditioners.	062

For example, an importer of a consumer refrigerator would provide the code “014,” while an importer of a laptop bundled with an external power supply would provide code “037.”

Collecting this information is essential to DOE’s ability to identify possibly noncompliant products or equipment before they are imported into the United States. Once the type of product is identified, DOE can then focus its search of the relevant DOE databases to determine the compliance of the specific product or equipment being imported. DOE requests comment on

requiring importers to identify the type of product or equipment being imported using a product-specific code in the certification of admissibility to DOE.<sup>13</sup>

## 2. Brand

The certification of compliance information DOE collects pursuant to 10 CFR 429.12 is brand-specific. A manufacturer provides the relevant information demonstrating compliance of their product or equipment specific to each brand under which a basic model may be labeled. Collecting information in the certification of admissibility regarding the brand of the covered product or equipment being imported would facilitate the DOE's determination of compliance of the product or equipment with applicable energy conservation standards and certification requirements. Moreover, collecting information as to the brand of the covered product or equipment is essential for DOE to provide CBP a description sufficient for CBP to identify the covered product and equipment and take appropriate action based upon the non-compliance of the product or equipment. DOE requests comment on requiring importers to provide the brand of the covered product or equipment being imported in their certification of admissibility to DOE.

## 3. Individual model number

The certification of compliance information DOE collects pursuant to 10 CFR 429.12 also includes the individual model number(s) within each basic model. By requiring importers to provide the individual model number of the covered product or equipment, DOE will be better able to determine if the product or equipment has, in fact, been certified as compliant or has been

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<sup>13</sup> DOE anticipates issuing a Notice of Proposed Rulemaking to revise Part 429. That rulemaking would likely change the regulatory structure to provide a three-digit numbering system.

found noncompliant. Moreover, collecting information as to the individual model number of the covered product or equipment is essential for DOE, when required, to provide CBP a description sufficient for CBP to identify the product or equipment and take appropriate action based upon the non-compliance of the product or equipment. DOE requests comment on requiring importers to provide the individual model number of the covered product or equipment subject to DOE energy conservation standards in their certification of admissibility to DOE.

#### 4. Identification of covered product or equipment subject to DOE energy conservation standards as a product or component

As a practical matter, a description of covered product or equipment subject to DOE energy conservation standards that is a component of a final product must include information (e.g., brand and model number) regarding the final product sufficient to allow CBP to identify the final product and take appropriate action based upon the non-compliance of the component contained therein or packaged with the final product. It is therefore essential that the importer identify in its certification of admissibility whether the covered product or equipment subject to DOE energy conservation standards is a final product or a component of a final product and, if a component, the brand and individual model number of the final product. DOE requests comment on requiring importers to indicate in their certification of admissibility to DOE whether the covered product or equipment subject to DOE energy conservation standards being imported is a final product or a component of a final product and, if a component, the brand and individual model number of the final product.

#### 5. Original Equipment Manufacturer

DOE routinely identifies noncompliant products by the original producer or assembler of the product (OEM). Collecting the OEM's name is therefore essential to DOE's ability to identify noncompliant products or equipment before they are imported into the United States. Once the OEM is identified, DOE can use that information to compare to the lists of products certified as compliant by that same OEM or, conversely, found to be noncompliant from the OEM. Identifying the OEM of the product will further help avoid confusion between similar products in the case where one OEM produces a compliant product while another does not. DOE requests comment on requiring importers to provide the name of the OEM for covered products and equipment subject to DOE energy conservation standards they are importing and, in the case of electric motors, the Compliance Certification number on the electric motor nameplate.

#### 6. Contact name and e-mail address for importer of record

In cases where a certification of admissibility raises questions of possible noncompliance with energy conservation standards, DOE will follow-up with the importer of record regarding the covered products or equipment certified. Requiring importers to provide a contact name and e-mail address would facilitate DOE's efforts in this regard and would serve the interest of the importer in expeditiously resolving any issues raised. DOE requests comment on requiring importers to provide a contact name and e-mail address in their certification of admissibility to DOE.

#### D. Method of Collection

All importers would be required to submit their certifications of admissibility to DOE via CBP's ACE system. Importers are encouraged by CBP to use ACE as it allows them to file manifests electronically; make periodic payments on an interest-free monthly basis; file and process formal consumption entries and informal entries, including ABI Census Warning Overrides; view and respond to certain CBP forms through the ACE Portal; and file and process AD/CVD entries (also known as type 03 entries) and track the lifecycle of their AD/CVD cases. Participating in ACE also supports the U.S. Department of Homeland Security's dual mission to facilitate legitimate trade and secure the nation's borders. Importers will be able to provide required information to multiple federal agencies through ACE, thereby simplifying the paperwork submission process for importers. DOE requests comment on requiring importers to file the certification of admissibility to DOE through the ACE system.

#### E. Effective Date and Compliance Date

If adopted, the effective date for this rule would be 30 days after publication of the final rule in the Federal Register. The compliance date for the rule, on or after which importers must submit certifications of admissibility in accordance with the rule, would be 2 years after the date of publication of the final rule in the Federal Register.

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

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

The Office of Management and Budget (OMB) has determined that today's regulatory action is not a "significant regulatory action" under section 3(f) of Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (Oct. 4, 1993). Accordingly, this action was

not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) in the OMB.

*B. Review Under the Regulatory Flexibility Act*

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

DOE has prepared an IRFA for this rulemaking. As presented and discussed below, the IRFA describes potential impacts on importers of covered products or equipment subject to DOE energy conservation standards and the associated compliance costs.

A statement of the objectives of, and reasons and legal basis for, the proposed rule are set forth elsewhere in the preamble and not repeated here.

## 1. Description and Estimated Number of Small Entities Regulated

For companies classified in different NAICS codes, 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. The size standards are listed by North American Industry Classification System (NAICS) code and industry description available at: <http://www.sba.gov/content/table-small-business-size-standards> and vary by NAICS code. Because the small business sizes vary by industry and the proposed rule affects companies in a range of NAICS codes, DOE used the most common threshold of 500 employees or less for an entity to be considered as a small business for this category.

No comprehensive list of importers of covered products or equipment subject to DOE energy conservation standards exists. DOE evaluated many information sources to assess the availability of data needed to estimate the number of companies that could be both importers of products covered by this rulemaking *and* United States small businesses. DOE’s research involved information from the Department of Commerce, the United States Census, the American Association of Exporters and Importers, the National Small Business Association, the Small Business Exporters Association, and the United States Customs and Border Protection Office. Ultimately, DOE’s analysis relied most heavily on information from the Department of Commerce and the United States Census to estimate the number of affected small business importers.

After assessing the data available, DOE relied on a three-step process for estimating the number of small business importers: (1) Determine the potentially affected industries; (2) Find the number of small businesses in each industry; (3) Estimate the number of those small businesses that import covered products or equipment subject to DOE energy conservation standards.

**Determination of potentially affected industries.** To calculate the number of small businesses potentially impacted by this rule, DOE first screened out the sectors listed in Table IV.1 (using two-digit NAICS code) from consideration based on the nature of their business (i.e., businesses operating in these sectors are unlikely to be an importer of covered products or equipment subject to DOE energy conservation standards or products that contain such covered products or equipment):

Table IV.1 – NAICS Sectors Screened Out From Consideration as Potentially Impacted by Rule

NAICS	Description
11	Agriculture
21	Mining, Quarrying, and Oil and Gas Extraction Quarrying
22	Utilities
23	Construction
48-49	Transportation and Warehousing
51	Information
52	Finance and Insurance
53	Real Estate
54	Professional, Scientific and Technical Services
55	Management of Companies and Enterprises
56	Administrative and Support and Waste Management and Remediation Services
61	Educational Services
62	Health Care and Social Assistance
71	Arts, Entertainment, and Recreation
72	Accommodation and Food Services

81	Other Services, except Public Administration
99	Unclassified

The industries that passed the screening are shown in Table IV.2.

Table IV.2 – NAICS Sectors (Two-Digit Code Level) Potentially Impacted by Rule

NAICS	Description
31-33	Manufacturing
42	Wholesale Trade
44-45	Retail Trade

Next, DOE evaluated each of the two-digit sectors that passed the first screening at the most granular five-digit NAICS code level.<sup>14</sup> Table IV.3 shows the final industry NAICS codes DOE assumed *could* be affected by this rule based on the description of the industry.

Table IV.3 – NAICS Sectors (Five-Digit Code Level) Potentially Impacted by Rule

NAICS	Description
33241	Power Boiler and Heat Exchanger Manufacturing
33331	Commercial and Service Industry Machinery Manufacturing
33341	Ventilation, Heating, Air-Conditioning, and Commercial Refrigeration Equipment Manufacturing
33361	Engine, Turbine, and Power Transmission Equipment Manufacturing
33391	Pump and Compressor Manufacturing
33399	All Other General Purpose Machinery Manufacturing
33411	Computer and Peripheral Equipment Manufacturing
33422	Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing
33431	Audio and Video Equipment Manufacturing
33511	Electric Lamp Bulb and Part Manufacturing
33512	Lighting Fixture Manufacturing
33521	Small Electrical Appliance Manufacturing
33522	Major Appliance Manufacturing
33531	Electrical Equipment Manufacturing
33591	Battery Manufacturing

<sup>14</sup> NAICS codes can be disaggregated into discrete non-overlapping subsets of firms based on their primary business activity.

33599	All Other Electrical Equipment and Component Manufacturing
33611	Automobile and Light Duty Motor Vehicle Manufacturing
33612	Heavy Duty Truck Manufacturing
42342	Office Equipment Merchant Wholesalers
42343	Computer and Computer Peripheral Equipment and Software Merchant Wholesalers
42344	Other Commercial Equipment Merchant Wholesalers
42361	Electrical Apparatus and Equipment, Wiring Supplies, and Related Equipment Merchant Wholesalers
42362	Household Appliances, Electric Housewares, and Consumer Electronics Merchant Wholesalers
42369	Other Electronic Parts and Equipment Merchant Wholesalers
42372	Plumbing and Heating Equipment and Supplies (Hydronics) Merchant Wholesalers
42373	Warm Air Heating and Air-Conditioning Equipment and Supplies Merchant Wholesalers
42374	Refrigeration Equipment and Supplies Merchant Wholesalers
42383	Industrial Machinery and Equipment Merchant Wholesalers
42386	Transportation Equipment and Supplies (except Motor Vehicle) Merchant Wholesalers
44229	Other Home Furnishings Stores
44314	Electronics and Appliance Stores
45411	Electronic Shopping and Mail-Order Houses

**Calculation of small businesses in affected industries.** Second, DOE used firm-size data from the United States Census to determine the number of small businesses in each five-digit NAICS code sector that passed the screening. DOE used 2012 data because it was the most recently available data and, as mentioned above, DOE used the 500-employee threshold as the small business cut off.

**Calculation of the number of small business importers.** Step 3 provides the total number of small businesses in the industries that may be affected by this rulemaking. DOE is not aware of data on the share of these small businesses that act as importers. To estimate this share, DOE divided the total number of importers--Department of Commerce data from 2011 shows that there were 183,960 U.S. businesses importing to the United States--by the total number of businesses in those sectors that might be engaged in importing (1,318,818)<sup>15</sup> to calculate the percentage of total businesses that are importers. In this way, DOE estimated that approximately 14 percent of businesses in the remaining sectors are engaged in importing activities. Lacking more specific importer data by industry, DOE assumed this percentage represented, on average, the share of total firms in each relevant industry that were importers. DOE then multiplied this share by the number of the small businesses in each covered NAICS sector (from Step 2) to yield the number of small business importers by each of those NAICS codes, as shown in Table IV.4.

Table IV.4 – Number of Small Business Potentially Impacted by Rule

NAICS	Description	Small Business Importers
33241	Power Boiler and Heat Exchanger Manufacturing	33
33331	Commercial and Service Industry Machinery Manufacturing	249
33341	Ventilation, Heating, Air-Conditioning, and Commercial Refrigeration Equipment Manufacturing	204
33361	Engine, Turbine, and Power Transmission Equipment Manufacturing	105
33391	Pump and Compressor Manufacturing	90
33399	All Other General Purpose Machinery Manufacturing	443

<sup>15</sup> This value was determined by subtracting the number of businesses in NAICS sectors not engaged in importing from the total number of businesses according to the Census. This was necessary because the data on the total number of importers could not be disaggregated in meaningful detail, but clearly some industries (such as services) are much less likely to have a significant presence in importing when compared to wholesale, manufacturing, and retail.

33411	Computer and Peripheral Equipment Manufacturing	137
33422	Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing	96
33431	Audio and Video Equipment Manufacturing	63
33511	Electric Lamp Bulb and Part Manufacturing	7
33512	Lighting Fixture Manufacturing	131
33521	Small Electrical Appliance Manufacturing	15
33522	Major Appliance Manufacturing	18
33531	Electrical Equipment Manufacturing	253
33591	Battery Manufacturing	17
33599	All Other Electrical Equipment and Component Manufacturing	122
33611	Automobile and Light Duty Motor Vehicle Manufacturing	27
33612	Heavy Duty Truck Manufacturing	7
42342	Office Equipment Merchant Wholesalers	349
42343	Computer and Computer Peripheral Equipment and Software Merchant Wholesalers	982
42344	Other Commercial Equipment Merchant Wholesalers	508
42361	Electrical Apparatus and Equipment, Wiring Supplies, and Related Equipment Merchant Wholesalers	1,196
42362	Household Appliances, Electric Housewares, and Consumer Electronics Merchant Wholesalers	291
42369	Other Electronic Parts and Equipment Merchant Wholesalers	1,284
42372	Plumbing and Heating Equipment and Supplies (Hydronics) Merchant Wholesalers	398
42373	Warm Air Heating and Air-Conditioning Equipment and Supplies Merchant Wholesalers	290
42374	Refrigeration Equipment and Supplies Merchant Wholesalers	97
42383	Industrial Machinery and Equipment Merchant Wholesalers	3,213
42386	Transportation Equipment and Supplies (except Motor Vehicle) Merchant Wholesalers	293
44229	Other Home Furnishings Stores	1,408
44314	Electronics and Appliance Stores	3,626

45411	Electronic Shopping and Mail-Order Houses	3,989
	Total	19,941

This represents a conservative upper-bound estimate because there are companies contained in some NAICS sectors (e.g., heat exchanger manufacturers in NAICS 33241) that could be importers of non-covered products or equipment, but are included here because DOE lacks the data necessary to cull those out. The estimate of 19,941 importers includes both importers of covered products or equipment subject to DOE energy conservation standards and other end-use products meant for distribution in commerce that contain such covered products as components (e.g., any end-use product bundled with a covered external power supply or a non-covered end-use product with a covered motor.)

## 2. Description and Estimate of Compliance Requirements

DOE assumes small businesses that import covered products or equipment will have already complied with their legal obligation to certify to DOE, through CCMS, all basic models of such products or equipment, and therefore would be required to report only the following information regarding the most recent certification of the basic model of covered products or equipment subject to DOE energy conservation standards they import:

1. The CCMS ticket number;
2. The CCMS attachment identification number assigned to the certification submission;
3. The line number in the submission corresponding to the basic model certified; and
4. If the covered product or equipment is a component of a final product, the brand name and individual model number of the final product.

**The role of customs brokers.** In assessing the burden of any new reporting requirements on importers, it is important to understand the process by which the typical importer complies with existing customs requirements. The vast majority of importers use customs brokers for a bundle of import-related services, including notification of regulatory requirements and aid in completing and submitting the required paperwork. For importers, who typically operate on tight schedules, delays at port can cause missed deliveries and result in heavy financial and reputational penalty. For these reasons, the job of negotiating the regulatory terrain of the import business is usually entrusted to third-party customs brokers who specialize in importation reporting requirements (among other services). Customs brokers are familiar with the necessary regulatory filings and procedures required to ensure that a shipment clears customs in a timely manner. Typically, an importer will contract with a broker who will file all necessary paperwork including the commercial invoice and any supplemental information required by various regulatory bodies. Additionally, brokers already have bond coverage to cover any duties associated with the importation and can save importers from having to post a separate bond for each shipment.

Because this proposed rule entails only an electronic reporting requirement through ACE, DOE does not anticipate any significant incremental investment in product or capital conversion costs to comply. Currently, more than 96 percent of all entries filed with CBP are already being filed through the ABI. By the end of 2016, ACE will become the Single Window - the primary system through which the trade community will report imports and exports and the government

will determine admissibility, with the ABI as the method through which entries and entry summaries are transmitted to ACE.<sup>16</sup>

While the ABI interface helps to facilitate the process, there are new data elements proposed as reporting requirements in this NOPR. Those fall into two categories: (1) data fields that are already typically collected during the importation process and (2) those that are not.

**Data Already Collected:** Based on interviews with customs brokers, DOE believes that the brand name of the final product being imported, which would be required in the instances where the covered product or equipment is a component of the final product, is on the commercial invoice that is already filed with the customs broker as part of the importation process. When required, this data can be keyed in during the electronic filing process that brokers and importers already go through and thus should have minimal impact on both the importer and customs broker.

**Data Not Currently Collected:** The individual model number, required in the instances where the covered product or equipment is a component of the final product, the CCMS ticket number, the CCMS attachment identification number assigned to the certification submission, and the line number in the submission corresponding to the basic model certified are the only data fields proposed as a new reporting requirement that are not typically on any of the invoices. Depending on the product, the individual model numbers may be included on the invoice. In any case, customs brokers indicated they would most likely go to their client (the importer) to ask

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<sup>16</sup> <http://www.cbp.gov/trade/automated>

them for any missing information, which the importer would have as part of the process of certifying compliance to DOE.

Furthermore, brokers maintain databases of their customers and associated products, and one of their service offerings is to be proactive with their clients in notifying them of new regulations. In interviews, brokers indicated they would likely review their customer databases to determine which companies are subject to new requirements and alert them to the additional data requirements discussed above. By contacting customers prior to the regulations going into effect, brokers can minimize the likelihood of any delays due to new DOE reporting requirements and also give customers time to prepare for the new requirements, particularly given the proposed two-year lead time.

Therefore, DOE estimates a one-time burden of approximately twenty hours per small business importer to learn the reporting requirements and set up a system of information flow internally. DOE notes that all information should be readily available, as importers of covered products or equipment subject to energy conservation standards are already required to certify compliance.

Because importers are currently required to submit certifications of compliance annually through CCMS, the information that would be submitted in a certification of admissibility prior to each importation of a basic model covered product or equipment (the most recent CCMS ticket number, attachment number, and line number) would need to be obtained and keyed in only once per year, for the first shipment of the covered product or equipment following the

annual CCMS filing. Because this information would be readily available to the importer, DOE estimates annual burden of 0.03 hours per basic model of covered product or equipment imported by the small business importer to obtain and enter the data required for a certification of admissibility. For all subsequent certifications of admissibility submitted over the course of the year, the importer would only be required to electronically resubmit the same data, and the burden imposed by these subsequent electronic submissions would be negligible.

Based upon information in the CCMS database, DOE estimates that, on average, each small business importer submits compliance certification reports for 157 basic models of covered product or equipment annually. Therefore, DOE estimates that the requirement of submission of certifications of admissibility proposed in this rule would result in an annual burden of approximately 4.71 hours per small business importer.

### 3. Request for Comments

DOE seeks comments on the following topics regarding this IRFA:

- 1) The five-digit NAICS codes believed to include importers of covered products or equipment subject to DOE energy conservation standards or such products or equipment with covered components.
- 2) The availability of data on the number of small business importers in sectors covered by DOE regulations.
- 3) The estimated burden associated with the reporting of individual model numbers for both importers and customs brokers.

- 4) How brokers will react to the necessary reporting requirements and if there will be any increase in costs.

#### 4. Duplication, Overlap, and Conflict with Other Rules and Regulations

DOE is not aware of any rules or regulations that duplicate, overlap, or conflict with the rule being proposed.

#### 5. Significant Alternatives to the Rule

This section considers alternatives to the proposals for the submission of certifications of admissibility in this rulemaking. As noted in Section III.B, DOE initially considered requiring importers to provide, in their certifications of admissibility, detailed product-specific information for all covered products and equipment subject to energy conservation standards. However, in order to reduce the potential burden on importers, DOE proposes to collect this additional information only where the importer has not already certified to DOE the compliance of the product or equipment through CCMS.

DOE could further mitigate the potential impacts on small business importers by not requiring a certification of admissibility prior to the importation of any covered consumer product or commercial and industrial equipment subject to an applicable energy conservation standard. However, DOE strongly believes the proposals in this rulemaking are essential to a sustainable and consistent enforcement program vis-à-vis imports of covered products and covered equipment. While the alternative may mitigate the potential economic impacts on small entities compared to the proposed provisions, the ability for DOE to enforce its energy

conservation regulations far exceeds any potential burdens. Furthermore, small businesses may benefit from stronger enforcement against noncompliant imports. Thus, DOE rejected this alternative and is adopting the provisions set forth in this rulemaking for all importers of covered products and covered equipment. DOE continues to seek input from businesses that would be affected by this rulemaking and will consider comments received in the development of any final rule.

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

#### 1. Description of the Requirements

DOE is proposing to require persons importing into the United States any covered consumer product or industrial equipment subject to an applicable energy conservation standard to provide a certification of admissibility to the DOE. DOE assumes that importers will have already complied with their legal obligation to certify to DOE, through CCMS, all basic models of products or equipment subject to DOE energy conservation standards, such that the importer would only need to identify in its certification of admissibility the most recent CCMS ticket number, attachment number, and line number for the basic model of the covered product or equipment contained in the shipment. This information would enable DOE to identify, prior to arrival at a U.S. port of entry, shipments that contain covered products or equipment that have been found to be non-compliant, allowing DOE to take appropriate proactive enforcement action. Such action could include providing notice to CBP sufficient to allow CBP to refuse admission of the non-compliant covered product or equipment into the U.S.

#### 2. Method of Collection

The certification of admissibility would be required to be submitted to DOE through CPB's ACE system.

### 3. Data

The following are DOE estimates of the total annual reporting burden imposed on persons importing into the United States any covered product or equipment subject to an applicable energy conservation standard. These estimates take into account the time necessary to obtain and enter the required electronic information to be submitted to ACE. As explained in Section IV.B.3, for each basic model of covered product and equipment, the data required for a certification of admissibility would need to be obtained and entered only once per year. Subsequent certifications during the same year would only require electronic resubmission of the same data previously submitted, and the burden of each resubmission would be negligible.

*OMB Control Number:* New.

*Form Number:* None.

*Type of Review:* Regular submission.

*Affected Public:* Persons importing into the United States any covered consumer product or industrial equipment subject to an applicable energy conservation standard.

*Estimated Number of Respondents:* 20,336

*Estimated Number of New Responses per Respondent Annually:* 313

*Estimated Time per New Response:* 0.03 hours.

*Estimated Total Annual Burden Hours:* 109,955.

*Estimated Total Annual Cost to the Importers:* \$4,336,589 in reporting costs.

### 4. Comments

Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of DOE, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to Chad Whiteman, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and by email to [Chad\\_S\\_Whiteman@omb.eop.gov](mailto:Chad_S_Whiteman@omb.eop.gov).

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*

DOE anticipates that this proposed 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 proposed rule amends an existing rule without changing its environmental effect and, therefore, DOE expects that it would be covered by the Categorical Exclusion in 10 CFR part 1021, subpart D, paragraph A5. Accordingly, DOE is not preparing an environmental assessment or an environmental impact statement.

*E. Review Under Executive Order 13132*

Executive Order 13132, “Federalism,” 64 FR 43255 (August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in 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. DOE has examined this proposed rule and has determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are 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(d)) No further action is required by Executive Order 13132.

*F. Review Under Executive Order 12988*

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, “Civil Justice Reform,” 61 FR 4729 (Feb. 7, 1996), 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; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the 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 No. 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; also available at [www.gc.doe.gov](http://www.gc.doe.gov). DOE examined this proposed rule according to UMRA and its statement of policy and determined that today’s proposal contains neither an intergovernmental mandate, nor a mandate that may result in the 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 (Public Law 105-277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This proposal 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 (March 18, 1988), that this proposal 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 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 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed this proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

*K. Review Under Executive Order 13211*

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to 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 today's proposed regulatory action, which sets forth a proposed requirement for the submission of a certification of admissibility to DOE by importers of products or equipment subject to energy conservation standards, is not a significant energy action because the requirement is 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.

## **V. Public Participation**

### *A. Submission of Comments*

DOE will accept comments, data, and information regarding this proposed rule before or after the public meeting, but no later than the date provided in the DATES section at the beginning of this proposed rule. Interested parties may submit comments using any of the methods described in the ADDRESSES section at the beginning of this notice.

Submitting comments via [www.regulations.gov](http://www.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 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. 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 website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

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, 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 on 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, please provide all items on a compact disk (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, written in English and 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 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 comment on the requirement that importers importing covered products or equipment subject to DOE energy conservation standards that are within the listed HTS codes provide a certification of admissibility to DOE. Further, DOE requests comment

as to whether covered products or equipment subject to or are being considered for DOE energy conservation standards are currently imported using other HTS codes.

2. DOE requests comment on its proposal to require, for a shipment that contains covered products or equipment subject to a DOE energy conservation standard, that the importer state whether the product or equipment has been certified to DOE as compliant with all applicable energy conservation standards and, if so, provide the CCMS ticket number, the CCMS attachment identification number, and line number associated with the specific basic model.
3. DOE requests comment on the requirement that importers submit a certification of admissibility to DOE for all covered products and equipment subject to an energy conservation standard that is contained in the shipment, either as a final product or a component part of a final product.
4. DOE requests comment on requiring importers to indicate in the import declaration to DOE whether the covered product or equipment being imported and subject to DOE energy conservation standards is a final product or a component of a final product and, if the covered product or equipment is a component, the brand name and individual model number of the final product. DOE also requests comment regarding whether the reporting burden on importers would be less to provide this information as part of the certification of admissibility or as part of a compliance certification report submitted through CCMS.
5. DOE requests comment on its proposal to collect additional product-specific information only (e.g., brand, individual model number) regarding imported covered products and equipment subject to energy conservation standards that the importer has not certified to DOE as meeting applicable energy conservation standards, and whether, as DOE

anticipates, this would result in less burden to those required to file certifications of admissibility

6. DOE requests comment on requiring importers to file the certification of admissibility through ACE.

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

The Secretary of Energy has approved publication of this proposed rule.

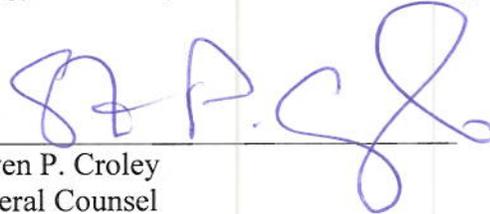
### **List of Subjects in 10 CFR Part 429**

Confidential business information, Energy conservation, Household appliances, Imports, Reporting and recordkeeping requirements.

Issued in Washington, DC, on December 18, 2015.



Kathleen B. Hogan  
Deputy Assistant Secretary for Energy Efficiency  
Energy Efficiency and Renewable Energy



Steven P. Croley  
General Counsel

For the reasons stated in the preamble, DOE is proposing to amend part 429 of Chapter II, Subchapter D of Title 10, Code of Federal Regulations, as set forth below:

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

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

**Authority:** 42 U.S.C. 6291-6317

2. Section 429.2 is amended by removing the definition of “manufacturer’s model number” and adding in alphabetical order the definitions of “individual model number” and “original equipment manufacturer” to read as follows:

**§429.2 Definitions.**

\* \* \* \* \*

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

Original equipment manufacturer or OEM means any person who produces or assembles a unit of a covered product or covered equipment. Only one OEM is responsible for the manufacture (production or assembly) of a particular unit.

3. Section 429.5 is amended by adding paragraph (c) to read as follows:

**§429.5 Imported products.**

\* \* \* \* \*

(c) Any person importing a unit of a covered product or covered equipment subject to an applicable energy conservation standard set forth in parts 430 or 431 for entry into the United States on or after [2 YEARS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER], whether the unit is a component part of another product or a final product, must provide a certification of admissibility to the Secretary in accordance with § 429.500.

4. Section 429.7 is amended by revising paragraph (b) to read as follows:

**§429.7 Confidentiality.**

\* \* \* \* \*

(b) An individual model number is public information unless:

(1) The individual model number is a unique model number of a commercial packaged boiler, commercial water heating equipment, commercial HVAC equipment or commercial refrigeration equipment that was developed for an individual customer,

(2) The individual model number is not displayed on product literature, and

(3) Disclosure of the individual model number would reveal confidential business information as described at §1004.11 of this title—in which case, under these limited circumstances, a manufacturer may identify the individual model number as a private model number on a certification report submitted pursuant to §429.12(b)(6).

\* \* \* \* \*

5. Section 429.12 is amended by revising paragraph (b)(6) to read as follows:

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

\* \* \* \* \*

(b) \* \* \*

(6) For each brand, the basic model number and the individual model number(s) in that basic model with the following exceptions: For walk-in coolers, 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 model number may be identified as a “private model number” if it meets the requirements of §429.7(b).

\* \* \* \* \*

6. Section 429.500 is added to read as follows:

**§429.500. Certification of Admissibility.**

(a) A certification of admissibility submitted pursuant to §429.5(c) must meet the provisions of this section.

(b) The certification must be submitted through the Automated Commercial Environment (ACE) of the U.S. Customs and Border Protection (CBP) before the entry of the unit(s) at the port of arrival.

(c) The certification must include whether the basic model of the product or equipment being imported has been certified to DOE as compliant with all applicable energy conservation standards;

(d) If the importer has not submitted a certification report for the basic model of the product or equipment being imported pursuant to §429.12, the certification of admissibility must include:

(1) The type of product or equipment (using a three-digit code corresponding to the applicable section in 10 CFR Part 429, subpart B);

(2) The brand name of the covered product or equipment;

(3) The individual model number of the covered product or equipment;

(4) Whether the covered product or equipment being imported is a final product or a component of a final product and, if the covered product or equipment is a component, the brand name and individual model number of the final product;

(5) The original equipment manufacturer (OEM) of the covered product or equipment being imported as defined in §429.2 and, in the case of electric motors, the Compliance Certification number; and

(6) A contact name and e-mail address of the importer of record.

(e) If the importer has submitted a certification report for the basic model of the product or equipment being imported pursuant to §429.12, the certification of admissibility must include:

(1) The CCMS ticket number of the most recent certification submission;

(2) The CCMS attachment identification number assigned to the certification submission;

(3) The line number in the submission corresponding to the basic model certified; and

(4) If the covered product or equipment is a component of a final product, the brand name and individual model number of the final product.