



U.S. Department of Energy
Office of Inspector General
Office of Audits and Inspections

Audit Report

The Department of Energy's Appliance and Equipment Standards Program

OAS-M-13-05

August 2013



Department of Energy
Washington, DC 20585

August 16, 2013

MEMORANDUM FOR THE ASSISTANT SECRETARY FOR ENERGY EFFICIENCY AND
RENEWABLE ENERGY

A handwritten signature in black ink, appearing to read "Rickey R. Hass".

FROM: Rickey R. Hass
Deputy Inspector General
for Audits and Inspections
Office of Inspector General

SUBJECT: INFORMATION: Audit Report on "The Department of Energy's
Appliance and Equipment Standards Program"

BACKGROUND

The *Energy Policy and Conservation Act of 1975* established a national-level energy conservation program for major appliances and called for setting efficiency targets. This Act, along with subsequent Acts, established mandatory energy efficiency and water conservation standards (minimum standards) for 42 residential and 24 commercial products and equipment, such as faucets, refrigerators and electric motors. Products sold in the U.S. must consume no more than the amount of energy or water allowed by Federal standards. By 2030, the Department of Energy (Department) anticipates that the minimum standards will result in \$1.6 trillion in cumulative operating cost savings for energy users in the U.S. and a reduction of 6.5 billion tons of carbon dioxide emissions.

The Department's Appliance and Equipment Standards Program (Standards Program) is tasked with administering these statutory requirements. Through a rulemaking process, the Standards Program is responsible for setting mandatory minimum standards and establishing test procedures for measuring energy efficiency and water conservation. To ensure compliance, manufacturers must certify that products adhered to the minimum standards and were tested in accordance with the Department's test procedures. In 2010, the Department established the Office of Enforcement, within the Office of General Counsel, to enforce manufacturers' compliance with minimum standards and certification requirements. The Department can take enforcement actions and assess civil penalties against manufacturers if products are not properly certified and/or fail to meet minimum standards. Since 2010, the Office of Enforcement has collected \$5.6 million in penalties from manufacturers for noncompliance with minimum standards and certification requirements.

We initiated this audit to determine whether the Department was effectively managing its responsibilities related to the minimum standards.

RESULTS OF AUDIT

Our audit found opportunities for improvement in the administration of the Standards Program. Specifically, we found the Department had not always ensured manufacturers:

- Certified products to meet the minimum standards as required by Federal regulations. Specifically, 23 of the 309 (7 percent) residential products we judgmentally sampled for certification compliance from a large home improvement store's website were not certified. Department officials were unaware that the products included in our sample had not been certified. Manufacturers' failures to certify products were not detected by the Department because it lacked policies and procedures to periodically survey the marketplace to ensure that available products were properly certified. Department officials informed us that they had occasionally sampled products in the marketplace and verified they were appropriately certified; however, we could not validate the adequacy of these efforts because the Department had not maintained supporting documentation.
- Annually re-certified products as required by Federal regulations. Specifically, 6 of the 146 (4 percent) products we judgmentally sampled from the Department's online certification system were not properly re-certified. These certification lapses were not detected by the Department because it had not established procedures and had no automated or manual checks in place to verify compliance with the annual re-certification requirement. Additionally, Department officials stated that due to competing priorities and limited resources, they had not proactively pursued re-certification violations.

Additionally, the Department could not demonstrate that it had provided adequate oversight of the Manufacturer Impact Analysis, a key work-product used by program officials to develop and set minimum standards. The analysis, prepared by contractors in response to Departmental tasking, was used to assess the financial and employment impacts of new minimum standards on manufacturers. Although Department officials informed us that they reviewed the analysis for reasonableness based upon their knowledge and experience, and by surveying publicly available information, the Department lacked a process for documenting its oversight. As a result, we were unable to develop conclusions regarding the completeness and accuracy of that work and the impact the analysis may have on the minimum standards. The Department, however, noted the public comment process for each rulemaking is a mitigating control for the lack of documentation of its review of the Manufacturer Impact Analysis in that concerns regarding this analysis should be disclosed and resolved through the rulemaking process.

We also noted that the Department had not met many of its legislative deadlines for the establishment of test procedures and minimum standards. Specifically, in reviewing the legislative deadlines for 21 rulemakings between March 2009 and January 2013, we found 8 test procedures rulemakings and 8 standards rulemakings were on average 1 year late. According to Department officials, factors outside of its control, such as the technical complexity of the rulemakings, lack of prior regulations for products, pending changes to industry standards, and interagency reviews, contributed to these delays. The Department was aware of these delays and told us that it had taken steps to improve the rulemaking process. For example, program officials established a detailed master schedule to monitor the progress of rulemakings. The program officials also involved stakeholders, such as manufacturers and advocacy groups, earlier in the process and conducted upfront research prior to the commencement of rulemakings to identify and mitigate significant issues.

The Department had taken a number of positive steps to administer and enforce the Standards Program. In recent years, it developed an online system for collecting product certifications, worked to streamline its rulemaking process, and created an enforcement program. However, if

uncorrected, the problems we identified may result in consumers purchasing products that do not meet the minimum efficiency standards, and may limit the Department's ability to achieve anticipated energy and carbon dioxide emissions savings. As a result of our audit, the Department initiated actions to address the 23 uncertified products and 6 products that had not been re-certified by either establishing a new enforcement case or addressing the uncertified products through existing enforcement cases. As of January 2013, the Department had completed enforcement actions on three of the products we referred to it for enforcement and assessed penalties totaling \$24,000.

To address the issues we identified, we made recommendations to improve the Standards Program.

MANAGEMENT REACTION

Management concurred with our recommendations and reported that it had initiated corrective actions.

The comments from management are discussed in more detail in the body of the report, and are included in Appendix 3.

AUDITOR COMMENTS

The Department's corrective actions, planned and taken, are responsive to our recommendations.

Attachment

cc: Deputy Secretary
Acting Under Secretary of Energy
Chief of Staff

REPORT ON THE DEPARTMENT OF ENERGY'S APPLIANCE AND EQUIPMENT STANDARDS PROGRAM

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THE DEPARTMENT OF ENERGY'S APPLIANCE AND EQUIPMENT STANDARDS PROGRAM

Background

The *Energy Policy and Conservation Act of 1975* established a national-level energy conservation program for major appliances and called for setting efficiency targets. This Act, along with subsequent Acts, established mandatory energy efficiency and water conservation standards (minimum standards) for 42 residential and 24 commercial products and equipment, such as faucets, refrigerators and electric motors. Products sold in the U.S. must consume no more than the amount of energy or water allowed by Federal standards. By 2030, the Department of Energy (Department) anticipates that the minimum standards will result in \$1.6 trillion in cumulative operating cost savings for energy users in the U.S. and a reduction of 6.5 billion tons of carbon dioxide emissions.

The Department's Appliance and Equipment Standards Program (Standards Program), part of the Energy Efficiency and Renewable Energy Building Technologies Program, is tasked with administering these statutory requirements. Through a rulemaking process, the Standards Program is responsible for setting mandatory minimum standards. Additionally, the Standards Program prescribes the test procedures that manufacturers must follow to assess whether products meet the minimum standards. In 2005, the Department was sued for failure to comply with legislative deadlines in setting minimum standards or test procedures for 22 product categories, and as a result, the court issued a consent decree requiring the Department to meet newly set deadlines. The Department subsequently met deadlines outlined in the consent decree.

To ensure compliance, manufacturers must certify adherence with Federal requirements. Specifically, manufacturers are required to record the test results of at least two units of each product and sign a compliance statement attesting that the products meet the minimum standards and were tested in accordance with the Department's test procedures. Additionally, manufacturers are required to re-certify compliance on an annual basis. All certifications are electronically submitted to the Department through its online Compliance and Certification Management System.

In 2010, the Department established the Office of Enforcement, within the Office of General Counsel, to enforce manufacturers' compliance with minimum standards and certification requirements. The Department can take enforcement actions and assess civil penalties against a manufacturer if a product is not properly certified and/or fails to meet minimum standards. Since 2010, the Office of Enforcement has collected \$5.6 million in penalties from manufacturers for noncompliance with minimum standards and certification requirements.

Given the significance of the Standards Program on energy savings, we initiated this audit to determine whether the Department was effectively managing its responsibilities related to the minimum standards.

Opportunities for Improvement in Program Administration

Opportunities exist for improving the Department's administration of the Standards Program. Specifically, we found that the Department had not always ensured that manufacturers provided

required certifications that products met the minimum standards or had complied with the annual re-certification requirement. Additionally, the Department had not documented its oversight of the contractor-prepared Manufacturer Impact Analysis, a key component used to set the minimum standards. Finally, although the Department had met the deadlines established in the consent decree, the Department had fallen behind schedule in meeting legislative deadlines for establishing rulemakings for test procedures and minimum standards.

Product Certification and Re-Certification

The Department had not always ensured that manufacturers certified that their products met the minimum standards, as required. Although Federal regulations (10 CFR 429.12) require manufacturers to certify and re-certify annually that products meet the minimum standards prior to distribution in the U.S., we identified instances in which manufacturers did not comply. Department officials were unaware of the uncertified products identified in our sample.

As part of our audit, we sampled products to determine whether manufacturers met certification and re-certification requirements. Our evaluation of those samples revealed that:

- Seven percent of the products in our sample testing certification compliance had not been certified in the Department's online certification system. We judgmentally selected 309 residential products from a large home improvement store's website and found 23 were not certified.
- Four percent of the products in our sample testing re-certification compliance had not met the annual re-certification requirement stipulated in Federal regulations. We judgmentally sampled 146 products certified in the system and found 6 had not met the re-certification requirement.

The lack of required certifications and re-certifications by manufacturers increased the risk that products sold to consumers do not meet the required minimum efficiency standards.

Certification and Re-Certification Controls

The existence of the uncertified products had not been detected by the Department because it lacked policies and procedures to periodically survey the marketplace to ensure that available products were properly certified in its online system. Department officials informed us that they had occasionally sampled products in the marketplace and verified that these products were appropriately certified; however, we could not validate the adequacy of these efforts because the Department had not maintained supporting documentation. Specifically, it had not documented the results of its survey or the sampling methodology, including the quantity and types of products sampled.

Additionally, the Department did not detect that manufacturers had not re-certified products because it had not established procedures, and had no automated or manual checks in place to verify compliance with the annual re-certification requirement. Department officials stated that due to competing priorities and limited resources, they had not proactively pursued re-certification violations in the past. However, officials stated that they intend to establish an

automated control to identify manufacturers that have not re-certified products. Without adequate controls to ensure proper certification and re-certification, the Department may not achieve the anticipated cost savings and reduction of carbon dioxide emissions expected from the Standards Program. As a result of our audit, the Department initiated actions to address the 23 uncertified products, and the 6 products that had not been re-certified by either establishing a new enforcement case or addressing the uncertified products through existing enforcement cases. According to Federal regulations, the Department can assess penalties of up to \$200 per day for each basic model not certified or re-certified by manufacturers. As of January 2013, the Department had completed enforcement actions on three of the products we referred to it for enforcement and assessed penalties totaling \$24,000.

Quality Assurance Review of Contractor Analysis

The Department could not demonstrate its oversight of the contractor-prepared Manufacturer Impact Analysis, a key component used to set the minimum standards. This occurred because the Department lacked a process for documenting its oversight. The purpose of the Manufacturer Impact Analysis is to assess the financial and employment impacts of new minimum standards on manufacturers. In the development of the Manufacturer Impact Analysis, the contractor considers publicly available information, such as financial statements, as well as proprietary information. The proprietary information includes the effects of amended energy conservation on manufacturers' revenues and finances, direct employment, capital assets, and industry competitiveness. The proprietary information is obtained primarily during private interviews between manufacturers and the contractor. Program officials informed us that manufacturers are willing to share proprietary information with the contractor under non-disclosure agreements and would not provide that information to the Federal government directly due to confidentiality concerns. The Department believes its contractor's ability to obtain this information is invaluable and results in better data on which to base minimum standards.

Although the Department had not obtained and reviewed all the information included in the Manufacturer Impact Analysis, program officials informed us they had reviewed the analysis for reasonableness based upon their knowledge and experience, and by surveying publicly available information. However, the Department had not documented its review. As each rule must also go to the public for comment, the Department believes this process is a mitigating control for the lack of documentation of its review of the Manufacturer Impact Analysis in that concerns regarding this analysis should be disclosed and resolved through the rulemaking process.

Given that the Manufacturer Impact Analysis is an essential component used in setting the minimum standards and a portion of it is confidential, it is important that the Department document its efforts to validate the information included. Documentation of oversight would provide assurance to third-parties of the quality and soundness of the analysis.

The Standards for Internal Controls in the Federal Government published by the U.S. Government Accountability Office require all transactions and other significant events to be clearly documented, and that such documentation be readily available for examination. Additionally, all documentation and records are to be properly managed and maintained. In the

absence of such documentation, we were unable to develop conclusions about the completeness and accuracy of the contractor's work and the effect it may have on the minimum standards set by the Department.

Legislative Deadlines for Test Procedures and Minimum Standards

Although the Department had met the deadlines established in the consent decree, the Department had fallen behind schedule in meeting other legislative deadlines for establishing rulemakings for test procedures and minimum standards. Specifically, in reviewing the legislative deadlines between March 2009 and January 2013, for 21 rulemakings, we found 8 test procedures rulemakings and 8 standards rulemakings were on average 1 year late. However, Department officials informed us that the delays were, in large part, out of the Department's control, and the Department had made improvements to its own processes to meet the legislative deadlines.

Department officials informed us that the technical complexity of the rulemakings, lack of prior regulations for products, pending changes to industry standards, and interagency reviews all contributed to these delays. We noted that the Department was aware of these delays and had taken steps to continually improve the rulemaking process in order to meet future deadlines. For example, the Department established a detailed master schedule to monitor the progress of rulemakings. Additionally, the Department involved stakeholders, such as manufacturers and advocacy groups, earlier in the process and conducted upfront research prior to the commencement of rulemakings to identify and mitigate significant issues.

RECOMMENDATIONS

If uncorrected, the problems we identified may result in consumers purchasing products that do not meet the minimum efficiency standards and may limit the Department's ability to achieve anticipated energy and carbon dioxide emissions savings. To address the problems outlined in our report, we recommend that the Assistant Secretary for Energy Efficiency and Renewable Energy, direct the Appliance and Equipment Standards Program Manager to:

1. Develop policies and procedures for verifying product certification;
2. Implement an automated control in the Standards Program's certification system to verify annual re-certification by manufacturers;
3. Document oversight of the contractor-prepared Manufacturer Impact Analysis; and
4. Continue to monitor the legislative deadlines for the test procedure and minimum standards rulemakings.

MANAGEMENT REACTION

Department officials concurred with our recommendations and have been working with the Standards Program to ensure all corrective actions are implemented. The Standards Program has begun development of a system that will identify uncertified products in the marketplace. The

system is in the trial phase and the Department expects to phase it in over the next year. The Department is also adding a feature to the certification system to verify required annual recertifications. It expects the feature to be operational by the end of 2013. Further, the Department has developed and disseminated a formal process for increased oversight of the Manufacturer Impact Analysis. Lastly, the Standards Program has initiated actions to improve the timeliness of the rulemaking process. Specifically, test procedures rulemakings will now be initiated a full 3 years before the statutory deadline to build in the time needed for thorough product testing and review. Additionally, the Department has initiated actions to better coordinate rulemakings with the Office of Management Budget.

AUDITOR COMMENTS

The Department's corrective actions, planned and taken, are responsive to our recommendations. Management's comments are included in Appendix 3.

Appendix 1

OBJECTIVE

The objective of the audit was to determine whether the Department of Energy (Department) was effectively managing its Appliance and Equipment Standards Program (Standards Program).

SCOPE

The audit was performed between June 2012 and June 2013, at Department Headquarters in Washington, DC.

METHODOLOGY

To accomplish our objective, we:

- Obtained and reviewed laws and regulations related to the Standards Program.
- Interviewed key program officials to obtain an understanding of the program, the enforcement activities in place and the quality assurance activities of contractor-prepared work.
- Reviewed prior Office of Inspector General and U.S. Government Accountability Office reports.
- Selected a judgmental sample of 309 products from 5 product categories to determine whether manufacturers had certified that their products met the energy efficiency and water conservation standards (minimum standards). Specifically, we selected 5 commonly-used product categories from the 42 residential products covered under the Standards Program and conducted internet searches on a large retail store's website to select our sample. Because we did not select a statistical sample, we cannot project our results to the population of products on the market.
- Selected 146 of the 309 products judgmentally sampled above to determine whether manufacturers had annually re-certified that products met the minimum standards. We only included those product categories with annual re-certification deadlines that had passed at the time of our audit. Because we did not select a statistical sample, we cannot project our results to the population of products certified in the online system.
- Analyzed the rulemaking schedule for compliance with legislative deadlines.

We conducted this performance audit in accordance with generally accepted Government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe the evidence obtained provides a reasonable basis for our conclusions based on our audit objective. Accordingly, the audit included tests of controls and compliance with laws and regulations to the extent necessary to satisfy the objective. In particular, we assessed the implementation of the *GPRA Modernization Act of 2010* as it relates

Appendix 1 (continued)

to the audit objective and found that the Department had established performance measures related to the Standards Program. Because our review was limited, it would not necessarily have disclosed all internal control deficiencies that may have existed at the time of our audit. Finally, we conducted an assessment of computer-processed data relevant to our audit objective and found it to be reliable.

An exit conference was held with management on August 7, 2013.

RELATED REPORTS

Office of Inspector General

- Audit Report on [*The Department's Management of the ENERGY STAR Program*](#) (DOE/IG-0827, October 2009). The Department of Energy (Department) had not implemented the actions it announced in 2007 to strengthen the ENERGY STAR Program. Officials had not: (1) developed a formal quality assurance program to help ensure that product specifications were adhered to; (2) effectively monitored the use of the ENERGY STAR label to ensure that only qualifying products were labeled as compliant; and (3) formalized procedures for establishing and revising product specifications and for documenting decisions regarding those specifications. The delay in the Department's planned improvements in its management of the ENERGY STAR Program could reduce consumer confidence in the integrity of the ENERGY STAR label, and diminish the value of the recent infusion of \$300 million for ENERGY STAR rebates under the American Recovery and Reinvestment Act of 2009.

Government Accountability Office

- Report on [*Energy Efficiency: Better Coordination among Federal Programs Needed to Allocate Testing Resources*](#) (GAO-13-135, March 2013). The U.S. Government Accountability Office (GAO) looked at three programs related to encouraging energy efficiency in household appliances and consumer electronics sold in the U.S.: (1) Federal minimum efficiency standards, led by the Department; (2) EnergyGuide, which requires product labeling and is led by the Federal Trade Commission (FTC); and (3) Energy Star, a voluntary labeling program led by the U.S. Environmental Protection Agency (EPA) – for duplication of efforts. It identified duplication between the Department and EPA as both manage separate verification testing programs to make sure products meet the Energy Star label requirements. GAO identified 11 instances in which the same model had been tested twice in 1 year.
- Review on [*Department of Energy: Energy Conservation Program: Energy Conservation Standards for Fluorescent Lamp Ballasts*](#) (B-322815, December 2011). GAO assessed the Department's compliance with the procedural steps required by section 801(a)(1)(B) of title 5, United States Code, in establishing a rule entitled *Energy Conservation Program: Energy Conservation Standards for Fluorescent Lamp Ballast*. GAO found that procedural steps taken indicate, with exception of the 60-day delay in effective date, the Department complied with the applicable requirements.
- Review on [*Department of Energy: Energy Conservation Program: Energy Conservation Standards for Residential Refrigerators, Refrigerator-Freezers, and Freezers*](#) (B-322512, October 2011). GAO assessed the Department's compliance with the procedural steps required by section 801(a)(1)(B) of title 5, United States Code, in establishing a rule entitled *Energy Conservation Program: Energy Conservation Standards for Residential Refrigerators, Refrigerator-Freezers, and Freezers*. GAO

Appendix 2 (continued)

found that procedural steps taken indicate, with exception of the 60-day delay in effective date, the Department complied with the applicable requirements.

- Review on [Department of Energy: Energy Conservation Program: Energy Conservation Standards for Residential Furnaces and Residential Central Air Conditioners and Heat Pumps](#) (B-322279, August 2011). GAO assessed the Department's compliance with the procedural steps required by section 801(a)(1)(B) of title 5, United States Code, in establishing a rule entitled *Energy Conservation Program: Energy Conservation Standards for Residential Furnaces and Residential Central Air Conditioners and Heat Pumps*. GAO found that the Department complied with the applicable requirements.
- Review on [Department of Energy: Energy Conservation Program: Energy Conservation Standards for Residential Clothes Dryer and Room Air Conditioners](#) (B-321902, May 2011). GAO assessed the Department's compliance with the procedural steps required by section 801(a)(1)(B) of title 5, United States Code, in establishing a rule entitled *Energy Conservation Program: Energy Conservation Standards for Residential Clothes Dryer and Room Air Conditioners*. GAO found that the Department complied with the applicable requirements.
- Review on [Department of Energy: Energy Conservation Program: Energy Conservation Standards for Small Electric Motors](#) (B-319524, April 2010). GAO assessed the Department's compliance with the procedural steps required by section 801(a)(1)(B) of title 5, United States Code, in establishing a rule entitled *Energy Conservation Program: Energy Conservation Standards for Small Electric Motors*. GAO found that with the exception of the effective date, the Department complied with the applicable requirements.
- Investigation Report on [ENERGY STAR PROGRAM – Covert Testing Shows the Energy Star Program Certification Process Is Vulnerable to Fraud and Abuse](#) (GAO-10-470, March 2010). GAO reported Energy Star is for the most part a self-certification program vulnerable to fraud and abuse. Specifically, GAO obtained certifications for 15 bogus products, including a gas-powered alarm clock.
- Audit Report on [ENERGY EFFICIENCY – Opportunities Exist for Federal Agencies to Better Inform Household Consumers](#) (GAO-07-1162, September 2007). GAO reported that opportunities existed for the EnergyGuide to improve how it provided information to help consumers improve their households' energy efficiency and decrease energy consumption nationally. Specifically, GAO found that although the Department, in consultation with the FTC, is required to study new products to determine if any products should be added to the EnergyGuide label, such a study had not been completed in 10 years. Further, it found that the FTC and the Department had not measured the effectiveness, costs of the EnergyGuide, and the energy savings of the program.

Appendix 2 (continued)

- Audit Report on [*ENERGY EFFICIENCY – Long-Standing Problems with DOE's Program for Setting Efficiency Standards Continue to Result in Forgone Energy Savings*](#) (GAO-07-42, January 2007). GAO examined the extent to which the Department met its obligations to issue rules on minimum energy efficiency standards for consumer products and industrial equipment and whether clearing the backlog will be effective or can be improved. GAO found that the Department missed all 34 congressional deadlines for setting energy efficiency standards for the 20 product categories with statutory deadlines that had passed. Further, GAO reported the Department's plan to bring the standards up to date by 2011 lacked critical elements of an effective project management plan.

MANAGEMENT COMMENTS



Department of Energy
Washington, DC 20585

July 12, 2013

MEMORANDUM FOR: RICKEY R. HASS
DEPUTY INSPECTOR GENERAL
FOR AUDITS AND INSPECTIONS
OFFICE OF INSPECTOR GENERAL

FROM: KATHLEEN B. HOGAN 
DEPUTY ASSISTANT SECRETARY
FOR ENERGY EFFICIENCY
ENERGY EFFICIENCY AND RENEWABLE ENERGY

SUBJECT: Response to Office of Inspector General Draft Report on "The Department of Energy's Appliance and Equipment Standards Program" (Standards Program)

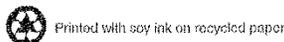
The Office of Energy Efficiency and Renewable Energy (EERE) welcomes the opportunity to respond to the recommendations by the Office of the Inspector General (OIG) in its June 2013 Draft Report on "The Department of Energy's Appliance and Equipment Standards Program."

EERE recognizes America's national interest in sound management of energy efficiency, including appliance standards. EERE's Building Technologies Office reviewed the report, and its responses to recommendations are detailed below.

The report recognizes that the Department has taken a number of positive steps to administer and enforce the Standards Program. In recent years, it developed an online system for collecting product certifications, worked to streamline its rulemaking process, and created an enforcement program. In response to the report's identification of areas for further improvement, EERE will address the OIG's recommendations to effectively manage the Standards Program and implement the corrective actions identified in the auditor's report to the extent they have not already been addressed.

Recommendation 1: Develop policies and procedures for verifying product certification.

MANAGEMENT RESPONSE: CONCURS. The Department agrees that, historically, DOE did not have a systematic way of collecting or reviewing certification reports that were submitted by manufacturers and therefore did not undertake consistent, comprehensive efforts to verify product certification. In fact, EERE and the Office of General Counsel (GC) estimated that,



prior to the January 2010 certification amnesty, less than 20% of models subject to certification requirements had been certified to the Department.

Since DOE began its enforcement efforts in late 2009, however, EERE and GC have regularly identified and prosecuted manufacturers for failure to certify compliance with certification requirements.¹ The offices have worked together to respond robustly to address the historically low levels of compliance with the certification requirements.

We are proud of our achievement in increasing compliance to the Audit Report's estimated 90+% compliance rate. To achieve this level of compliance, the offices have implemented a variety of measures, including development of a system for certifications to be filed electronically, conduct of market surveys, prosecution of violations, and industry outreach -- all while simultaneously increasing the number of products subject to certification requirements from 19 in 2009 to 38 today.

In addition, EERE has already begun development of a system to perform more comprehensive surveys of the marketplace to identify products being sold in various retail applications as compared to those certified in DOE's certification database. As we converted the certification program from a paper-based system to an electronic system, we identified a need to be able to more easily identify products being distributed in the U.S. to compare against our database of certified models. Accordingly, in 2012 we began development of an automated system that will identify uncertified models in the marketplace. This software program will improve our ability to identify models that have not been certified as compliant. The program is in the trial phase and is being tested with one or two product types while we determine the best methodology to compare models numbers. DOE expects to phase this software program in over the next year as each product that is currently subject to certification requirements are incorporated into the system.

Recommendation 2: Implement an automated control in the Standards Program's certification system to verify annual re-certification by manufacturers.

MANAGEMENT RESPONSE: CONCURS. Automated controls were technologically impossible prior to 2011 when manufacturers were first required to submit certification reports electronically. Annual re-certification was not due until 2012. As part of the transition to an electronic data collection system, EERE immediately began development of reporting tools for the certification database. The first phase of tools included 100% validation of certification reports. The second phase provided improved public access to the data submitted to the Department. The third phase, development of which began in 2012, will include an automated

¹ See <http://energy.gov/gc/articles/doe-resolves-nearly-all-its-september-2010-certification-enforcement-actions> (October 2010), <http://energy.gov/gc/articles/doe-office-enforcement-resolves-20-energy-efficiency-enforcement-cases> (June 2011), <http://energy.gov/gc/articles/doe-collects-civil-penalties-failure-certify> (August 2012) and <http://energy.gov/gc/articles/doe-collects-civil-penalties-failure-certify-0> (June 2013).

system to verify whether each model has been recertified annually. We expect that these tools will be fully operational by the end of 2013.

Recommendation 3: Document oversight of the contractor-prepared Manufacturer Impact Analysis.

MANAGEMENT RESPONSE: CONCURS. The Standards Program has a system in place to ensure that all analysis is reviewed at multiple points in the rulemaking process. At the contractor level, a second contractor is given the role of "reviewer" to ensure that the analysis is sound and reflective of the market for the particular product before the analysis is reviewed by DOE Federal staff. DOE Federal staff and management then review the analysis for quality assurance purposes, including the Manufacturer Impact Analysis (MIA). The report, in particular, requested that the MIA should have a formal review process in place. A formal process has been developed and has been disseminated to all contractors and Federal staff and added to the Federal Product Manager checklist to ensure that the MIA is thoroughly reviewed by DOE Federal staff.

Recommendation 4: Continue to monitor the legislative deadlines for the test procedure and minimum standards rulemakings.

MANAGEMENT RESPONSE: CONCURS. The IG report notes that the Department met all deadlines established in the *N.Y. v. Bodman* consent decree and that the Department had taken steps to continually improve the rulemaking process in order to meet future deadlines. For example, the Standards Program has taken action to build in extra time to its schedules as it works to meet its deadlines. Test procedure rulemakings will now be initiated a full 3 years before the statutory deadline to build in the time needed for thorough product testing and review. In addition, DOE, in coordination with the Office of Management and Budget (OMB), creates in the OMB-published semi-annual Regulatory Agenda a schedule for standards rulemakings on a 12-month forward looking basis. The most recent Regulatory Agenda was released on July 1, 2013. DOE believes that coordinating the rulemaking schedule with OMB will help speed the review process. In addition, the Standards Program has initiated an effort to become more involved in industry test procedure committees, including both Federal staff and contractors, in order to be well versed in the current activities related to product test methods. While Federal Advisory Committee Act rules prohibit the Standards Program from reaching any consensus or dictating methods in these committees, the Standards Program staff and contractors can attend and become more apprised of current activities. The Standards Program believes these activities, taken together, will mitigate the scheduling issues under its control.

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3. What format, stylistic, or organizational changes might have made this report's overall message more clear to the reader?
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