
DEPARTMENT OF ENERGY

**Guidance on Energy-Efficiency
Enforcement Regulations**

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

ACTION: Notice.

SUMMARY: This notice sets forth the
Department of Energy's (DOE's)
interpretation of its energy efficiency

enforcement regulations. These regulations provide for manufacturer submission of compliance statements and certification reports to DOE, maintenance of compliance records by manufacturers, and the availability of enforcement actions for improper certification or upon a determination of noncompliance. DOE also announces its intent to randomly select and review manufacturer compliance with these requirements and initiate enforcement actions as appropriate.

DATES: This guidance is effective October 14, 2009.

FOR FURTHER INFORMATION CONTACT: Ms. Stephanie Weiner, Office of the General Counsel, U.S. Department of Energy, Forrestal Building, Room 6A-245, 1000 Independence Ave., SW., Washington, DC 20585; Telephone (202) 586-9648.

SUPPLEMENTARY INFORMATION: The Energy Policy and Conservation Act of 1975, as amended, (EPCA or the "Act") authorizes the Department of Energy (DOE or the "Department") to enforce compliance with the energy conservation standards established for certain consumer products and commercial equipment. 42 U.S.C. 6299-6305 (consumer products), 6316 (commercial and industrial equipment). To ensure that all covered products distributed in the United States comply with DOE's energy conservation standards, the Department has promulgated enforcement regulations, which include specific certification and compliance requirements. See 10 CFR part 430, subpart F; 10 CFR part 431, subparts B, K, U, and V.

The Department issues this guidance to make clear that under existing DOE regulations, a manufacturer's failure to properly certify a covered product and retain records in accordance with DOE regulations may be subject to enforcement action, including the assessment of civil penalties. In addition, DOE announces its intent to exercise this enforcement authority more rigorously, beginning this fall, with a program to randomly select and review manufacturers' compliance with these certification requirements.

The Department's rules require manufacturers of covered consumer products to "certify by means of a compliance statement and a certification report that each basic model(s) meets the applicable energy conservation standard," before distributing it in commerce within the United States. 10 CFR 430.62. Appendix A to Subpart F of Part 430 sets forth templates for these filings. For each basic model, the certification report must include certain identifying information, including the

product type, product class, manufacturer's name and model number, as well as a product-specific energy efficiency levels. *Id.* Section 430.62(a)(4). The accompanying compliance report must certify that "the basic model(s) complies with the applicable energy conservation standard" and that "[a]ll required testing has been conducted in conformance" with applicable DOE test procedures. *Id.* Section 430.62(a)(3)(i)-(ii). Importantly, the manufacturer must also certify that all reported certification information is "true, accurate, and complete," and that he or she is "aware of the penalties associated with violations of the Act, the regulations thereunder, and 18 U.S.C. 1001 which prohibits knowingly making false statements to the Federal Government." *Id.* Section 430.62(a)(3)(iii)-(iv).

In connection with these filings, the Department's rules also require manufacturers to "establish, maintain, and retain the records of the underlying test data for all certification testing." 10 CFR 430.62(d). Further, the records must be "organized and indexed in a fashion which makes them readily accessible for review by DOE" and "shall include the supporting test data associated with tests performed on any test units to satisfy" the certification and compliance requirements. *Id.*

Under EPCA, the Secretary may take enforcement action for violations of these certification requirements. As relevant here, EPCA makes it unlawful "for any manufacturer to fail to permit access to, or copying of, records required to be supplied under this part, or fail to make reports or provide other information required to be supplied under [the Act]." 42 U.S.C. 6302(a)(3). Implementing that provision, the Department's rules prohibit both the "[f]ailure to permit access to, or copying of records required to be supplied under the Act and this rule" and the "failure to make reports or provide information required to be supplied under this Act and this rule." 10 CFR 430.61(a)(1). The Secretary may bring an injunctive action for the failure to properly certify covered products, 42 U.S.C. 6304, or may assess penalties for knowing violations of the certification reporting requirements, *id.* Section 6303(a). DOE's rules establish that, for consumer products:

If a basic model is not properly certified in accordance with the requirements of this subpart, the Secretary may seek, among other remedies, injunctive action to prohibit distribution in commerce of such basic model.

10 CFR 430.71(b).

To eliminate uncertainty among manufacturers subject to these requirements, the Department hereby provides its interpretation of the scope of these rules. Specifically, the Department clarifies that a failure to certify covered products in accordance with the DOE's rules is an independent violation of EPCA and DOE's implementing regulations that may be subject to enforcement action. The Department reads 42 U.S.C. 6302(a)(3) and 10 CFR 430.61(a)(1) to require not only that manufacturers make reports and provide the information required by the certification regulations, but also that such submissions be both accurate and provided in accordance with those regulations. A failure to do so is a prohibited act under EPCA and DOE rules and subject to enforcement action. A contrary reading would substantially undermine the purpose of the certification and compliance requirements in the first place—to ensure that all covered products distributed in commerce comply with applicable energy-efficiency standards and have been tested as prescribed by the rules.

Under a plain reading of section 430.71(b), moreover, improperly certifying a covered product is itself a violation subject to enforcement action. The Department need not test an improperly certified product or otherwise determine its noncompliance with the applicable standard before seeking an injunction or assessing civil penalties. Separate from these certification requirements, the Department's rules also establish both the process for testing covered consumer products' compliance, 10 CFR 430.70, and the Department's authority to take enforcement actions in the event that DOE determines that a covered product does not comply with an applicable standard, *id.* Sections 430.71(a), 430.73. But those regulations do not restrict the Department from seeking injunctive relief or civil penalties for prohibited acts that are not dependent upon testing or a determination of noncompliance. See, e.g., *id.* Section 430.61(b) (allowing DOE to seek penalties for acts other than standards violations). Thus, the Department has the authority to initiate enforcement action for improper certification, separate from any determination of whether a covered product does or does not comply with the applicable energy-conservation standard.

EPCA's enforcement provisions likewise apply to covered commercial and industrial equipment. See 42 U.S.C. 6316 (providing that the enforcement

provisions for consumer products apply “to the same extent and in the same manner” for covered commercial and industrial equipment). As with consumer products, the Department has promulgated certification and compliance regulations for certain equipment, including motors and transformers. *See* 10 CFR part 431, subparts B, K, U, and V; *See, e.g.*, 10 CFR 431.385(b) (“If a basic model [of electric motor] is not properly certified in accordance with the requirements of this subpart, the Secretary may seek, among other remedies, injunctive action to prohibit distribution in commerce of such basic model.”)¹ The Department interprets its certification regulations governing covered commercial and industrial equipment in the same way as its regulations governing consumer products. For the reasons set forth above, the failure to certify a covered piece of commercial or industrial equipment in accordance with DOE rules may be subject to enforcement action, including the imposition of civil penalties.

Today, the Department also announces its intent to exercise its enforcement authority more rigorously in the future. In order for DOE’s efficiency standards to effectively promote the development and distribution of energy efficient products that will save energy and reduce costs for millions of Americans, DOE must ensure that these standards are aggressively and consistently enforced. Proper certification is a necessary prerequisite to achieving these goals. This fall, therefore, DOE will begin this effort by initiating a compliance review of certification reports for consumer products and commercial equipment covered by DOE regulations. Pursuant to its existing enforcement authority, the Department intends to randomly select previously filed certification reports for review, to request certification records from manufacturers as needed, and to hold manufacturers accountable for any failure to certify covered products in accordance with DOE rules.

This guidance represents the Department’s interpretation of existing regulations and announcement of the agency’s general policy with respect to exercising its existing enforcement authority. It is not intended to create or remove any rights or duties, nor is it

intended to affect any other aspect of EPCA or DOE regulations.

Authority: 42 U.S.C. 6299–6305; 6316.

Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notice.

Issued in Washington, DC, on October 7, 2009.

Scott Harris,

General Counsel.

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¹ Additionally, the Department is developing a final rule to adopt similar certification and compliance regulations for the remaining types of covered commercial and industrial equipment covered by statute. *See* 64 FR 69598 (December 13, 1999); 71 FR 25104 (April 28, 2006); 71 FR 42193 (July 25, 2006); 71 FR 71341–42 (December 8, 2006).