



6450-01-P

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;
Notice of Reopening of Comment Period**

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

ACTION: Notice of reopening of comment period.

SUMMARY: On December 29, 2015, the U.S. Department of Energy (DOE) published a notice of proposed rulemaking (NOPR) in the Federal Register proposing 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. DOE is reopening the comment period until June 15, 2016, to provide interested parties with additional time to submit comments.

DATES: The comment period for the notice of proposed rulemaking published on December 29, 2015 (80 FR 81199), has been extended. DOE will accept comments, data, and information in response to the NOPR received no later than June 15, 2016.

ADDRESSES: See the section “Public Participation” for details on submitting comments.

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; 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.

SUPPLEMENTARY INFORMATION: On December 29, 2015, the U.S. Department of Energy (DOE) published a notice of proposed rulemaking in the Federal Register proposing 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. (80 FR 81199) The comment period ended February 12, 2016. On February 17, 2016, after receiving several requests for additional time to prepare and submit comments, DOE reopened the comment period until February 29, 2016. (81 FR 8022) At a public meeting held on February 19, 2016, DOE again received requests for additional time to prepare and submit comments, and reopened the period for submitting comments until March 16, 2016. 81 FR 11686 (Mar. 7, 2016).

DOE wishes to provide interested parties with additional time to submit comments, and is reopening the comment period until June 15, 2016. DOE is particularly interested in receiving comments and views of interested parties concerning how to minimize the burden of data collection to importers of covered products or equipment subject to an applicable energy conservation standard, while at the same time providing DOE with traceability information sufficient to determine whether a covered import is one that the DOE has previously identified as noncompliant with the relevant standard and, if so, to provide U.S. Customs and Border Protection (CBP) “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))

In the NOPR, DOE proposed that an importer provide information regarding the importer's most recent submission in DOE's Compliance and Certification Management System (CCMS), specifically 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. Because DOE makes determinations of noncompliance on a basic model basis, identification of the certified basic model number of the covered import would allow DOE to accurately determine whether the covered import belongs to a basic model that has previously been found to be noncompliant with applicable energy conservation standards.

DOE received comments in response to the NOPR suggesting the submission of alternative data elements to achieve its traceability requirements, such as brand and basic model number of the product, or brand and individual model number. One commenter stated that importers may already provide to CBP the model number of the covered products or equipment that they import, such that DOE may be able to rely on this information in lieu of additional information that it may require. Commenters also recommended that DOE allow multiple paths for importers of covered products to provide traceability information for their products.

At the public meeting for the NOPR, DOE stated that it had considered alternatives to its proposal, such as requiring submission of brand and individual model number, or stock keeping unit (SKU). As noted, DOE is seeking a solution that will allow it to confirm that the covered import does not belong to a basic model that DOE has previously found to be noncompliant and is open to offering options for the importer to provide the necessary information in the least burdensome manner.

To this end, DOE seeks comments on potential options to achieving DOE's goal of traceability while minimizing the burden on importers. Among the possibilities DOE is

considering, some of which have been suggested by commenters to date, are for importers to provide: the brand name and basic model number of the product or equipment as reported in the most recent CCMS certification submission; the brand name and individual model number of the product or equipment as reported in the most recent CCMS certification submission; or a SKU code, Universal Product Code, International Article Number, or Global Trade Item Number. Generally, DOE seeks comment on the advantage of allowing importers to use any unique identifier of the covered import that is readily available to employees of the importer across the enterprise, whether they interface with CBP or customs brokers or whether they are the employees who file certifications for the importer in CCMS. For DOE to adopt this approach, the importer would have to provide the same identifier in the corresponding CCMS report. DOE also welcomes comments as to other alternatives that would minimize importer burden while still allowing DOE to confirm that a covered import does not belong to a basic model that DOE has previously found to be noncompliant.

Commenters have expressed concern with respect to DOE's proposal to require certain information related to covered products or equipment that are a component of another finished product, due to the fact that an importer may use more than one basic model of component part in its finished product, and may not know which basic model is contained in a given shipment. DOE notes that the purpose of this proposal is to allow quick identification by CBP of a noncompliant product. DOE welcomes comments on alternatives, including alternatives that would reduce importer burden, such as allowing the importer to identify the range of possible component part basic models, but importers should be aware that this approach could potentially result in a greater impact by having CBP stop shipments that may not contain noncompliant products due to the importer's choice to group multiple basic models into a single identifier.

In addition, DOE understands that characterizing its proposed requirement as a “certificate of admissibility” may have created the mistaken impression that it was proposing a conformity assessment procedure as described in the Technical Barriers to Trade Agreement administered by the World Trade Organization. DOE wishes to emphasize, however, that it is not proposing to mandate any additional testing¹ or to require submission of information unnecessarily redundant of that already provided in accordance with those regulations. Instead, DOE only seeks in its proposal to collect the minimum information necessary to trace the covered import to the certified basic model to which it belongs.

Moreover, it is not DOE’s intent to delay in any way the importation of any covered product or equipment, aside from that for which DOE has already, separately, made a final determination that the basic model to which the covered import belongs is not compliant with applicable energy conservation standards. The importation of such a product is already prohibited. In addition, DOE notes that, although the information it proposes to collect would allow it to determine whether a covered import has been properly certified to DOE in CCMS, DOE is not proposing to delay the importation of a covered product subject to energy conservation standards solely due to a failure to certify the covered import. With this in mind, DOE welcomes comments on possible alternatives to the term “certification of admissibility” in reference to what is, in essence, a limited collection of information for purposes of traceability.

Finally, DOE seeks comments on alternatives to the proposed compliance date for the rule of 2 years after the date of publication of the final rule in the Federal Register, such as a delayed or phased-in compliance date.

¹ Existing DOE regulations require testing to ensure compliance with energy conservation standards.

DOE will accept comments, data, and information in response to the NOPR received no later than June 15, 2016. DOE will consider any comments in response to the NOPR received by midnight of June 15, 2016, and deems any comments received by that time to be timely submitted. Based on the comments received, DOE will determine whether it will need to issue a supplemental notice of proposed rulemaking or proceed to a final rule.

Public Participation

A. Submission of Comments

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. Follow the instructions for submitting comments.
2. Email: 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.

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. All documents in the docket are listed in the 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.

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.

Issued in Washington, DC, on May 6, 2016.

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

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