

United States Department of Energy
OMB Control Number 1910-1400

**“Certification Reports, Compliance Statements, Application for a Test Procedure Waiver,
and Recordkeeping for Consumer Products and Commercial/Industrial Equipment subject
to Energy or Water Conservation Standards”**
Comment Summary and Responses

On August 22, 2017, the Department published a Notice of Information Collection Extension and Request for Comment Regarding DOE's Information Collection Provisions. 82 FR 39780 (August 22, 2017). The notice can be found [here](#). DOE received comments regarding the information collection estimates, summarized in this word document.

Comment received on hour burden: ALA, AHAM, HPBA, ITI, and NEMA (hereafter referred to as ALA *et al.*) jointly commented that on average the total annual certification burden is 358 hours per manufacturer. (ALA *et al.*, No. 5 at p. 2) In addition,

DOE response: DOE is increasing the certification burden to 35 hours per response, which better aligns with ALA *et al.*'s estimate of 358 hours per manufacturer.

Comment received on cost burden: NAFEM commented that its small business members report that CCMS-related testing and reporting cost a minimum between \$10,000 - \$15,000 for every product line. (NAFEM, No. 6 at p. 2).

DOE response: DOE appreciates NAFEM's feedback on the cost for small businesses to test and certify their products. However, DOE wants to make clear that its certification requirements do not require manufacturers to annually test their basic models in order to submit a certification report. DOE only requires manufacturers to determine the basic model's representative efficiency or energy consumption before distribution in U.S. commerce according to the product specific provisions found in subpart B of 10 CFR 429. For most products, these provisions require manufacturers to test at least two units per basic model according to the DOE test procedure, and DOE accounts for the burden associated with testing when adopting or amending a test procedure or energy conservation standard. NAFEM's estimated burden includes both the cost of testing and certification, and did not break out the cost associated only with certification. For this reason DOE cannot compare NAFEM's estimate to its own.

Comment received on cost burden: ALA *et al.* commented that certification is primarily done by product/compliance/design engineers, but that additional staff involved in reporting activities include lab technicians, plant/product managers, data entry personnel, compliance officers, regulatory affairs staff, interns, general support staff, and assistants.

DOE response: DOE estimated a fully burdened labor rate¹ of \$100/hr. In addition to consideration of an engineer's labor rate, the fully burdened labor rate also reflects the labor rates of the other staff as described by ALA *et al.*, as well as that of a staff attorney.

¹ A fully burdened labor rate includes the employee's salary, fringe benefits, health insurance, and administrative costs.

Comments on quality, utility, and clarity of the information being collected: ASAP, ASE, ACEEE, NCLC, NEEP, NEEA, and NPCC² (hereafter referred to as ASAP *et al.*) submitted a joint comment in support the extension of information collection related to the appliance standards program. ASAP *et al.* emphasized that publicly-available certification data provides valuable information to consumers because it can help consumers make purchasing decisions. ASAP *et al.* further commented that, DOE's compliance certification database provides easy-to-use information about all basic models that have been certified to DOE, which can help facilitate efficiency programs by providing reliable model-specific information. (ASAP *et al.*, No. 7 at pp. 1-2) ASAP *et al.* also supported DOE's collection of information related to applications for extensions regarding representations because these applications provide a mechanism to limit burden on manufacturers." (ASAP *et al.*, No. 7 at p. 3)

The California Investor Owned Utilities³ (CA IOUs) fully supported the collection of appliance information in terms of utility and necessity, and are proponents of the proposed extension by three years. CA IOUs stated that the information collected by DOE is invaluable for standards development, energy efficiency programs, marketplace research, and other types of appliance-related analyses conducted by industry participants as well as consumers and consumer advocate groups. (CA IOUs, No. 8 at p. 2)

Lennox commented that consistent information collection and enforcement of DOE energy efficiency regulations are needed to maintain a level playing field. Information reporting should strike a balance between providing sufficient information and excessive reporting burden. Lennox further stated that DOE should not eviscerate reporting and compliance provisions, as doing so would chill manufacturer investment in developing new and improved products. (Lennox, No. 9 at pp. 1-2)

Comments on utility: Plumbing Manufacturers International (PMI) commented that the current reporting requirements are no longer needed for commercial pre-rinse spray valves, faucets, showerheads, urinals and water closets because water consumption requirements in line with Federal regulations are already addressed in industry standards and/or codes. (PMI, No. 2 at pg. 1)

DOE response: DOE notes that while industry standards may help ensure that plumbing products comply with Federal standards, industry standards are voluntary. DOE also notes that state building codes do not uniformly adopt the most recent industry standards. In addition to ensuring compliance with the Federal standards, DOE's certification database provides consumers with comprehensive, up-to-date efficiency information in addition to supporting effective enforcement. Therefore, DOE does not agree that industry standards and state building codes negate the impact of certification.

² Appliance Standards Awareness Project (ASAP), Alliance to Save Energy, American Council for an Energy-Efficient Economy (ACEEE), National Consumer Law Center (NCLC), Natural Resources Defense Council (NRDC), Northeast Energy Efficiency Partnerships (NEEP), Northwest Energy Efficiency Alliance (NEEA), and Northwest Power and Conservation Council (NPCC)

³ Pacific Gas and Electric Company (PG&E), Southern California Gas Company (SoCalGas), San Diego Gas and Electric (SDG&E), and Southern California Edison (SCE)

Comments on utility: NAFEM commented that the proposed requirements to submit certificates of admissibility to the U.S. Customs for each imported shipment is an incredible burden and redundant with other reporting obligations. (NAFEM, No. 6 at p. 2)

DOE response: DOE appreciates NAFEM's comments, and notes that this proposal is part of an open rulemaking and has not been finalized. Any additional information collection burden that would be imposed under such a regulation, were one to be finalized, would be evaluated and addressed in the course of that rulemaking.

Comments on quality of the information being collected: ASAP *et al.* and Lennox commented in support of DOE electronic CCMS because it reduces reporting burdens and streamlines the certification process. (ASAP *et al.*, No. 7 at p. 3; Lennox No. 9 at p. 2)

Comments on quality of the information being collected: Acuity opined that DOE uses the CCMS system to check that manufacturers have completed the requisite administrative tasks and that the system provides no value in validating a product's performance. Acuity asserted that DOE's enforcement efforts are focused entirely on entry mistakes, while ignoring manufacturers who do not report at all. Acuity further asserted that its prior complaints regarding manufacturers that do not comply with the certification reporting obligations have gone unaddressed. Acuity suggested DOE could establish a website or reporting mechanism, similar to the FTC's public claims filing system, that would allow manufacturers to report suspected nonreporting manufacturers to help facilitate enforcement against nonreporting entities. (Acuity, No. 3 at pp. 4-5)

DOE response: The Office of the Assistant General Counsel for Enforcement reviews manufacturers' compliance with certification requirements and to ensure that manufacturers provide information demonstrating compliance with DOE standards and regulations. In addition, this program investigates all complaints about potential noncompliance. DOE notes that it currently has a mechanism for the submission of complaints. Anyone wishing to make a complaint may send an email to energyefficiencyenforcement@hq.doe.gov or call 202-287-6997. For example, DOE investigates approximately 400 certification cases annually based on the information submitted by manufacturers, including importers, as part of their compliance certification. To date, DOE has collected over \$20 million in fines for violations with DOE's regulations, including certifications and compliance with the energy conservation standards.

Comments on quality, utility, and clarity of the information being collected: Lennox commented that DOE should publish certification record numbers on its public certification database to further streamline verification of product certification. (Lennox, No. 9 at pp. 2-3) Acuity commented that CCMS has an outdated data entry system, which requires manual input of numerous fields of information for hundreds of product models into a Microsoft Excel spreadsheet that cannot be edited or updated after filing. Acuity suggested the data entry system should be replaced with a dynamic web-based platform that would allow companies to enter and update—and DOE to analyze—real-time compliance data. In addition, Acuity commented that a web-based portal or similar construct, could be secured by password/credential protection from both the manufacturer and DOE sides. (Acuity, No. 3, pp. 2-3 and p. 5) Traulsen commented that

DOE should better align annual product certification deadlines with new template usage so that manufacturers are not required to certify multiple times. In addition, Traulsen suggested that DOE release a revision log noting changes made in certification templates to aid the entities completing the templates. (Traulsen, No. 4 at p. 1)

DOE response: DOE appreciates the feedback from Lennox, Acuity, and Traulsen and will consider these comments going forward. In response to Acuity's comment, DOE emphasizes that it elected to use Microsoft Excel spreadsheet for certification templates because of its flexibility and because it is a widely adopted standard across industries. The certification templates allow data to be entered manually, with copy-and-paste, or imported from another system. In addition, these Microsoft Excel templates allow manufacturers to work on it over time, save it locally, and have several people work on it without having to have an open user session in CCMS. Further, DOE's CCMS system is currently secured by password protection. All users are required to register with CCMS and establish usernames and passwords to access CCMS. In response to Traulsen's comment about aligning with annual certification deadlines, DOE explains that typically it does not require manufacturers to recertify on newly posted templates until the annual certification date unless manufacturers are required to do so in order to demonstrate compliance with amended standards. For example, DOE posted a template for automatic commercial ice makers on December 18, 2017. In the announcement DOE stated, "Submissions made on previous versions of the template do not have to be resubmitted until the August 1, 2018 annual certification date if they comply with the amended performance standards." In regard to Traulsen's comment on providing a log of changes, DOE notes that it explains the reason a new template is posted in its template announcement and email notification. DOE also notes the CCMS product-template pages maintains a newsfeed on the left side of the CCMS product-template download page (See <https://www.regulations.doe.gov/ccms/templates>). For example when DOE posted the new battery charger certification template, DOE announced by email and on the newsfeed (website) "A new Battery Chargers, v5.0 template has been posted on the CCMS web site. This template must be used for all submissions no later than June 13, 2018 to certify compliance with the performance standards that go into effect on that date."

Comments on quality, utility, and clarity of the information being collected:

Interested parties also commented on aligning DOE's reporting requirements with other entities. The CA IOUs commented in support of aligning the data collected for DOE and the California Energy Commission (CEC) because the reduction of duplicative reporting requirements helps avoid inconsistencies in data and benefits manufacturers serving the California marketplace by minimizing their compliance overhead. The CA IOUs urged DOE to work very closely with CEC to make sure their data and systems align. (CA IOUs, No. 8 at p. 2-3) Traulsen also supports DOE's consideration of revisions to the CCMS to facilitate a reduction in duplicative reporting under California's Appliance Efficiency Regulations. (Traulsen, No. 4 at p. 2) Lennox stated that DOE's CCMS system should be utilized as the central information repository to satisfy other regulatory or program requirements and DOE should work to utilize the existing data to satisfy CEC's reporting requirements. (Lennox, No. 9 at pp. 2-3) ALA *et al.* also commented that CCMS should be the central place for manufacturers to report data related to energy use. In addition to aligning reporting requirements with FTC, ALA *et al.* suggested that DOE could further streamline the database by adding a column to each template so that

ENERGY STAR qualification can be indicated. ALA *et al.* also supported eliminating duplicative reporting requirements between California and DOE by ensuring that the information reported on CCMS can satisfy the CEC requirements. (ALA *et al.*, No. 5 at pp. 3-5) NAFEM suggested that the U.S. and Canada harmonize reporting requirements and templates because their programs and markets are similar. NAFEM stated that DOE should survey Canada, U.S. states and other agencies to identify additional information that should be included in the CCMS database so that CCMS is a one-stop location where manufacturers list their products. (NAFEM, No. 6 at p. 2)

PMI commented that Federal and state requirements should be reported separately, even though it could possibly eliminate duplicative reporting, as DOE should maintain their national focus and let states manage themselves. PMI also questioned how DOE would address differences in reporting requirements and covered products. (PMI, No. 2 at p. 2)

DOE response: DOE will continue to consider revisions to the CCMS that would facilitate a reduction in duplicative reporting under the California's Appliance Efficiency Regulations. In response to PMI's concern about address differences in reporting requirements, DOE tentatively plans to add additional fields to its certification templates to account for any additional information needed for reporting to CEC. Submission of the additional information would not be mandatory for the purpose of complying with DOE's requirements. Similarly, DOE may consider adding templates for products not covered by DOE's regulations in order to allow manufacturers to certify to CEC via CCMS at their discretion.

Comments on utility of the information being collected: ALA *et al.* commented that DOE should reevaluate its annual certification requirements and that manufacturers should be required to report only when a new product is introduced, when a model is changed in a way that impacts measured energy or efficiency, and when a product is no longer in production. ALA *et al.* opined that annual reporting does nothing to enhance consumer knowledge and serves no purpose for DOE rulemaking or enforcement efforts. ALA *et al.* estimated that removing annual reporting requirements would reduce the annual reporting burden on average by 126.6 hours per manufacturer. In addition, ALA *et al.* commented that DOE should limit the data reporting to only information that is essential to show compliance with the standards. (ALA *et al.*, No. 5 at pp. 2-4) Acuity commented that annual reporting adds unnecessary costs for manufacturers. Acuity also stated that DOE uses valuable enforcement resources reviewing vast amounts of repetitive data. Acuity recommended DOE eliminate the annual reporting requirement when products and information have not changed from the previous report. Instead, Acuity suggested that annual reporting be replaced with an annual certification requirement from reporting companies that their information is correct and up-to-date or, alternatively, allow for certification of only updated information. (Acuity, No. 3 at pp. 1, 3 and 5)

ASAP *et al.* stated that the requirement to submit certification reports annually provides DOE with up-to-date information about regulated products available for sale. ASAP *et al.* commented that the submission of certification and compliance reports along with records retention is essential for DOE to conduct effective enforcement, and that effective enforcement protects manufacturers who are complying with the law from unscrupulous competitors and

ensures that products purchased by consumers deliver the required levels of efficiency and in turn utility bill savings. (ASAP et al., No. 7 at pp. 1-2)

DOE response: DOE is not considering amending its regulations as part of this notice, however, it will consider these comments in any future rulemakings that address certification requirements.

Comments on clarity of the information being collected: ALA et al. commented DOE should commit to issuing related CCMS templates no later than one year before the compliance date of the standard or test procedure. (ALA et al., No. 5 at pp. 4) NAFEM and Acuity commented that at times DOE does not provide certification templates in a timely manner. (NAFEM, No. 6 at p. 2; Acuity, No. 3 at p. 3) NAFEM added that templates should be provided more than three months before a certification deadline. (NAFEM, No. 6 at p. 2)

DOE response: DOE appreciates the feedback from ALA et al., NAFEM, and Acuity. DOE strives to make certification templates available in a timely manner and will work to post new or revised templates well in advance of certification deadlines. For example, DOE posted a certification template for battery charges 6 months ahead of the compliance date for the new energy conservation standards in order to provide manufacturers with adequate time to certify.

Comments on quality, utility, and clarity of the information being collected: DOE also received comments on its test procedure waiver process. ASAP et al. commented that the test procedure waiver process helps to ensure that manufacturers can continue to introduce products with new features, even when those features may not have been contemplated at the time the test procedure was established. (ASAP et al., No. 7 at pp. 2) NAFEM commented that DOE's current test procedure waiver process is burdensome, lengthy, costly, and an inhibitor to innovation and small business. NAFEM stated that the test waiver process needs to be streamlined to allow the manufacturers and DOE to be more flexible and responsive, thus allowing continued product development and innovation of products that further energy efficiency. (NAFEM, No. 6 at p. 2-3) Acuity suggested that DOE should allow waiver applications from trade associations or similar industry groups because this would streamline the application process and allow manufacturers to pool compliance resources, while saving DOE time and expense in reviewing repetitive company applications. In addition, Acuity urged DOE to approve or deny test procedure waivers in a timely manner. (Acuity, No. 3 at p. 5) Traulsen suggested that interim waiver should be considered granted if the applicant does not receive a response from DOE within 30 business days. In addition, Traulsen suggested an amendment to the waiver process that if public comment or rebuttal is not submitted to DOE within the allotted comment period after an interim waiver is granted, then a final determination on the waiver can be expected within three months of issuance of the interim waiver. Traulsen asserted that the time lost during a waiver's review delays the product from being available to the market, resulting in lost opportunity. (Traulsen, No. 4 at p. 2)

DOE response: While DOE is not considering amending its regulations, including those for the waiver process, as part of this notice, it will consider these comments in any future rulemakings that address certification requirements.

Comments on clarity of the information being collected: Acuity also commented that there is a lack of guidance and compliance resources from DOE regarding compliance expectations and interpretations, particularly when regulations are, in Acuity's opinion, ambiguous or conflicting. (Acuity, No. 3 at pp. 1, 3-4, 5)

DOE response: DOE appreciates Acuity's comment and notes that it has a mechanism in place for manufacturers to seek guidance. DOE posts guidance and frequently asked questions on its website at: <https://www1.eere.energy.gov/guidance/default.aspx?pid=2&spid=1>. DOE encourages manufacturers and other entities with questions to email them to EERE_ACES@ee.doe.gov or submit questions via the online form on the aforementioned webpage.

Other comments: Lennox commented that DOE should employ negotiated or working group consensus approaches as an integral part of the DOE rulemakings unless there is not a reasonable likelihood that the requisite consensus can be reached. Certification and information reporting requirements should be included in this process. (Lennox, No. 9 at p. 2)

DOE response: DOE appreciates Lennox's comment and will take it under consideration for future rulemakings.