§ 431.372 Sampling.

For purposes of a certification of compliance, the determination that a basic model complies with the applicable energy conservation standard or water conservation standard shall be based upon the testing and sampling procedures, and other applicable rating procedures set forth in this part. For purposes of a certification of compliance, the determination that a basic model complies with the applicable design standard shall be based on the incorporation of specific design requirements specified in this part.

§ 431.373 Enforcement.

For covered equipment other than electric motors, this section sets forth procedures the Department will follow in pursuing alleged non-compliance with an applicable energy or water conservation standard. Paragraph (c) of this section applies to all such covered equipment. Paragraphs (a)(1) and (a)(2) of this section apply to all such equipment except for distribution transformers and commercial heating, ventilating, and air conditioning equipment and commercial water heating equipment.

(a) Performance standards—(1) Test notice. Upon receiving information in writing concerning the energy performance or water performance (in the case of commercial prerinse spray valves) of a particular covered equipment sold by a particular manufacturer or private labeler, which indicates that the covered equipment may not be in compliance with the applicable energy- or water-performance standard, the Secretary may conduct a review of the test records. The Secretary may then conduct enforcement testing of that equipment by means of a test notice addressed to the manufacturer or private labeler in accordance with the following requirements:

(i) The test notice procedure will only be followed after the Secretary or his/her designated representative has examined the underlying test data (or, where appropriate, data about the use of an alternative efficiency determination method (AEDM)) provided by the manufacturer, and after the manufacturer has been offered the opportunity to meet with the Department to verify compliance with the applicable energy conservation standard or water conservation standard. When compliance of a basic model was certified based on an AEDM, the Department has the discretion to pursue other steps provided under this part for verifying the AEDM before invoking the test notice procedure. A representative designated by the Secretary must be permitted to observe any reverification procedures undertaken according to this subpart, and to inspect the results of such reverification.

(ii) The test notice will be signed by the Secretary or his/her designee and will be mailed or delivered by the Department to the plant manager or other responsible official designated by the manufacturer.

(iii) The test notice will specify the model or basic model to be selected for testing, the number of units to be tested, the method for selecting these units, the date and time at which testing is to begin, the date when testing is scheduled to be completed, and the facility at which testing will be conducted. The test notice may also provide for situations in which the selected basic model is unavailable for testing, and it may include alternative basic models. For equipment that this part allows to be rated by use of an AEDM, the specified basic model may be one that the manufacturer has rated by actual testing or that it has rated by the use of an AEDM.

(iv) The Secretary may require in the test notice that the manufacturer of a covered equipment shall ship at his expense a reasonable number of units of each basic model specified in the test notice to a testing laboratory designated by the Secretary. The number of units of a basic model specified in a test notice shall not exceed 20.

(v) Within five working days of the time the units are selected, the manufacturer must ship the specified test units of a basic model to the designated testing laboratory.

(2) Testing laboratory. Whenever the Department conducts enforcement testing at a designated laboratory in accordance with a test notice under this section, the resulting test data shall constitute official test data for that basic model. The Department will...
use such test data to make a determination of compliance or noncompliance.

(3) **Sampling.** The Secretary will base the determination of whether a manufacturer’s basic model complies with the applicable energy- or water-performance standard on testing conducted in accordance with the applicable test procedures specified in this part, and with the following statistical sampling procedures:

(i) For commercial prerinse spray valves, illuminated exit signs, traffic signal modules and pedestrian modules, refrigerated bottled or canned vending machines, and commercial clothes washers, the methods are described in appendix B to subpart F of part 430 (Sampling Plan for Enforcement Testing).

(ii) For automatic commercial ice makers, as well as commercial refrigerators, freezers, and refrigerator-freezers, the methods are described in appendix D to subpart T of part 431 and include the following provisions:

(A) Except as required or provided in paragraphs (a)(3)(ii)(B) and (a)(3)(ii)(C) of this section, initially, the Department will test two units.

(B) Except as provided in paragraph (a)(3)(ii)(C) of this section, if fewer than two units of basic model are available for testing when the manufacturer receives the test notice, then:

(1) If only one unit of a basic model is available for testing, the Department will test that unit, and will base the compliance determination on the results for that unit in a manner otherwise in accordance with this section. Available units are those, which are available for commercial distribution within the United States.

(C) Notwithstanding paragraphs (a)(3)(ii)(A) and (a)(3)(ii)(B) of this section, if testing of the available or subsequently available units of a basic model would be impractical, as for example when a basic model is very large, has unusual testing requirements, or has limited production, the Department may in its discretion decide to base the determination of compliance on the testing of fewer than the available number of units, if the manufacturer so requests and demonstrates that the criteria of this paragraph are met.

(iii) For commercial HVAC and WH products, the methods are described in appendix D to subpart T of part 431 and include the following provisions:

(A) Except as required or provided in paragraphs (a)(3)(iii)(B) and (a)(3)(iii)(C) of this section, initially, the Department will test two units.

(B) Except as provided in paragraph (a)(3)(iii)(C) of this section, if fewer than two units of basic model are available for testing when the manufacturer receives the test notice, then:

(1) The Department will test the available unit(s); or

(2) If one or more other units of the basic model are expected to become available within six months, the Department may instead at its discretion, test either:

(i) The available unit(s) and one or more of the other units that subsequently become available (up to a maximum of four); or

(ii) Up to four of the other units that subsequently become available.

(C) Notwithstanding paragraphs (a)(3)(iii)(A) and (a)(3)(iii)(B) of this section, if testing of the available or subsequently available units of a basic model would be impractical, as for example when a basic model is very large, has unusual testing requirements, or has limited production, the Department may in its discretion decide to base the determination of compliance on the testing of fewer than the available number of units, if the manufacturer so requests and demonstrates that the criteria of this paragraph are met.

(iv) For the purposes of paragraphs (a)(3)(ii)(A) through (a)(3)(ii)(C) and (a)(3)(iii)(A) through (a)(3)(iii)(C) of
this section, when it tests three or fewer units, the Department will base the compliance determination on the results of such testing in a manner otherwise in accordance with this section.

(v) For the purposes of paragraphs (a)(3)(ii)(A) through (a)(3)(ii)(C) and (a)(3)(iii)(A) through (a)(3)(iii)(C) of this section, available units are those that are available for commercial distribution within the United States.

(4) Test unit selection. (i) For commercial prerinse spray valves, illuminated exit signs, traffic signal modules and pedestrian modules, refrigerated bottled or canned vending machines, and commercial clothes washers, the following applies:

(A) The Department shall select a batch, a batch sample, and test units from the batch sample in accordance with the following provisions of this paragraph and the conditions specified in the test notice.

(B) The batch may be subdivided by the Department using criteria specified in the test notice.

(C) The Department will randomly select a batch sample of up to 20 units from one or more subdivided groups within the batch. The manufacturer shall keep on hand all units in the batch sample until the basic model is determined to be in compliance or non-compliance.

(D) The Department will randomly select individual test units comprising the test sample from the batch sample. The Department will achieve random selection by sequentially numbering all of the units in a batch and then using a table of random numbers to select the units to be tested. The manufacturer must keep on hand all units in the batch until such time as the inspector determines that the unit(s) selected for testing is (are) operative. Thereafter, once a manufacturer distributes or otherwise disposes of any unit in the batch, it may no longer claim under paragraph (a)(5)(iii) of this section that a unit selected for testing is defective due to a manufacturing defect or failure to operate in accordance with its design and operating instructions.

(5) Test unit preparation. (i) Before and during the testing, a test unit selected in accordance with paragraph (a)(4) of this section shall not be prepared, modified, or adjusted in any manner unless such preparation, modification, or adjustment is allowed by the applicable Department test procedure. The Department will test each unit in accordance with the applicable test procedures.

(ii) No one may perform any quality control, testing, or assembly procedures on a test unit, or any parts and subassemblies thereof, that is not performed during the production and assembly of all other units included in the basic model.

(iii) A test unit shall be considered defective if it is inoperative. A test unit is also defective if it is found to be in noncompliance due to a manufacturing defect or due to failure of the unit to operate according to the manufacturer’s design and operating instructions, and the manufacturer demonstrates by statistically valid means that, with respect to such defect or failure, the unit is not representative of the population of production units from which it is obtained. Defective units, including those damaged due to shipping or handling, must be reported immediately to the Department. The Department will authorize testing of
an additional unit on a case-by-case basis.

(6) Testing at manufacturer's option. (i) If the Department determines a basic model to be in noncompliance with the applicable energy performance standard or water performance standard at the conclusion of its initial enforcement sampling plan testing, the manufacturer may request that the Department conduct additional testing of the basic model. Additional testing under this paragraph must be in accordance with the applicable test procedure, and:

(A) For commercial prerinse spray valves, illuminated exit signs, traffic signal modules and pedestrian modules, refrigerated bottled or canned vending machines, and commercial clothes washers, the applicable provisions in appendix B to subpart F of part 430;

(B) For automatic commercial ice makers, as well as commercial refrigerators, freezers, and refrigerator-freezers, the applicable provisions in appendix D to subpart T of part 431, and limited to a maximum of six additional units of basic model.

(ii) All units tested under this paragraph shall be selected and tested in accordance with paragraphs (a)(1)(v), (a)(2), (a)(4), and (a)(5) of this section.

(iii) The manufacturer shall bear the cost of all testing under this paragraph.

(iv) The Department will advise the manufacturer of the method for selecting the additional units for testing, the date and time at which testing is to begin, the date by which testing is scheduled to be completed, and the facility at which the testing will occur.

(v) The manufacturer shall cease distribution of the basic model tested under the provisions of this paragraph from the time the manufacturer elects to exercise the option provided in this paragraph until the basic model is determined to be in compliance. The Department may seek civil penalties for all units distributed during such period.

(vi) If the additional testing results in a determination of compliance, the Department will issue a notice of allowance to resume distribution.

(b) Design standard. In the case of a design standard, the Department can determine that a model is noncompliant after the Department has examined the underlying design information from the manufacturer and has offered the manufacturer the opportunity to verify compliance with the applicable design standard.

(c) Cessation of distribution of a basic model of commercial equipment other than electric motors. (1) In the event the Department determines, in accordance with enforcement provisions set forth in this subpart, a model of covered equipment is noncompliant, or if a manufacturer or private labeler determines one of its models to be in noncompliance, the manufacturer or private labeler shall:

(i) Immediately cease distribution in commerce of all units of the basic model in question;

(ii) Give immediate written notification of the determination of noncompliance to all persons to whom the manufacturer has distributed units of the basic model manufactured since the date of the last determination of compliance; and

(iii) If requested by the Secretary, provide the Department within 30 days of the request, records, reports and other documentation pertaining to the acquisition, ordering, storage, shipment, or sale of a basic model determined to be in noncompliance.

(2) The manufacturer may modify the noncompliant basic model in such manner as to make it comply with the applicable performance standard. The manufacturer or private labeler must treat such a modified basic model as a new basic model and certify it in accordance with the provisions of this subpart. In addition to satisfying all requirements of this subpart, the manufacturer must also maintain records that demonstrate that modifications have been made to all units of the new basic model before its distribution in commerce.

(3) If a manufacturer or private labeler has a basic model that 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 the basic model.

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