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6450-01-P

DEPARTMENT OF ENERGY

10 CFR Part 429

[EERE-2022-BT-CRT-0021]

RIN 1904-AF42

Energy Conservation Program: Compliance Procedures for Consumer Refrigeration and Miscellaneous Refrigeration Products

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of proposed rulemaking and request for comment.

SUMMARY: On July 18, 2016, the U.S. Department of Energy published a final rule that amended the test procedure for refrigerators and refrigerator-freezers and established both coverage and procedures for testing miscellaneous refrigeration products ("MREFs"). That final rule also established provisions within DOE's compliance procedures to provide instructions regarding product category determinations, which were intended to be consistent with the definitions established for MREFs and refrigerators, refrigerator-freezers, and freezers. This document proposes to correct certain inconsistencies between the instructions for determining product categories and the corresponding product definitions to avoid confusion regarding the application of those definitions. DOE is seeking comment from interested parties on the proposal.

DATES: DOE will accept comments, data, and information this regarding this proposal no later than **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *www.regulations.gov*, under docket number EERE–2022–BT–CRT-0021. Follow the instructions for submitting comments.

Alternatively, interested persons may submit comments, identified by docket number EERE–2022–BT–CRT-0021, by any of the following methods:

Email: Refrigeration2022CRT0021@ee.doe.gov. Include the docket number EERE–2022–BT–CRT-0021 in the subject line of the message.

Postal Mail: Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, Mailstop EE-5B, 1000 Independence Avenue, SW., Washington, DC, 20585-0121. Telephone: (202) 287-1445. If possible, please submit all items on a compact disc (“CD”), in which case it is not necessary to include printed copies.

Hand Delivery/Courier: Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, 950 L’Enfant Plaza, SW., 6th Floor,

Washington, DC, 20024. Telephone: (202) 287-1445. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

No telefacsimiles (“faxes”) will be accepted. For detailed instructions on submitting comments and additional information on this process, see section I of this document.

Docket: The docket for this activity, which includes *Federal Register* notices, public meeting attendee lists and transcripts (if a public meeting is held), comments, and other supporting documents/materials, is available for review at *www.regulations.gov*. All documents in the docket are listed in the *www.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.

The docket web page can be found at *www.regulations.gov/docket/EERE-2022-BT-CRT-0021*. The docket web page contains instructions on how to access all documents, including public comments, in the docket. See section I for information on how to submit comments through *www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Dr. Stephanie Johnson, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE-5B, 1000 Independence Avenue, SW., Washington, DC, 20585-0121. Telephone: (202) 287-1943. Email: *stephanie.johnson@ee.doe.gov*.

Mr. Michael Kido, U.S. Department of Energy, Office of the General Counsel, GC-33,
1000 Independence Avenue, SW., Washington, DC 20585-0121. Telephone: (202) 586-8145.
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SUPPLEMENTARY INFORMATION:

I. Authority

The Energy Policy and Conservation Act, as amended (“EPCA”),¹ authorizes the United States Department of Energy (“DOE”) to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part B² of EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles, which sets forth a variety of provisions designed to improve energy efficiency. These products include miscellaneous refrigeration products (“MREFs”) along with more common consumer refrigeration products (*i.e.*, refrigerators, refrigerator-freezers, and freezers). These products are the focus of this notice of proposed rulemaking (“NOPR” or “proposal”) and collectively comprise what DOE simply refers to in this document as “consumer refrigeration products” in this document. (42 U.S.C. 6292(a)(1))

In addition to identifying particular consumer products and commercial equipment as covered under the statute, EPCA permits the Secretary of Energy to classify additional types of consumer products as covered products. (42 U.S.C. 6292(a)(20)) DOE added MREFs as covered products through a final determination of coverage published in the *Federal Register* on July 18,

¹ All references to EPCA in this document refer to the statute as amended through the Energy Act of 2020, Pub. L. 116-260 (Dec. 27, 2020), which reflect the last statutory amendments that impact Parts A and A-1 of EPCA.

² For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

2016 (“July 2016 final rule”). 81 FR 46768. MREFs are consumer refrigeration products, other than refrigerators, refrigerator-freezers, or freezers. 10 CFR 430.2. MREFs include refrigeration products such as coolers (*e.g.*, wine chillers and other specialty products) and combination cooler refrigeration products (*e.g.*, wine chillers and other specialty compartments combined with a refrigerator, freezer, or refrigerator-freezer).

The energy conservation program under EPCA consists essentially of four parts: (1) testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA specifically include definitions (42 U.S.C. 6291), test procedures (42 U.S.C. 6293), labeling provisions (42 U.S.C. 6294), energy conservation standards (42 U.S.C. 6295), and the authority to require information and reports from manufacturers (42 U.S.C. 6296).

The Federal testing requirements consist of test procedures that manufacturers of covered products must use as the basis for: (1) certifying to DOE that their products comply with the applicable energy conservation standards adopted pursuant to EPCA (42 U.S.C. 6295(s)), and (2) making other representations about the efficiency of those consumer products (42 U.S.C. 6293(c)). Similarly, DOE must use these test procedures to determine whether the products comply with relevant standards promulgated under EPCA. (42 U.S.C. 6295(s))

This proposal is intended to narrowly clarify and correct inconsistencies in certain product category determination specifications within the certification provisions for the consumer refrigeration products that are the subject of this document.

II. Scope and Definitions

DOE's regulations generally categorize consumer refrigeration products into different product categories based on operating temperatures, among other criteria. While this proposal does not propose to alter any of the definitions associated with these different consumer refrigeration products, a basic understanding of the definitions for these different product categories – all of which are found in 10 CFR 430.2 -- is helpful.

DOE defines a "refrigerator" as a cabinet, used with one or more doors, that has a source of refrigeration that requires single-phase, alternating current electric energy input only and is capable of maintaining compartment temperatures above 32 °F (0 °C) and below 39 °F (3.9 °C) as determined according to 10 CFR 429.14(d)(2). A refrigerator may include a compartment capable of maintaining compartment temperatures below 32 °F (0 °C), but does not provide a separate low temperature compartment capable of maintaining compartment temperatures below 8 °F (-13.3 °C) as determined according to 10 CFR 429.14(d)(2). This term does not include:

- (1) Any product that does not include a compressor and condenser unit as an integral part of the cabinet assembly;
- (2) A cooler; or
- (3) Any miscellaneous refrigeration product that must comply with an applicable miscellaneous refrigeration product energy conservation standard.

Section 430.2 defines a “freezer” as a cabinet, used with one or more doors, that has a source of refrigeration that requires single-phase, alternating current electric energy input only and is capable of maintaining compartment temperatures of 0 °F (-17.8 °C) or below as determined according to 10 CFR 429.14(d)(2). It does not include any refrigerated cabinet that consists solely of an automatic ice maker and an ice storage bin arranged so that operation of the automatic icemaker fills the bin to its capacity. The term does not include:

- (1) Any product that does not include a compressor and condenser unit as an integral part of the cabinet assembly; or
- (2) Any miscellaneous refrigeration product that must comply with an applicable miscellaneous refrigeration product energy conservation standard.

A “refrigerator-freezer” is defined as a cabinet, used with one or more doors, that has a source of refrigeration that requires single-phase, alternating current electric energy input only and consists of two or more compartments where at least one of the compartments is capable of maintaining compartment temperatures above 32 °F (0 °C) and below 39 °F (3.9 °C) as determined according to 10 CFR 429.14(d)(2), and at least one other compartment is capable of maintaining compartment temperatures of 8 °F (-13.3 °C) and may be adjusted by the user to a temperature of 0 °F (-17.8 °C) or below as determined according to 10 CFR 429.14(d)(2). The term does not include:

- (1) Any product that does not include a compressor and condenser unit as an integral part of the cabinet assembly; or
- (2) Any miscellaneous refrigeration product that must comply with an applicable miscellaneous refrigeration product energy conservation standard

The term “miscellaneous refrigeration product” means a consumer refrigeration product other than a refrigerator, refrigerator-freezer, or freezer, which includes coolers and combination cooler refrigeration products.

A “cooler” is a cabinet, used with one or more doors, that has a source of refrigeration capable of operating on single-phase, alternating current and is capable of maintaining compartment temperatures either:

- (1) No lower than 39 °F (3.9 °C); or
- (2) In a range that extends no lower than 37 °F (2.8 °C) but at least as high as 60 °F (15.6 °C) as determined according to 10 CFR 429.61(d)(2).

A “combination cooler refrigeration product” means any cooler-refrigerator, cooler-refrigerator-freezer, or cooler-freezer.

DOE’s regulations define a “cooler-refrigerator” as a cabinet, used with one or more doors, that has a source of refrigeration that requires single-phase, alternating current electric

energy input only, and consists of two or more compartments, including at least one cooler compartment as defined in 10 CFR part 430 subpart B appendix A, where:

(1) At least one of the remaining compartments is not a cooler compartment as defined in 10 CFR part 430 subpart B appendix A and is capable of maintaining compartment temperatures above 32 °F (0 °C) and below 39 °F (3.9 °C) as determined according to 10 CFR 429.61(d)(2);

(2) The cabinet may also include a compartment capable of maintaining compartment temperatures below 32 °F (0 °C) as determined according to 10 CFR 429.61(d)(2); but

(3) The cabinet does not provide a separate low temperature compartment capable of maintaining compartment temperatures below 8 °F (−13.3 °C) as determined according to 10 CFR 429.61(d)(2).

A “cooler-refrigerator-freezer” means a cabinet, used with one or more doors, that has a source of refrigeration that requires single-phase, alternating current electric energy input only, and consists of three or more compartments, including at least one cooler compartment as defined in 10 CFR part 430 subpart B appendix A, where:

(1) At least one of the remaining compartments is not a cooler compartment as defined in 10 CFR part 430 subpart B appendix A and is capable of maintaining compartment temperatures above 32 °F (0 °C) and below 39 °F (3.9 °C) as determined according to 10 CFR 429.61(d)(2);
and

(2) At least one other compartment is capable of maintaining compartment temperatures below 8 °F (−13.3 °C) and may be adjusted by the user to a temperature of 0 °F (−17.8 °C) or below as determined according to 10 CFR 429.61(d)(2).

A “cooler-freezer” means a cabinet, used with one or more doors, that has a source of refrigeration that requires single-phase, alternating current electric energy input only, and consists of two or more compartments, including at least one cooler compartment as defined in 10 CFR part 430 subpart B appendix A, where the remaining compartment(s) are capable of maintaining compartment temperatures at 0 °F (−17.8 °C) or below as determined according to the provisions in 10 CFR 429.61(d)(2).

See generally 10 CFR 430.2.

II. *Discussion of Proposed Amendments*

A. *“Coldest Temperature” Requirement*

The July 2016 final rule established provisions in 10 CFR 429.14 (for refrigerators, refrigerator-freezers, and freezers) and 10 CFR 429.61 (for MREFs) to provide instructions regarding product category determinations, intended to be consistent with the definitions established in 10 CFR 430.2. 81 FR 46768, 46790.

In particular, section 429.61(d)(2) specifies for MREFs that compartment temperatures used to determine product category shall be the mean of the measured compartment temperatures at the “coldest setting” for each tested unit of the basic model according to the provisions of appendix A. This reference to the coldest setting is necessary to determine whether a

compartment is a cooler because the definition of cooler — by referencing the capability of maintaining compartment temperatures *no lower than 39 °F (3.9 °C)* [emphasis added]— necessarily requires evaluating the coldest setting available for the subject compartment (*i.e.*, testing the coldest setting is necessary to determine the lowest temperature that the compartment is capable of achieving). *See* 10 CFR 430.2. Accordingly, the measurement of the compartment temperature for the purpose of defining a compartment as a “cooler compartment” is conducted at “the coldest setting.”

In the July 2016 final rule, DOE inadvertently applied the “coldest setting” wording in 10 CFR 429.14 and 10 CFR 429.61 to other types of consumer refrigeration products for which the “coldest setting” is not the appropriate setting for determining product classification; specifically, for consumer refrigerators, refrigerator-freezers, freezers, and for compartments in miscellaneous refrigeration products other than cooler compartments. As illustrated in the paragraphs that follow, determining product classification for these types of consumer refrigeration products is based on the capability of a product to operate within an applicable temperature range and is not specific to the lowest capable operating temperature (*i.e.* not specific to the “coldest setting”).

By way of example, in considering the refrigerator definition, determining whether a compartment is a fresh food (*i.e.*, refrigerator) compartment is not specific to the lowest capable operating temperature. Rather, to be defined as a refrigerator, a product must be capable of maintaining a compartment temperature within a specified range, which may not correspond to the coldest setting available on the product. In particular, a refrigerator is defined, in part, as being capable of maintaining a compartment temperature above 32 °F (0 °C) and below 39 °F

(3.9 °C). 10 CFR 430.2. If the coldest setting on a refrigerator were to result in a compartment temperature less than 32 °F (0 °C) (for example, 31 °F), testing the product at the coldest setting would yield a temperature outside the specified range (in this example, 31 °F) and therefore would not provide an indication of the product's capability to maintain a compartment temperature above 32 °F (0 °C) and below 39 °F (3.9 °C). For such a product, determining product category based on the coldest setting alone (as currently suggested by 10 CFR 429.14(d)(2)) would inadvertently exclude the product from the refrigerator definition. In contrast, evaluating the temperature range of the product as tested using appendix A would appropriately identify that the product is capable of maintaining a compartment temperature above 32 °F (0 °C) and below 39 °F (3.9 °C), thus meeting the definition of refrigerator. DOE's proposal seeks to remedy this current inconsistency.

The issue is further illustrated by the definitions for cooler-refrigerator and cooler-freezer, which are based on the full range of temperatures at which the non-cooler compartment(s) is capable of operating without specifying a maximum or minimum operating capability. As such, the instruction to measure the non-cooler compartment temperature at the coldest setting to determine that compartment's classification, as instructed under 10 CFR 429.61(d)(2), is also inconsistent with the definitions of cooler-refrigerator and cooler-freezer.

Finally, DOE notes that the rulemaking leading to the July 2016 final rule emphasized that DOE did not intend to redefine the scope of coverage for refrigerators, refrigerator-freezers, or freezers, or to amend those definitions in a manner that would affect how a covered product at the time would be classified. 81 FR 46768, 46777 (*See also* 81 FR 11454, 11459–11460).

For these reasons, DOE has tentatively determined that the coldest setting instruction as currently included in 10 CFR 429.14(d)(2) and 10 CFR 429.61(d)(2) is inconsistent with the definitions established in the July 2016 final rule and is proposing amendments to correct this inconsistency. To address this issue, DOE is proposing that the instructions for determining compartment classification would differentiate cooler compartments from compartments other than cooler compartments. For cooler compartments, DOE proposes no change to the current requirements specified at 10 CFR 429.61(d)(2), since the coldest setting is the appropriate setting with which to evaluate a cooler compartment. For compartments other than cooler compartments, DOE is proposing to amend 10 CFR 429.14(d)(2) and 10 CFR 429.61(d)(2) to remove the reference to operation at the coldest setting. For such compartments, the compartment temperature settings used to determine product category would be used to evaluate the full range of temperatures that the product can maintain within the compartment, thus allowing for accurate application of the definitions for these products.

This document identifies and proposes amendments to 10 CFR part 429 addressing the inconsistencies introduced in the July 2016 final rule. The proposed corrections in this document do not otherwise affect the substance of the rulemaking or any conclusions reached in support of the July 2016 final rule.

B. Products Meeting Multiple Product Category Definitions

In a test procedure final rule published on April 21, 2014 (“April 2014 final rule”), DOE acknowledged that a product may be capable of operating at the temperatures specified in both

the refrigerator definition and the freezer definition (*i.e.*, a “convertible” product) and that such a product would be required to certify as both a refrigerator and a freezer if the product meets the applicable definition(s). 79 FR 22320, 22343. This would not be the result if the temperature were measured only at the coldest setting for determining classification of a compartment. The proposed amendments to 10 CFR 429.14 and 10 CFR 429.61 discussed in section II.A of this document would clarify the certification process for convertible products as multiple product types, as intended in the April 2014 final rule. To further clarify the appropriate certification of such products, DOE is proposing to further amend 10 CFR 429.14 and 10 CFR 429.61 to explicitly specify that if a product is capable of operating with compartment temperatures as specified in multiple product category definitions, the model must be tested and certified to each applicable product category. For example, a single-compartment product capable of maintaining compartment temperatures of -2 °F and 36 °F would meet both the refrigerator (above 32 °F and below 39 °F) and freezer (0 °F or below) definitions and would be certified to each corresponding applicable product class.

DOE is seeking comment on these proposed amendments to 10 CFR part 429, particularly as to whether these proposals will sufficiently address the issues identified in this document.

III. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866 and 13563

Executive Order (“E.O.”) 12866, “Regulatory Planning and Review,” as supplemented and reaffirmed by E.O. 13563, “Improving Regulation and Regulatory Review, 76 FR 3821 (Jan.

21, 2011), requires agencies, to the extent permitted by law, to (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public. DOE emphasizes as well that E.O. 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, the Office of Information and Regulatory Affairs (“OIRA”) in the Office of Management and Budget (“OMB”) has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in the preamble, this proposed regulatory action is consistent with these principles.

Section 6(a) of E.O. 12866 also requires agencies to submit “significant regulatory actions” to OIRA for review. OIRA has determined that this proposed regulatory action does not constitute a “significant regulatory action” under section 3(f) of E.O. 12866. Accordingly, this action was not submitted to OIRA for review under E.O. 12866.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (“IRFA”) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, “Proper Consideration of Small Entities in Agency Rulemaking,” 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel’s website: www.energy.gov/gc/office-general-counsel.

This NOPR identifies and proposes amendments to address inconsistencies introduced in the July 2016 final rule. The proposed corrections in this NOPR do not otherwise affect the scope or substance of the current test procedures for consumer refrigeration products.

Therefore, DOE initially concludes that the impacts of the amendments proposed in this NOPR would not have a “significant economic impact on a substantial number of small entities,” and that the preparation of an IRFA is not warranted. DOE will transmit the certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act of 1995

Manufacturers of consumer refrigeration products must certify to DOE that their products comply with any applicable energy conservation standards. To certify compliance,

manufacturers must first obtain test data for their products according to the DOE test procedures, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including consumer refrigeration products. (*See generally* 10 CFR part 429.) The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (“PRA”). This requirement has been approved by OMB under OMB control number 1910-1400. Public reporting burden for the certification is estimated to average 35 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

DOE is not proposing to amend the certification or reporting requirements for consumer refrigeration products.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act of 1969

In this NOPR, DOE proposes amendments to certification-related provisions for certain consumer refrigeration products. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021.

Specifically, DOE has determined that adopting certification requirements for consumer products and industrial equipment is consistent with activities identified in 10 CFR part 1021, appendix A to subpart D, A5 and A6. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, “Federalism,” 64 FR 43255 (Aug. 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this proposed rule and has determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this proposed rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, “Civil Justice Reform,” 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity, (2) write regulations to minimize litigation, (3) provide a clear legal standard for affected conduct rather than a general standard, and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation (1) clearly specifies the preemptive effect, if any, (2) clearly specifies any effect on existing Federal law or regulation, (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction, (4) specifies the retroactive effect, if any, (5) adequately defines key terms, and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the proposed rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (“UMRA”) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Pub. L. 104-4, sec. 201 (codified at 2 U.S.C. 1531). For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one

year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed “significant intergovernmental mandate,” and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820; also available at www.energy.gov/gc/office-general-counsel. DOE examined this proposed rule according to UMRA and its statement of policy and determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure of \$100 million or more in any year, so these requirements do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105-277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This proposed rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, “Governmental Actions and Interference with Constitutionally Protected Property Rights” 53 FR 8859 (March 18, 1988), that

this proposed regulation would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). Pursuant to OMB Memorandum M-19-15, Improving Implementation of the Information Quality Act (April 24, 2019), DOE published updated guidelines which are available at

www.energy.gov/sites/prod/files/2019/12/f70/DOE%20Final%20Updated%20IQA%20Guidelines%20Dec%202019.pdf. DOE has reviewed this proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB, a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy

action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

The proposed regulatory action to amend the certification provisions for certain consumer refrigeration products is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

IV. Public Participation

DOE will accept comments, data, and information regarding this proposed rule no later than the date provided in the **DATES** section at the beginning of this proposed rule. Interested parties may submit comments using any of the methods described in the **ADDRESSES** section at the beginning of this document.

Submitting comments via www.regulations.gov. The *www.regulations.gov* web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment

due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (“CBI”)). Comments submitted through *www.regulations.gov* cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery/courier, or postal mail. Comments and documents submitted via email, hand delivery/courier, or postal mail also will be posted to

www.regulations.gov. If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information on a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via postal mail or hand delivery/courier, please provide all items on a CD, if feasible, in which case it is not necessary to submit printed copies. No faxes will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, written in English and free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure

should submit via email two well-marked copies: one copy of the document marked confidential including all the information believed to be confidential, and one copy of the document marked non-confidential with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notice of proposed rulemaking and request for comment.

List of Subjects in 10 CFR Part 429

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Reporting and recordkeeping requirements.

Signing Authority

This document of the Department of Energy was signed on June 7, 2022, by Kelly J. Speakes-Backman, Principal Deputy Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the *Federal Register*.

Signed in Washington, DC, on June 7, 2022.

 Kelly Speakes-Backman Digitally signed by Kelly Speakes-Backman
Date: 2022.06.07 20:51:16 +02'00'

Kelly J. Speakes-Backman
Principal Deputy Assistant Secretary for
Energy Efficiency and Renewable Energy

For the reasons stated in the preamble, DOE is proposing to amend part 429 of chapter II, subchapter D, of title 10 of the Code of Federal Regulations as set forth below:

**PART 429 – CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR
CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT**

1. The authority citation for part 429 continues to read as follows:

Authority: 42 U.S.C. 6291-6317; 28 U.S.C. 2461 note.

2. Section 429.14 is amended by revising paragraph (d)(2) to read as follows:

§429.14 Consumer refrigerators, refrigerator-freezers and freezers.

* * * * *

(d) * * *

(2) Compartment temperatures used to determine product category shall be the mean of the measured compartment temperatures for each tested unit of the basic model according to the provisions of appendix A of subpart B of part 430 of this chapter for refrigerators and refrigerator-freezers and of appendix B of subpart B of part 430 of this chapter for freezers. If a product is capable of operating with compartment temperatures as specified in multiple product category definitions in §430.2 of this chapter, the model must be tested and certified to each applicable product category.

3. Section 429.61 is amended by revising paragraph (d)(2) to read as follows:

§429.61 Consumer miscellaneous refrigeration products.

* * * * *

(d) * * *

(2) For compartments other than cooler compartments, compartment temperatures used to determine product category shall be the mean of the measured compartment temperatures for each tested unit of the basic model according to the provisions of appendix A to subpart B of part 430 of this chapter. For cooler compartments, compartment temperatures used to determine product category shall be the mean of the measured compartment temperatures at the coldest setting for each tested unit of the basic model according to the provisions of appendix A to subpart B of part 430 of this chapter. For cooler compartments with temperatures below 39 °F (3.9 °C) but no lower than 37 °F (2.8 °C) at the coldest setting, the compartment temperatures used to determine product category shall also include the mean of the measured compartment temperatures at the warmest setting for each tested unit of the basic model according to the provisions of appendix A to subpart B of part 430 of this chapter. If a product is capable of operating with compartment temperatures as specified in multiple product category definitions in §430.2 of this chapter, the model must be tested and certified to each applicable product category.