

**Register** on August 20, 2021 (86 FR 46888) for a 60-day public comment period. The public comment period closed on October 19, 2021. Subsequent to the public comment period for DG–1380, the NRC staff completed its review of Code Cases N–872 and N–898, related to the use of Nickel-Based Alloy 617. On March 1, 2022, the NRC staff issued a supplemental **Federal Register** notice (87 FR 11490) to DG–1380 requesting public comment on the staff’s proposed endorsement of Code Cases N–872 and N–898. Public comments on DG–1380 and the staff responses to the public comments are available in ADAMS (see the “Availability of Documents” table in section IV).

As noted in the **Federal Register** on December 9, 2022 (87 FR 75671), this

document is being published in the “Rules” section of the **Federal Register** to comply with publication requirements under 1 CFR chapter I.

**III. Congressional Review Act**

This RG is a rule as defined in the Congressional Review Act (5 U.S.C. 801–808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

**IV. Backfitting, Forward Fitting, and Issue Finality**

RG 1.87, Revision 2, does not constitute backfitting as defined in section 50.109 of title 10 of the *Code of Federal Regulations* (10 CFR), “Backfitting,” and as described in NRC Management Directive (MD) 8.4,

“Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests”; constitute forward fitting as that term is defined and described in MD 8.4; or affect the issue finality of any approval issued under 10 CFR part 52, “Licenses, Certificates, and Approvals for Nuclear Power Plants.”

The guidance does not apply to any current licensees or applicants or existing or requested approvals under 10 CFR part 52, and therefore, its issuance cannot be a backfit or forward fit or affect issue finality. Further, as explained in RG 1.87, Revision 2, applicants and licensees are not required to comply with the positions set forth in RG 1.87, Revision 2.

**V. Availability of Documents**

Document	ADAMS accession No.
RG 1.87, Revision 2, “Acceptability of ASME Code, Section III, Division 5, ‘High Temperature Reactors,’” dated January 2023.	ML22101A263.
Regulatory Analysis for RG 1.87, Revision 2 ..... DG–1380 (Proposed Revision 2 to RG 1.87), “Acceptability of ASME Code, Section III, Division 5, ‘High Temperature Reactors,’” dated August 2021.	ML21091A277. ML21091A276.
NUREG–2245, “Technical Review of the 2017 Edition of ASME Section III, Division 5, ‘High Temperature Reactors,’” dated January 2023.	ML23030B636.
TLR–RES/DE/REB–2022–01, “Review of Code Cases Permitting Use of Nickel-Based Alloy 617 in Conjunction with ASME Section III, Division 5,” dated January 31, 2022.	ML22031A137.
Response to Public Comments on DG–1380, dated January 2023 .....	ML22101A267.
MD 8.4, “Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests,” dated September 20, 2019.	ML18093B087.

**VI. Submitting Suggestions for Improvement of Regulatory Guides**

A member of the public may, at any time, submit suggestions to the NRC for improvement of existing RGs or for the development of new RGs. Suggestions can be submitted on the NRC’s public website at <https://www.nrc.gov/reading-rm/doc-collections/reg-guides/contactus.html>. Suggestions will be considered in future updates and enhancements to the “Regulatory Guide” series.

Dated: February 1, 2023.

For the Nuclear Regulatory Commission.

**Meraj Rahimi,**

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**DEPARTMENT OF ENERGY**

**10 CFR Part 429**

[EERE–2022–BT–CRT–0021]

RIN 1904–AF42

**Energy Conservation Program: Consumer Refrigeration and Miscellaneous Refrigeration Products**

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

**ACTION:** Final rule.

**SUMMARY:** On July 18, 2016, the U.S. Department of Energy (DOE) 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 certification requirements 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 final rule corrects certain inconsistencies between the instructions

for determining product categories and the corresponding product definitions to avoid confusion regarding the application of those definitions.

**DATES:** The effective date of this rule is March 9, 2023.

**ADDRESSES:** The docket, which includes **Federal Register** notices, comments, and other supporting documents/materials, is available for review at [www.regulations.gov](http://www.regulations.gov). All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. However, not all documents listed in the index may be publicly available, such as those containing information that is exempt from public disclosure.

A link to the docket web page can be found at [www.regulations.gov/docket/EERE-2022-BT-CRT-0021](http://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.

For further information on how to review the docket contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: [ApplianceStandardsQuestions@ee.doe.gov](mailto:ApplianceStandardsQuestions@ee.doe.gov).

**FOR FURTHER INFORMATION CONTACT:**

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**I. Authority**

The Energy Policy and Conservation Act, as amended (“EPCA”),<sup>1</sup> authorizes 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 B<sup>2</sup> 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,

<sup>1</sup> All references to EPCA in this document refer to the statute as amended through the Energy Act of 2020, Public Law 116–260 (Dec. 27, 2020), which reflect the last statutory amendments that impact Parts A and A–1 of EPCA.

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

refrigerator-freezers, and freezers). These products are the focus of this final rule, and collectively comprise what DOE refers to as “consumer refrigeration products” in this document.

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)) EPCA originally included refrigerators, refrigerator-freezers, and freezers as covered products at 42 U.S.C. 6292(a)(1) and prescribed initial energy conservation standards for them at 42 U.S.C. 6295(b), which DOE has since amended through rulemakings. To address additional types of consumer refrigeration products, DOE added MREFs as covered products through a final coverage determination published in the **Federal Register** on July 18, 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 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 any relevant standards promulgated under EPCA. (42 U.S.C. 6295(s))

This final rule 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. Background**

In the July 2016 Final Rule DOE amended the test procedure for refrigerators and refrigerator-freezers and established both coverage and procedures for testing miscellaneous refrigeration products (“MREFs”). 81 FR 46768. The July 2016 Final Rule also established provisions within DOE’s certification requirements 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.

On June 13, 2022, DOE published a notice of proposed rulemaking (“NOPR”) applicable to consumer refrigeration products, proposing corrections to certain inconsistencies between the instructions for determining product categories and the corresponding product definitions to avoid confusion regarding the application of those definitions (“June 2022 NOPR”). 87 FR 35678. DOE requested comment from interested parties on the proposal.

DOE received one comment in response to the June 2022 NOPR from the Association of Home Appliance Manufacturers (“AHAM”). A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.<sup>3</sup>

**III. Scope and Definitions**

DOE’s regulations generally categorize consumer refrigeration products into different product categories based on operating temperatures, among other criteria. In the June 2022 NOPR, DOE described the various consumer refrigeration products and their definitions. 87 FR 35678, 35679. The various consumer refrigeration product categories are refrigerator, freezer, refrigerator-freezer, cooler, cooler-refrigerator, cooler-freezer, and cooler-refrigerator-freezer. The latter three of the product categories are considered combination cooler refrigeration products. The term “miscellaneous refrigeration product” or MREF is defined to mean a consumer refrigeration product other than a

<sup>3</sup> The parenthetical reference provides a reference for information located in the docket of DOE’s rulemaking to develop certifications for consumer refrigeration products. (Docket No. EERE-2022–BT–CRT–0021, which is maintained at [www.regulations.gov](http://www.regulations.gov)). The references are arranged as follows: (commenter name, comment docket ID number, page of that document).

refrigerator, refrigerator-freezer, or freezer, which includes coolers and combination cooler refrigeration products. *See generally* 10 CFR 430.2.

The amendments in this final rule do not alter any of the definitions associated with the various consumer refrigeration products. Rather, as discussed below, this final rule seeks to narrowly clarify and correct inconsistencies in certain product category determination specifications within the certification provisions.

#### IV. Discussion of 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, § 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 MREF products other than cooler compartments. In the June 2022 NOPR, DOE provided examples illustrating how 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”). 87 FR 35678, 35680. DOE further noted 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).

In the June 2022 NOPR, DOE tentatively determined that the coldest setting instructions as currently included in 10 CFR 429.14(d)(2) and 10 CFR 429.61(d)(2) are inconsistent with the definitions established in the July 2016 Final Rule and therefore proposed to correct this inconsistency. 87 FR 35678, 35680. To address the issue, DOE proposed that the instructions for determining compartment classification would differentiate cooler compartments from other compartments. *Id.* For cooler compartments, DOE proposed 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. *Id.* For compartments other than cooler compartments, DOE proposed 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, and to instead specify that the compartment temperature settings used to determine product category would also 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. *Id.*

AHAM agreed with DOE that the inclusion of the “coldest setting” instruction for compartments other than cooler compartments is an error and agreed that a correction is necessary. AHAM expressed general support for DOE’s proposal, but suggested that the proposed wording changes for 10 CFR 429.14(d)(2) and 10 CFR 429.61(d)(2) did not completely resolve the issue. Specifically, AHAM suggested that while it was DOE’s intent that a technician use the mean of the measured temperature locations in the compartment during testing, the proposed language makes no mention of how to take those measurements and determine a product category. AHAM noted that for refrigerator and freezer compartments, for example, the unit must be able to achieve temperatures between a certain range when tested. AHAM asserted that a technician at a

test laboratory reading the proposed change to 10 CFR 429.14(d)(2) could interpret the text to refer to the compartment temperature at the mean setting, rather than the mean of the measured temperature locations in the compartment, as intended by DOE’s proposed language. (AHAM, No. 2 at p. 2–3)

AHAM proposed alternate language for 10 CFR 429.14(d)(2) specifying that compartment temperature used to determine product category is per the definition in 10 CFR 430.2, and shall be the mean of the measured compartment temperatures for each tested unit of the basic model when measured according to section 5.1 of appendix A of subpart B of part 430 for refrigerators and refrigerator-freezers, and section 5.1 of appendix B of subpart B of part 430 for freezers. Similarly, AHAM proposed language for 10 CFR 429.61(d)(2), specifying that compartment temperature used to determine product category is per the definition in 10 CFR 430.2, and shall be the mean of the measured compartment temperatures at the coldest setting for each tested unit of the basic model when measured according to section 5.1 of appendix A to subpart B of part 430. AHAM’s proposed language would also specify that for cooler compartments with temperatures below 39 °F (3.9 °C) but no lower than 37 °F (2.8 °C), the compartment temperatures used to determine product category, per the definitions in 10 CFR 430.2, shall also include the mean of the measured compartment temperatures at the warmest setting for each tested unit of the basic model when measured according to section 5.1 of appendix A to subpart B of part 430. (AHAM, No. 2 at p. 3)

AHAM stated that its proposed language reflects DOE’s intent to correct inconsistencies between the instructions for determining product categories and the corresponding product definitions, while also providing additional specificity to avoid confusion in testing situations. AHAM further stated that the proposed edits would establish a direct connection between 10 CFR 429.14(d)(2), 10 CFR 429.61(d)(2), and their respective testing provisions of appendices A and B of subpart B of part 430, and the relevant product category definitions in 10 CFR 430.2. (*Id.*)

DOE has determined that the edits suggested by AHAM would provide greater specificity in indicating what settings would be required when making measurements to determine product category, and what procedures would be used when making the measurements. To provide even further

specificity, DOE has determined that the instructions should additionally refer to the specific test conditions of appendix A and/or appendix B, as applicable. Hence, DOE is amending the instructions at 10 CFR 429.14(d)(2) and 10 CFR 429.61(d)(2) to explicitly state that product category determination shall be based on testing under the conditions specified in appendix A and/or appendix B, as applicable, in addition to the language suggested by AHAM. DOE notes that the introductory text in 10 CFR 429.14(d) and 429.61(d) references 10 CFR 430.2 regarding product category definitions, and therefore DOE is not additionally referencing 10 CFR 430.2 within the amended text of 10 CFR 429.14(d)(2) and 429.61(d)(2) as recommended by AHAM.

Furthermore, DOE notes that AHAM's proposed edits to 10 CFR 429.14(d)(2) suggest that the only temperatures needed for determination of product category are the temperatures that would be measured during energy testing of the product. However, in some cases, determining product classification may require determining the full range of a compartment's potential temperatures. For example, measuring the full range of temperatures may be required to determine whether a fresh food or freezer compartment is convertible.<sup>4</sup> DOE also notes that combination cooler refrigeration products are also covered under 10 CFR 429.61(d)(2). Thus, language applicable to fresh food and freezer compartments must also be included in that section. Hence, DOE is also amending 10 CFR 429.14(d)(2) and 10 CFR 429.61(d)(2) to emphasize that determination of compartment status may require determining the full range of compartment temperature.

Finally, in cases where multiple units of a model are evaluated, DOE recognizes that for different units of the same model, a compartment within a given model may have a slightly different temperature range than for the other units. In such cases, DOE expects that the mean of the maximum or minimum temperatures of the compartment across the units in the sample would be considered when determining compartment status. DOE is adopting clarifying amendments in 10 CFR 429.14(d)(2) and 10 CFR 429.61(d)(2) specifying that if the temperature ranges for the same compartment of multiple units of a

sample are different, the maximum and minimum compartment temperatures for compartment status determination shall be based on the mean measurements for the units in the sample.

#### *B. Products Meeting Multiple Product Category Definitions*

In the June 2022 NOPR, DOE proposed 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 (*i.e.*, a “convertible product”), the model must be tested and certified to each applicable product category. 87 FR 35678, 35680–81.

DOE received no comments on this proposal. For the reasons presented in the June 2022 NOPR, DOE is amending 10 CFR 429.14(d) and 10 CFR 429.61(d) to specify that products that may be classified as both a fresh food compartment and a freezer compartment must be tested and certified to each applicable product category based on the operation of the compartment(s) as both fresh food and freezer compartments.

DOE notes that the definition of a cooler compartment does not accommodate a compartment being classified as convertible between cooler status and fresh food status—this applies only for compartments that are convertible between fresh food and freezer status.

#### *C. Compartment Volume Determination*

In this final rule, DOE is adopting editorial and clarifying amendments to the compartment volume determination instructions in 10 CFR 429.14(d)(1) and 10 CFR 429.61(d)(1) to update and clarify the instructions, specifically as they relate to products with multiple compartments. In adopting these amendments, DOE is not modifying the existing approach, but rather including clarifications to ensure the compartment volume determination is properly performed for all product configurations.

### **V. Procedural Issues and Regulatory Review**

#### *A. Review Under Executive Order 12866*

This final rule is not a “significant regulatory action” under any of the criteria set out in section 3(f) of Executive Order 12866, “Regulatory Planning and Review.” 58 FR 51735 (October 4, 1993). Accordingly, this action was not subject to review by the Office of Information and Regulatory

Affairs (OIRA) in the Office of Management and Budget (OMB).

#### *B. Review Under the Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of a final regulatory flexibility analysis (“FRFA”) for any final rule where the agency was first required by law to publish a proposed rule 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](http://www.energy.gov/gc/office-general-counsel). DOE reviewed this final rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003.

This final rule makes amendments to address inconsistencies introduced in the July 2016 Final Rule. The corrections do not otherwise affect the scope or substance of the current test procedures for consumer refrigeration products.

Therefore, DOE concludes that the impacts of the amendments in this final rule do not have a “significant economic impact on a substantial number of small entities,” and that the preparation of a FRFA 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

<sup>4</sup> DOE notes that the need to measure the full range of temperatures is already incorporated into AHAM's suggested language for cooler compartments with temperatures below 39 °F (3.9 °C) but no lower than 37 °F (2.8 °C).

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 amending the certification or reporting requirements for consumer refrigeration products in this final rule.

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 final rule, DOE establishes 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 final 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 final 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, this final 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. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a regulatory action resulting 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](http://www.energy.gov/gc/office-general-counsel). DOE examined this final 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 final rule will 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 regulation will 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](http://www.energy.gov/sites/prod/files/2019/12/f70/DOE%20Final%20Updated%20IQA%20Guidelines%20Dec%202019.pdf). DOE has reviewed this final 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 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 significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use if the regulation is implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

This regulatory action 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.

#### L. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this rule before its effective date. The report will state that it has been

determined that the rule is not a "major rule" as defined by 5 U.S.C. 804(2).

#### VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final rule.

#### 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 January 30, 2023, by Francisco Alejandro Moreno, Acting Assistant Secretary for Energy Efficiency and Renewable Energy, U.S. Department of 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 January 30, 2023.

**Treana V. Garrett,**

*Federal Register Liaison Officer, U.S. Department of Energy.*

For the reasons stated in the preamble, DOE amends 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) to read as follows:

#### **§ 429.14 Consumer refrigerators, refrigerator-freezers and freezers.**

\* \* \* \* \*

(d) *Product category determination.* Each basic model shall be certified according to the appropriate product

category as defined in § 430.2 of this chapter based on compartment volumes and compartment temperatures. If one or more compartments could be classified as both a fresh food compartment and a freezer compartment, the model must be certified to each applicable product category based on the operation of the compartment(s) as both fresh food and freezer compartments.

(1) Compartment volume used to determine product category shall be, for each compartment, the mean of the volumes of that specific compartment for the sample of tested units of the basic model, measured according to the provisions in section 4.1 of appendix A of subpart B of part 430 of this chapter for refrigerators and refrigerator-freezers and section 4.1 of appendix B of subpart B of part 430 of this chapter for freezers, or, for each compartment, the volume of that specific compartment calculated for the basic model in accordance with § 429.72(c).

(2) Determination of the compartment temperature ranges shall be based on operation under the conditions specified and using measurement of compartment temperature as specified in appendix A of subpart B of part 430 of this chapter for refrigerators and refrigerator-freezers and appendix B of subpart B of part 430 of this chapter for freezers. The determination of compartment status may require evaluation of a model at the extremes of the range of user-selectable temperature control settings. If the temperature ranges for the same compartment of multiple units of a sample are different, the maximum and minimum compartment temperatures for compartment status determination shall be based on the mean measurements for the units in the sample.

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

#### **§ 429.61 Consumer miscellaneous refrigeration products.**

\* \* \* \* \*

(d) *Product category determination.* Each basic model of miscellaneous refrigeration product must be certified according to the appropriate product category as defined in § 430.2 of this chapter based on compartment volumes and compartment temperatures. If one or more compartments could be classified as both a fresh food compartment and a freezer compartment, the model must be certified to each applicable product category based on the operation of the compartment(s) as both fresh food and freezer compartments.

(1) Compartment volume used to determine product category shall be, for each compartment, the mean of the volumes of that specific compartment for the sample of tested units of the basic model, measured according to the provisions in section 4.1 of appendix A of subpart B of part 430 of this chapter, or, for each compartment, the volume of that specific compartment calculated for the basic model in accordance with § 429.72(d).

(2) For compartments other than cooler compartments, determination of the compartment temperature ranges shall be based on operation of the product under the conditions specified in appendix A to subpart B of part 430 of this chapter for miscellaneous refrigeration products. The determination of compartment status may require evaluation of a model at the extremes of the range of user-selectable temperature control settings. If the temperature ranges for the same compartment of multiple units of a sample are different, the maximum and minimum compartment temperatures for compartment status determination shall be based on the mean measurements for the units in the sample.

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## DEPARTMENT OF ENERGY

### 10 CFR Part 430

[EERE-2021-BT-TP-0023]

RIN 1904-AF18

#### Energy Conservation Program: Test Procedure for Cooking Products; Correction

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

**ACTION:** Correcting amendments.

**SUMMARY:** On August 22, 2022, the U.S. Department of Energy (“DOE”) published a final rule adopting test procedures for a category of cooking products, *i.e.*, conventional cooking tops. This document corrects errors and omissions in that final rule. Neither the errors and omissions nor the corrections affect the substance of the rulemaking or any conclusions reached in support of the final rule.

**DATES:** Effective February 7, 2023.

#### FOR FURTHER INFORMATION CONTACT:

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#### SUPPLEMENTARY INFORMATION:

##### I. Background

On August 22, 2022, DOE published a final rule (“August 2022 Final Rule”) establishing a test procedure for cooking tops at title 10 of the Code of Federal Regulations (“CFR”) part 430, subpart B, appendix I1 (“appendix I1”). 87 FR 51492. Since publication of the August 2022 Final Rule, DOE has identified errors and omissions in the regulatory text. DOE is issuing this rule to correct certain technical errors and omissions in the August 2022 Final Rule, specifically in appendix I1 of 10 CFR part 430, and to assist regulated entities with compliance efforts.

In Table 3.1 of the regulatory text of the August 2022 Final Rule, the first column (*i.e.*, Minimum nominal gas burner input rate) was erroneously labeled with a “less than” sign (<), as it was labeled in Table III.2 in the preamble of the August 2022 Final Rule. 87 FR 51514, 51542. This notice corrects the typographical error.

Additionally, DOE discussed that it was finalizing its proposal to normalize the energy use of the minimum-above-threshold cycle to represent an Energy Test Cycle with a final water temperature of exactly 90 degrees Celsius as proposed in the November 4, 2022 Notice of Proposed Rulemaking. 87 FR 51510-51511; See also 86 FR 60974. However, section 4.1.1.2.2 of appendix I1 as codified in the August 2022 Final Rule inadvertently performs this normalization on the gas volume consumption (represented by the symbol “V”) rather than on the gas energy consumption (represented by the symbol “Eg”). Subsequently, the equation for calculating per-cycle active mode gas energy consumption in section 4.1.1.2.4 of appendix I1 as codified by the August 2022 Final Rule uses the normalized gas volume consumption calculated in section 4.1.1.2.2 (multiplied by the gas correction factor “CF” and the heating value of the gas “H” to determine gas energy consumption). In this notice, DOE is correcting section 4.1.1.2.2 of appendix I1 to calculate the normalized

gas energy consumption rather than gas volume consumption; accordingly, DOE is also correcting section 4.1.1.2.4 to use the normalized gas energy consumption value calculated in section 4.1.1.2.2.

Finally, as codified by the August 2022 Final Rule, section 3.3.1.1 of appendix I1 specifies recording the higher heating value (“H”) for the natural gas or propane supply. A complete test of a conventional gas cooking top typically includes multiple test cycles on each cooking zone (*e.g.*, the minimum-above-threshold cycle and maximum-below-threshold cycle), and the higher heating value may differ for each test cycle. The higher heating value is used in the equation in section 4.1.1.2.2 as corrected by this final rule. DOE has determined that the current instruction in section 3.3.1.1 may not provide sufficient clarity that the value of H must be recorded for each test cycle for each cooking zone. Therefore, DOE is adding language in section 3.3.1.1 of appendix I1 to specify recording the higher heating value of the gas “for each test.”

##### II. Need for Correction

As published, the regulatory text in August 2022 Final Rule may lead to inaccurately calculated test results due to omitted language and the use of incorrect symbols and formulas. Because this final rule would simply correct errors and omissions in the text without making substantive changes in the August 2022 Final Rule, the changes addressed in this document are technical in nature.

##### III. Procedural Issues and Regulatory Review

DOE has concluded that the determinations made pursuant to the various procedural requirements applicable to the August 2022 Final Rule remain unchanged for these final rule technical corrections. These determinations are set forth in the August 2022 Final Rule. 87 FR 51492, 51533-51537.

Pursuant to the Administrative Procedure Act, 5 U.S.C. 553(b), DOE finds that there is good cause to not issue a separate notice to solicit public comment on those technical corrections contained in this document. Issuing a separate notice to solicit public comment would be impracticable, unnecessary, and contrary to the public interest. As explained previously, the corrections in this document do not affect the substance of or any of the conclusions reached in support of the August 2022 Final Rule. Additionally, given the August 2022 Final Rule is a product of an extensive administrative