Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

[Docket No. EE–RM–93–801]

RIN 1904–AB03

Energy Conservation Program for Consumer Products: Amendment to the Definition of ''Electric Refrigerator''

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE).

ACTION: Notice of proposed rulemaking and opportunity for public comment.

SUMMARY: The Department of Energy (DOE or Department) is proposing to amend the definition of Electric refrigerator in its energy conservation program regulations to include a maximum temperature of the fresh food storage compartment, and to exclude certain appliances whose physical configuration makes them unsuitable for general storage of perishable foods.

DATES: DOE will consider all written comments received by August 12, 1999.

ADDRESSES: Mail comments concerning this proposed rule to Michael G. Raymond, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mail Station EE–43, 1000 Independence Avenue, SW, Washington, DC 20585–0121.

FOR FURTHER INFORMATION CONTACT: Michael G. Raymond, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mail Station EE–43, 1000 Independence Avenue, SW, Washington, DC 20585–0121, (202) 586–9611 or electronically at michael.raymond@ee.doe.gov.; Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Forrestal Building, Mail Station GC–72, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–9526.

SUPPLEMENTARY INFORMATION:

I. Background and Introduction

The Department has received requests from several manufacturers of wine coolers, including Danby Products, Ltd. and the Witt Company, requesting exemptions from the refrigerator energy efficiency standards for their wine coolers. These products are configured with special storage racks for wine bottles and do not attain as low a storage temperature as a standard refrigerator. These characteristics make them unsuitable for general long-term storage of perishable foods. Wine coolers also have glass front doors which makes them less energy efficient than standard refrigerators. The Department proposes to amend the definition of ''electric refrigerator'' at 10 CFR 430.2 to exclude such appliances from coverage. Sales of these products are small and excluding them from coverage would not have any significant impacts.

DOE proposes to exclude wine coolers by including an upper temperature limit in the definition of electric refrigerator. The refrigerator definition contains the phrase ''designed for the refrigerated storage of food at temperatures above 32 °F.'' Clearly, any temperature above 32 °F would not be suitable for the refrigerated storage of food. What is lacking in the definition is a temperature range suitable for food storage for a reasonable length of time. The ''American National Standard—Household Refrigerators/Household Freezers,'' ANSI/AHAM HRF–1–1988, Section 7.6.5.1, ''Recommended Level of Performance'' states: ''It is recommended that in the fresh food compartment of household refrigerators, an average temperature within the range of 34 °F and 41 °F be attainable between the coldest and warmest settings of the controls * * *.'' Also, from the same paragraph, ''Refrigerator-freezer design and development engineers believe 41 °F to be a very practical but not absolute upper limit.''

Accordingly, the Department proposes to change the definition of a refrigerator to include the 41 °F upper limit, and to exclude refrigerators containing special storage racks only. By the proposed definition, appliances which, at the coldest setting of the controls, could not attain a fresh food compartment temperature below 41 °F, and contain only special-purpose storage racks, would not be considered a refrigerator, and therefore, not a covered product.

II. Opportunity for Public Comment

A. Participation in Rulemaking

Interested persons are invited to participate in this proposed rulemaking by submitting written data, views, or comments with respect to the subject set forth in this notice. Whenever applicable, full supporting rationale, data, and detailed analyses should also be submitted.

B. Written Comment Procedures

Written comments (10 copies) should be identified on the outside of the envelope, and on the comments themselves, with the designation: ''Refrigerator Definition'' and must be received by the date specified at the beginning of this notice. In the event any person wishing to submit a written comment cannot provide 10 copies, alternative arrangements may be made in advance by calling Michael Raymond at (202) 586–9611.

All comments received on or before the date specified at the beginning of this notice and other relevant information will be considered by DOE before final action is taken on the proposed rule. All comments submitted will be available for examination in the Freedom of Information Reading Room, Forrestal Building, Room 1E–190, 1000 Independence Ave., SW, Washington, DC 20585–0121, telephone (202) 586–3142, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Pursuant to the provisions of 10 CFR 1004.11, any person submitting information or data that is believed to be confidential, and which may be exempt by law from public disclosure, should submit one complete copy, as well as two copies from which the information claimed to be confidential has been deleted. The DOE will make its own determination of any such claim.

C. Public Hearing

In DOE's view, today's proposed rulemaking does not involve any significant issues of law or fact that would warrant holding a public hearing. Moreover, the companies requesting these changes have not requested such a hearing, and the opportunity to file written comments should suffice for other members of the public who want

DOE to consider their views. For these reasons, DOE has not provided for a public hearing in this notice. Nevertheless, if members of the public request the opportunity to make oral comments and can identify issues that would justify scheduling a public hearing, DOE will reconsider its position on holding such a hearing.

III. Regulatory and Procedural Requirements

A. Review Under the National Environmental Policy Act of 1969

The Department has reviewed this rule under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. § 4321 *et seq.*, the regulations of the Council on Environmental Quality, 40 CFR parts 1500–1508, the Department's regulations for compliance with NEPA, 10 CFR Part 1021, and the Secretarial Policy on the National Environmental Policy Act (June 1994). The Department classified this proposed rule as having no environmental effect.

B. Review Under Executive Order 12866, ''Regulatory Planning and Review.''

The Department has reviewed this regulatory action under Executive Order 12866, ''Regulatory Planning and Review,'' October 4, 1993. The Department concluded that this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs. Therefore, the Department will take no further action in today's proposed rule with respect to Executive Order 12866.

C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601, requires the preparation of an initial regulatory flexibility analysis for every rule which, by law, the agency must propose 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. A regulatory flexibility analysis examines the impact of the rule on small entities and considers alternative ways of reducing negative impacts. Today's proposed rule simply redefines the term ''electric refrigerator'' to exclude wine coolers. This change to the definition was requested by small manufacturers of wine coolers for their benefit. No negative impact on any small manufacturer is foreseen.

D. Review Under Executive Order 12612, ''Federalism''

Executive Order 12612, ''Federalism,'' 52 FR 41685 (October 30, 1987), requires that agencies review regulations, rules, legislation, and any other policy actions for any substantial direct effect on States, on the relationship between the National Government and States, or in the distribution of power and responsibilities among various levels of government. If there are substantial effects, then the Executive Order requires preparation of a Federalism assessment to be used in all decisions involved in promulgating and implementing a policy action. The proposed rule published today is a change to the definition of the term ''electric refrigerator'' and would not regulate the States. Accordingly, the Department has determined that preparation of a Federalism assessment is unnecessary.

E. Review Under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights''

The Department has determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 52 FR 8859 (March 18, 1988), that this regulation would not result in any takings which might require compensation under the Fifth Amendment to the United States Constitution.

F. Review Under the Paperwork Reduction Act

Today's notice of proposed rulemaking would have no paperwork impacts.

G. Review Under Executive Order 12988, ''Civil Justice Reform''

With respect to the review of existing regulations and the promulgation of new regulations, Section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by Section 3(a), Section 3(b) of the Executive Order 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) provide 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 the Executive Order requires agencies to review regulations in light of applicable standards Section 3(a) and Section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. The Department reviewed today's proposed rule under the standards of Section 3 of the Executive Order and determined that, to the extent permitted by law, it meets the requirements of those standards.

H. Review Under Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act'') requires that the Department prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. The budgetary impact statement must include: (i) identification of the Federal law under which the rule is promulgated; (ii) a qualitative and quantitative assessment of anticipated costs and benefits of the Federal mandate and an analysis of the extent to which such costs to state, local, and tribal governments may be paid with Federal financial assistance; (iii) if feasible, estimates of the future compliance costs and of any disproportionate budgetary effects the mandate has on particular regions, communities, non-Federal units of government, or sectors of the economy; (iv) if feasible, estimates of the effect on the national economy; and (v) a description of the Department's prior consultation with elected representatives of state, local, and tribal governments and a summary and evaluation of the comments and concerns presented. The Department has determined that the action proposed today does not include a Federal mandate that may result in estimated costs of $100 million or more to state, local or to tribal governments in the aggregate or to the private sector. Therefore, the requirements of Sections 203 and 204 of the Unfunded Mandates Act do not apply to this action.

I. Review Under the Public Law: 105–277 (FY 1999 Appropriations Act)

A provision under the Public Law: 105–277 (FY 1999 Appropriations Act, Page 547 of the Conference Report, H. R.

4328) requires that agencies assess the impact of proposed actions on family well-being before implementing policies and regulation. Agencies must assess such an action with respect to whether—(1) it strengthens or erodes the stability or safety of the family and, particularly, the marital commitment, (2) it strengthens or erodes the authority and rights of parents in the education, nurture, and supervision of their children, (3) it helps the family perform its functions, or substitutes governmental activity for the function, (4) it increases or decreases disposable family income or poverty of families and children, (5) its benefits justify the financial impact on the family, (6) it can be carried out by State or local government or by the family, (7) it establishes an implicit or explicit policy concerning the relationship between the behavior and personal responsibility of youth, and the norms of society. Additionally, agency heads must submit a written certification to the Director of the Office of Management and Budget and to Congress that the policy or regulation has been so assessed and they must provide an adequate rationale for the implementation of each policy or regulation that may negatively affect family well-being.

The Department has determined that the action proposed today, which amends the definition of the term ''electric refrigerator,'' does not have any significant potential negative impact on the family well-being. Therefore, the requirements of the above provisions under Public Law 105–277 do not apply to this action.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Energy conservation, Household appliances.

Issued in Washington, DC, on June 7, 1999.

Dan W. Reicher,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, Part 430 of Chapter II of Title 10, Code of Federal Regulations, is proposed to be amended as set forth below.

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

1. The authority citation for Part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

2. Section 430.2 is amended by revising the definition of ''Electric refrigerator'' to read as follows:

§ 430.2 Definitions.

* * * * *

Electric refrigerator means a cabinet designed for the refrigerated storage of food at temperatures above 32 °F and below 41 °F, storage racks configured for general refrigerated food storage, and having a source of refrigeration requiring single phase, alternating current electric energy input only. An electric refrigerator may include a compartment for the freezing and storage of food at temperatures below 32 °F, but does not provide a separate low temperature compartment designed for the freezing and storage of food at temperatures below 8 °F.

* * * * *

[FR Doc. 99–17657 Filed 7–12–99; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 229

[Regulation CC; Docket No. R–1031]

Availability of Funds and Collection of Checks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Advance notice of proposed rulemaking; withdrawal.

SUMMARY: In December 1998, the Board issued an advance notice of proposed rulemaking requesting comment on the potential benefits and drawbacks of a modification to its Regulation CC that would shorten the maximum hold for many nonlocal checks. This modification would shorten the availability schedule for nonlocal checks from five to four business days, except that a depositary bank could retain a five-day availability schedule for subcategories of nonlocal checks for which it certifies that it does not receive a sufficient proportion of returned checks within four business days. This proposal was one of several possible alternatives for defining subcategories of nonlocal checks that would be subject to a shortened availability schedule. The Board has concluded that return times for nonlocal checks do not support a reduced availability schedule for nonlocal checks in the aggregate at this time. The Board has also determined that the costs and potential risks would outweigh the likely benefits of establishing subcategories of nonlocal checks for availability purposes at this time. Therefore, the Board has decided not to propose any specific regulatory changes at this time to reduce the nonlocal check availability schedule.

FOR FURTHER INFORMATION CONTACT: Jack K. Walton II, Manager, Check Payments Section (202/452–2660) or Michele Braun, Project Leader (202/452–2819), Division of Reserve Bank Operations and Payment Systems; Stephanie Martin, Managing Senior Counsel (202–452–3198), Legal Division. For the hearing impaired *only,* contact Diane Jenkins, Telecommunications Device for the Deaf (TDD) (202/452–3544).

SUPPLEMENTARY INFORMATION:

Background

As a result of concerns about some banks' practice of delaying funds availability by placing holds on the proceeds of checks deposited into customers' transaction accounts, Congress passed the Expedited Funds Availability Act (EFAA) in 1987.[1] The EFAA specifies maximum time limits on the holds that banks may place on funds deposited into transaction accounts.

The EFAA funds availability schedules attempt to balance banks' concerns about managing their risk with consumers' concerns about the availability of their funds. Congress recognized that banks would be exposed to risks if they were required to make funds from a check available before they had a reasonable opportunity to learn that the check was returned unpaid. To balance depositors' interest in receiving prompt access to their funds with banks' ability to manage their risks, the EFAA directed the Board to consider improvements to the check processing system that would speed the collection and return of checks.[2] In addition, the EFAA required the Board to reduce the statutory funds availability schedules to as short a time as possible and equal to the period achievable under the improved check clearing system for a depositary bank to reasonably expect to learn of the nonpayment of most items for each category of checks.[3]

The Board's Regulation CC (12 CFR part 229), which implements the EFAA, includes maximum availability schedules for funds deposited into transaction accounts as well as provisions designed to accelerate the check return system. The regulation's availability schedules incorporate several provisions in the EFAA where Congress deemed that, in certain cases, a longer time was necessary to provide a reasonable amount of time for a

[1] 12 U.S.C. 4001–4010. As used in this notice and in Regulation CC, the term *bank* includes commercial banks, savings institutions, and credit unions. *Depositary bank* refers to the bank of first deposit (see 12 CFR 229.2(e) and (o)).

[2] 12 U.S.C. 4008(b) and (c).

[3] 12 U.S.C. 4002(d)(1).