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DEPARTMENT OF ENERGY**10 CFR Part 430****[Docket No. EERE-2009-BT-TP-0003]****RIN 1904-AB92****Energy Efficiency Program for Consumer Products: Test Procedures for Residential Refrigerators, Refrigerator-Freezers, and Freezers****AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.**ACTION:** Interim final rule; reopening of comment period.

SUMMARY: This document announces a limited reopening of the comment period for interested parties seeking to submit comments on the December 16, 2011 interim final rule to amend the test procedures for residential refrigerators, refrigerator-freezers, and freezers that will apply to products that are manufactured starting in 2014. The comment period is extended until October 17, 2011.

DATES: Comments must be submitted no later than October 17, 2011.

ADDRESSES: Any comments submitted must identify the "Interim Final Rule on Test Procedures for Residential Refrigerators, Refrigerator-Freezers, and Freezers" and provide the appropriate docket number EERE-2009-BT-TP-0003 and/or RIN number 1904-AB92. Comments may be submitted using any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *E-mail:* Refrig-2009-TP-0003@ee.doe.gov. Include docket number EERE-BT-TP-0003 and/or RIN number 1904-AB92 in the subject line of the message.

- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mail-stop EE-2J, Interim Final Rule for Test Procedures for Refrigerators and Refrigerator-Freezers, docket number EERE-2009-BT-TP-0003 and/or RIN number 1904-AB92, 1000 Independence Avenue, SW., Washington, DC 20585-0121. Please submit one signed paper original.

- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza, SW., Suite 600, Washington, DC 20024. Telephone: (202) 586-2945. Please submit one signed paper original.

The public may review copies of all materials related to this rulemaking at the U.S. Department of Energy, Resource Room of the Building Technologies Program, 950 L'Enfant Plaza, SW., Suite 600, Washington, DC, (202) 586-2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards at the above telephone number for additional information regarding visiting the Resource Room.

FOR FURTHER INFORMATION CONTACT: Mr. Lucas Adin, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE-2J, 1000 Independence Avenue, SW., Washington, DC 20585-0121. Telephone: (202) 287-1317. E-mail: Lucas.Adin@ee.doe.gov.

Mr. Michael Kido, U.S. Department of Energy, Office of the General Counsel, GC-71, 1000 Independence Avenue, SW., Washington, DC 20585-0121. Telephone: (202) 586-8145. E-mail: Michael.Kido@hq.doe.gov.

For information on how to submit or review public comments, contact Ms. Brenda Edwards, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE-2J, 1000 Independence Avenue, SW., Washington, DC 20585-0121. Telephone: (202) 586-2945. E-mail: Brenda.Edwards@ee.doe.gov.

SUPPLEMENTARY INFORMATION: On December 16, 2010, the U.S. Department of Energy (DOE) published in the **Federal Register** a Final Rule that amended the test procedures for residential refrigerators, refrigerator-freezers, and freezers (collectively, "refrigeration products"). 75 FR 78810. The amended test procedures for residential refrigerators and refrigerator-freezers are found in 10 CFR part 430, subpart B, appendix A1 and the test procedures for residential freezers are found in 10 CFR part 430, subpart B, appendix B1. These revised test procedures, which do not affect measured energy use, became effective on January 18, 2011. Consistent with 42 U.S.C. 6293(c)(2), however, manufacturers do not need to use these procedures for making representations regarding energy usage until June 14, 2011.

Concurrently with this Final Rule, DOE published an Interim Final Rule establishing new amended test procedures for these products, Appendix A and Appendix B, that incorporate the same revisions made to Appendix A1 and Appendix B1. 75 FR 78810. The Interim Final Rule also

included amendments to these procedures that will, once finalized, apply to refrigeration products starting in 2014. It also provided interested parties with an opportunity to submit comments on the Interim Final Rule by February 14, 2011—i.e., an extra 60 days within which to provide comment.

On February 7, 2011, prior to the closing of that comment period, DOE received an emailed request from the Association of Home Appliance Manufacturers (AHAM) requesting that DOE extend the comment period deadline to "30 days after the [refrigeration products] standards final rule is made available to the public." That email noted that AHAM had also consulted with the American Council for an Energy Efficient Economy regarding this request.

The AHAM request explained that the group required additional time to provide comment to the agency. AHAM asserted that:

The Department released the test procedure for refrigerator/freezers as a final rule and interim final rule in order to allow stakeholders to comment on the necessary revisions to the energy conservation standards. DOE's strategy, as discussed with AHAM, assumed that the standards final rule would be released no later than the statutorily mandated deadline of December 31, 2010. But that final rule has not been released. *Thus, stakeholders cannot provide substantive comments and data on whether the equations are accurate or require some revision.* (Emphasis in original.)

DOE notes that once it issues a final rule promulgating the energy conservation standards for a particular product type, the agency is prohibited by statute from altering those standards in any way that would permit either an increase in the maximum energy consumption of that product or a decrease in that product's minimum energy efficiency. See 42 U.S.C. 6295(o)(1). As a result, to the extent that interested parties seek a wholesale revision of the standards that DOE has set, barring the presence of calculation or typographical error, those standards cannot be altered in a manner that would result in refrigeration products that consume more energy—or that are less efficient.

However, to ensure that the test procedure accurately captures as reasonably as possible the energy consumption of those products that are addressed in the Interim Final Rule, DOE is re-opening the comment period for that test procedure proceeding to enable interested parties to comment given that the energy conservation standards rule has been issued. The purpose of this limited re-opening is to

permit interested parties to comment on the interplay between the test procedure and the energy conservation standards in order to permit DOE to make any final changes that may be needed to the final test procedure for products that will be manufactured starting in 2014. Accordingly, consistent with AHAM's request, DOE is re-opening its comment period on the Interim Final Rule for refrigeration products for a period of 30 days.

DOE notes that if it were to amend Appendix A or Appendix B to ensure that the procedure adequately measures the energy consumption of a given product and an accompanying adjustment were required to the energy conservation standard to ensure that the same level of efficiency or energy use would result, it is DOE's view that such a change would not constitute backsliding of the standard under 42 U.S.C. 6295(o)(1). Accordingly, should any adjustments to Appendix A or Appendix B prove necessary, additional information from interested parties explaining the nature and impact of any suggested changes would be of substantial benefit in finalizing the test procedure.

Although DOE seeks comment generally on the Interim Final Rule, it also notes that the Whirlpool Corporation (Whirlpool) recently raised a specific issue on a related matter involving a test procedure waiver request from Samsung Electronics America, Inc. (Samsung). In that request, Samsung sought a waiver from the current test procedure in order to permit it to use the multiple defrost cycle test that DOE presented in its Interim Final Rule. See 76 FR 16760 (March 25, 2011). In response to that request, Whirlpool asked DOE, among other things, not to grant a "permanent waiver" to Samsung without first correcting certain calculation errors in the test procedure, which are described in detail below. See generally, Letter from J.B. Hoyt, Director, Government Relations, Whirlpool Corporation, to Henry Kelly, Acting Assistant Secretary, Office of Energy Efficiency and Renewable Energy (EERE), DOE (April 25, 2011).

DOE notes that during the test procedure's comment period, Whirlpool stated that it agreed with DOE's proposed amendments to the equation that were ultimately adopted in the Interim Final Rule. See Whirlpool Comments on the Refrigeration Products Notice of Proposed Rulemaking (Docket Number EERE-2009-BT-TP-0003, No.

12.1, at p. 6). However, its comments regarding Samsung's waiver request test procedure suggested that revisions to the procedure manufacturers would need to follow under Appendix A for all products with long-time or variable defrost, might be necessary.

In particular, Whirlpool pointed to possible issues involving the accuracy of the second part of the energy test for products with long-time automatic defrost, which is described in section 4.2.1 of Appendix A. This portion of the procedure is intended to capture the energy consumed during all of the events occurring with the defrost control sequence that are outside of stable operation. According to Whirlpool, the test method prescribed in Appendix A, which is the same method Samsung requested to use in its waiver, may inadvertently provide an energy "credit" to some products by including in the measurement an excessive portion of time during which the compressor is not running. The size of this credit, if any, is determined mainly by the characteristics of a product's compressor cycles and may be exaggerated in products with especially long cycles.

DOE observed this phenomenon during product testing conducted for the test procedure rulemaking and raised the issue for comment during the public meeting on the Refrigeration Products Test Procedures Notice of Proposed Rulemaking held June 22, 2010 (Public Meeting Presentation, No. 9 at p. 53). At the meeting, DOE raised the possibility that accurate measurement of the energy consumption associated with the defrost cycle may require revision of the test period—specifically, the use of a different end time. Other than general statements of support for DOE's proposed approach, the agency received no substantive comments on this issue during the NOPR comment period.

In order to address this issue, and to ensure that the procedure accounts for all energy use associated with defrost cycles, including any special cycles related to the defrost cycle such as a pre-cooling cycle before defrost or temperature recovery following defrost, DOE may consider the adoption of alternative approaches to the method currently laid out in Appendix A (and the corresponding portions of Appendix B). Specifically, DOE may consider modifying the test procedure for the second part of the test for products with long-time or variable defrost with cycling compressor systems (Appendix A, section 4.2.1.1) so that it ends at the

termination of the first regular compressor cycle after the temperatures have fully recovered to their stable conditions rather than ending at the initiation of that cycle.

DOE seeks comments on whether any revisions are required to the test period for the second part of the test for such products to properly account for the energy consumption associated with defrost cycles. Based upon the comments received in response to this notice, as well as additional analysis performed by DOE as a result of objections to the Samsung waiver request, DOE will consider whether to adopt one of the alternatives noted above or another appropriate alternative to the current version of the procedure in Appendix A and Appendix B.

Further Information on Submitting Comments

Under 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 two copies: one copy of the document including all the information believed to be confidential, and one copy of the document 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.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include (1) A description of the items, (2) whether and why such items are customarily treated as confidential within the industry, (3) whether the information is generally known by or available from other sources, (4) whether the information has previously been made available to others without obligation concerning its confidentiality, (5) an explanation of the competitive injury to the submitting person which would result from public disclosure, (6) when such information might lose its confidential character due to the passage of time, and (7) why disclosure of the information would be contrary to the public interest.

Issued in Washington, DC, on August 25, 2011.

Timothy Unruh,

Program Manager, Federal Energy Management Program, Energy Efficiency and Renewable Energy.

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