posted without change, including any personal information, to *http://www.regulations.gov.*

Docket: For access to background documents or comments received, go to the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Ms. Rosalyn Murphy-Jenkins, Director, Labeling and Program Delivery Division, Office of Policy and Program Development, FSIS, USDA, (301) 504–0879.

SUPPLEMENTARY INFORMATION: On July 27, 2011, FSIS published the proposed rule ''Common or Usual Name for Raw Meat and Poultry Products Containing Added Solutions'' (76 FR 44855) to amend its regulations to establish a common or usual name for raw meat and poultry products that do not meet standard of identity regulations and to which solutions have been added. The Agency proposed that the common or usual name for such products include an accurate description of the raw meat or poultry component, the percentage of added solution incorporated into the raw meat or poultry product, and the individual ingredients or multi-ingredient components in the solution listed in the descending order of predominance by weight. FSIS also proposed that the print for all words in the common or usual name appear in a single font size, color, and style of print and that the name appear on a single-color contrasting background. In addition, the Agency proposed to remove the standard of identity regulation for ''ready-to-cook poultry products to which solutions are added.'' The comment period for the proposed rule ended on September 26, 2011.

The Agency received a request for a 60 day extension of the comment period. The letter explained that additional time to comment was necessary because the proposed amendments are important to many meat and poultry companies. FSIS agrees that the proposed amendments are important, and, to provide more time for constructive comment, the Agency is reopening the comment period for the proposed rule. The comment period will close on January 9, 2012.

The letter also requested the information, data, and evidence that FSIS considered in developing the proposed rule. In addition, the request asked the Agency for examples of specific labels in the marketplace about which it has concerns.

The Agency responded that the information, data, and evidence on which it based the proposed amendments can be found in the Truthful Labeling Coalition's (TLC) petition and attachments referenced in the proposed rule (76 FR 44857). The TLC petition and its attachments are available in the FSIS Docket Room and on its Web site (*http://www.fsis.usda.gov/Regulations_&_Policies/Proposed_Rules/index.asp*).

In response to the request for specific labels in the marketplace that FSIS has concerns about, examples of such labels are included in the Sorensen Associates Consumer Research Study (*http://www.fsis.usda.gov/PDF/Petition_Truthful_Labeling_Coalition_Attachments.pdf*) and ''Attachment B'' of the TLC petition (*http://www.fsis.usda.gov/PDF/Petition_Truthful_Labeling_Coalition.pdf*). To provide further examples, the Agency posted additional representative samples of marketplace labels (*http://www.fsis.usda.gov/PDF/2010-0012_Examples.pdf*).

The Agency's response to the request for information, data, and evidence that FSIS considered in developing the proposed rule is posted on its Web site at (*http://www.fsis.usda.gov/regulations_&_policies/Proposed_Rules/index.asp*).

Additional Public Notification

FSIS will announce this notice online through the FSIS Web page located at *http://www.fsis.usda.gov/regulations_&_policies/Federal_Register_Publications_&_Related_Documents/index.asp.*

FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade groups, consumer interest groups, health professionals, and other individuals who have asked to be included. The Update is also available on the FSIS Web page. Through the Listserv and Web page, FSIS is able to provide information to a much broader and more diverse audience. In addition, FSIS offers an electronic mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/News_&_Events/Email_Subscription/.* Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

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Done at Washington, DC, on November 1, 2011.

Alfred V. Almanza,

Administrator.

[FR Doc. 2011–28796 Filed 11–7–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket No. EERE–2011–BT–DET–0072]

RIN 1904–AC66

Energy Conservation Program for Consumer Products: Proposed Determination To Treat Non-Compressor Residential Refrigeration Products as Covered Products

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

ACTION: Proposed determination.

SUMMARY: The U.S. Department of Energy (DOE) has preliminarily determined that residential refrigeration products that do not incorporate a compressor qualify as covered products under Part B of Title III of the Energy Policy and Conservation Act (EPCA), as amended. DOE reached this preliminary conclusion because classifying products of such type as covered products is necessary or appropriate to carry out the purposes of EPCA, and the average U.S. household energy use for such products, (*e.g.,* thermoelectric wine chillers) is likely to exceed the 100 kilowatt-hour (kWh) per year threshold required for coverage.

DATES: DOE will accept written comments, data, and information on this notice, but no later than December 8, 2011.

ADDRESSES: Interested persons may submit comments, identified by docket number EERE–2011–BT–DET–0072, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov* Follow the instructions for submitting comments.
- *Email: Brenda.Edwards@ee.doe.gov.* Include EERE–2011–BT–DET–0072 and/or RIN 1904–AC66 in the subject line of the message.
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, Proposed Determination for Residential Refrigeration Products that do not Incorporate a Compressor, EERE–2011–BT–DET–0072 and/or RIN 1904–AC66, 1000 Independence Avenue SW., Washington, DC 20585–0121. *Phone:* (202) 586–2945. Please submit one signed paper original.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 6th Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024. *Phone:* (202) 586–2945. Please submit one signed paper original.

Instructions: All submissions received must include the agency name and docket number or RIN for this rulemaking.

Docket: For access to the docket to read background documents or comments received, go to the U.S. Department of Energy, 6th Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024, (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards at (202) 586–2945 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. *Email: Lucas.Adin@ee.doe.gov.*

In the Office of General Counsel, contact 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. *Email: Michael.Kido@hq.doe.gov;* or Ms. Jennifer Tiedeman, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue SW., Washington, DC 20585–0121. *Telephone:* (202) 287–6111. *Email: Jennifer.Tiedeman@hq.doe.gov.*

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I. Statutory Authority

Title III of the Energy Policy and Conservation Act (EPCA), as amended (42 U.S.C. 6291 *et seq.*), sets forth various provisions designed to improve energy efficiency. Part B of Title III of EPCA (42 U.S.C. 6291–6309) established the ''Energy Conservation Program for Consumer Products Other Than Automobiles,'' which covers consumer products and certain commercial products (hereafter referred to as ''covered products'').[1]

EPCA specifies a list of covered consumer products that includes refrigerators, refrigerator-freezers, and freezers (referred to collectively as ''residential refrigeration products'') that can be operated by alternating current (AC) electricity, are not designed to be used without doors, and include a compressor and condenser as an integral part of the cabinet assembly. (42 U.S.C. 6292(a)(1)) This proposed coverage determination addresses those residential refrigeration products that do not meet these specific criteria.

In addition to specifying a list of covered residential and commercial products, EPCA permits the Secretary of Energy to classify additional types of consumer products as covered products when certain prerequisites have been met. For a given product to be classified as a covered product, the Secretary must determine that (1) Covering that product is either necessary or appropriate to carry out the purposes of EPCA and (2) the average annual per-household energy use by products of such type is likely to exceed 100 kWh per year. (42 U.S.C. 6292(b)(1)).

After first determining whether the above criteria are met, the Secretary may prescribe energy conservation standards for a covered product. See 42 U.S.C. 6295(o) and (p). In order to set standards for a given product that has been added as a newly covered product pursuant to 42 U.S.C. 6292(b)(1), the Secretary must determine that four additional criteria are met. First, the average per household energy use within the United States by the products of such type (or class) exceeded 150 kilowatt-hours (or its BTU equivalent) for any 12-month period ending before such determination. Second, the aggregate household energy use within the United States by products of such type (or class) exceeded 4,200,000,000 kilowatt-hours (or its BTU equivalent) for any such 12-month period. Third, a substantial improvement in the energy efficiency of products of such type (or class) is technologically feasible. And fourth, the application of a labeling rule under 42 U.S.C. 6294 to such type (or class) is not likely to be sufficient to induce manufacturers to produce, and consumers and other persons to purchase, covered products of such type (or class) that achieve the maximum energy efficiency that is technologically feasible and economically justified. (42 U.S.C. 6295(l)(1)).

In addition to the above, if DOE issues a final determination that non-compressor residential refrigeration products are covered products, DOE will consider test procedures for these products and will determine if they satisfy the provisions of 42 U.S.C. 6295(l)(1) during the course of any energy conservation standards rulemaking.

II. Current Rulemaking Process

DOE has not previously conducted an energy conservation standard rulemaking for non-compressor equipped residential refrigeration products. If, after public comment, DOE issues a final determination of coverage for this product, DOE will consider both test procedures and energy conservation standards for these products.

Additionally, assuming that DOE determines that the criteria for extending coverage to non-compressor

[1] Upon codification in the U.S. Code, Part B was re-designated Part A for editorial reasons.

residential refrigeration products are met and that accompanying energy conservation standards are warranted, DOE will, consistent with EPCA, propose a test procedure for these products. In developing an appropriate procedure, DOE will take steps to help ensure that the procedure is not unduly burdensome to conduct for measuring the energy efficiency, energy use or estimated annual operating cost of these products during a representative average use cycle or period of use. (42 U.S.C. 6293(b)(3)) In carrying out this process, DOE initially prepares a notice of proposed rulemaking (NOPR) and allows interested parties to present oral and written data, views, and arguments with respect to such procedures. DOE also considers relevant information, including technological developments relating to energy use or energy efficiency of the covered products.

With respect to energy conservation standards, DOE typically prepares an Energy Conservation Standards Rulemaking Framework Document (the framework document). The framework document explains the issues, analyses, and process that it is considering for the development of energy conservation standards for the product(s) to be addressed by the standard. After DOE receives comments on the framework document, DOE typically prepares an Energy Conservation Standards Rulemaking preliminary analysis, and an accompanying technical support document (TSD) that provides the details of DOE's analysis. The preliminary analysis typically provides initial draft analyses of potential impacts of energy conservation standards on consumers, manufacturers, and the nation. Neither of these steps is legally required and DOE may, depending on the circumstances of a particular case, combine these steps when preparing a new standards rulemaking.

DOE also typically publishes a notice of proposed rulemaking (NOPR) as part of the energy conservation standards rulemaking. The NOPR provides DOE's proposal for potential energy conservation standards and a summary of the results of DOE's supporting technical analysis. The details of DOE's energy conservation standards analysis are provided in an accompanying TSD. DOE's analysis describes both the burdens and benefits of potential standards, pursuant to 42 U.S.C. 6295(o). Because non-compressor residential refrigeration products would be newly covered under 42 U.S.C. 6292(b)(1), DOE would also consider, as noted above, whether these products satisfy certain specified criteria before prescribing standards for them. See 42 U.S.C. 6295(l)(1). After the publication of the NOPR, DOE affords interested persons an opportunity during a period of not less than 60 days to provide oral and written comment. After receiving and considering the comments on the NOPR, and not less than 90 days after the publication of the NOPR, DOE would issue the final rule prescribing any new energy conservation standards for residential refrigeration products that do not incorporate a compressor.

III. Scope of Coverage

DOE proposes in this determination to extend coverage to refrigeration products that are not currently covered under existing authority for residential refrigeration products (42 U.S.C. 6292(a)(1)) because they use alternative refrigeration technologies that do not include a compressor and condenser unit as an integral part of the cabinet assembly. Hence, DOE is proposing to extend coverage to those residential refrigeration products that operate using AC electricity but use either thermoelectric-based or absorption-based systems. In addition, while some non-compressor refrigeration products operate using energy sources other than AC electricity, it is DOE's understanding that most, if not all, of these products would likely fall outside the scope of coverage as consumer products under EPCA because they are primarily used in mobile applications such as recreational vehicles. See 42 U.S.C. 6292(a) (excluding from coverage ''those consumer products designed solely for use in recreational vehicles and other mobile equipment'').

DOE seeks feedback from interested parties on this scope of coverage.

IV. Evaluation of the Annual Energy Use of Thermoelectric and Absorption Refrigeration Products

The following sections describe DOE's evaluation of whether residential refrigeration products that do not incorporate a compressor fulfill the EPCA criteria for being added as covered products. As stated previously, DOE may classify a consumer product as a covered product if (1) Classifying products of such type as covered products is necessary and appropriate to carry out the purposes of EPCA; and (2) the average annual per-household energy use by products of such type is likely to exceed 100 kilowatt-hours (or its Btu equivalent) per year. 42 U.S.C. 6292(b)(1).

A. Coverage Necessary or Appropriate To Carry Out Purposes of EPCA

To satisfy the purposes of EPCA, the coverage of non-compressor residential refrigeration products is both necessary and appropriate to carry out the purposes of EPCA. These products consume energy generated from limited energy supplies and their regulation would be likely to result in the improvement of their energy efficiency. Accordingly, establishing standards for these products fall squarely within the overall statutory goals set out in EPCA to: (1) Conserve energy supplies through energy conservation programs; and (2) provide for improved energy efficiency of major appliances and certain other consumer products. (42 U.S.C. 6201)

In a related matter, DOE recently set energy conservation standards and accompanying test procedures for residential refrigerators, refrigerator-freezers, and freezers (collectively, refrigeration products). See 76 FR 57516 (Sept. 15, 2011) (amending energy conservation standards for residential refrigeration products) and 75 FR 78810 (Dec. 16, 2010) (amending current test procedures and issuing an interim final rule to create revised test procedures for products manufactured starting in 2014). During DOE's efforts to amend the standards for these products, interested parties urged DOE to include wine chillers as part of this effort. See 75 FR 59470, 59486 (Sept. 27, 2010) (residential refrigeration products NOPR, noting industry's urging that DOE consider wine storage products within the scope of the standards rulemaking). Wine chillers are devices used to store bottles of wine at temperatures that are higher than those used to store fresh food. Wine chillers, which typically use either a conventional compressor-condenser or a thermoelectric-based system, have a temperature range of between 45 °F and 55 °F, compared to 39 °F for the safe storage of fresh food used in refrigerators and refrigerator-freezers. Given the different purposes served by these products and their accompanying performance characteristic differences, DOE decided to generally address these wine chiller products in a separate rulemaking. 76 FR at 57534.

Consistent with this approach, DOE is currently considering initiating an energy conservation standard rulemaking addressing wine chillers. As a prerequisite to the setting of standards for these products, DOE is interested in ensuring that both compressor-based and non-compressor-based products would be covered as part of this approach in order to prevent a mass

shift in the market from compressor-based to alternative refrigeration technologies such as thermoelectric- and absorption-based systems that currently fall outside of EPCA's scope of coverage for refrigeration products. As explained below, DOE has reason to believe that products that use these alternative technologies are less efficient than products using conventional compressor-based refrigeration systems. As a result, a shift by manufacturers to use these alternative technologies could have an adverse impact on overall energy efficiency. To address this potential problem, and to provide a more comprehensive approach to the treatment of wine chillers generally, DOE seeks to establish coverage over products that employ these alternative technologies pursuant to the Agency's authority under 42 U.S.C. 6292(b).

Available information collected by DOE suggests that products using thermoelectric technology will be much less efficient than their compressor-equipped counterparts.[2] DOE is also aware that residential refrigeration products using thermoelectric technology have become commercially available—particularly, wine chillers. Similarly, a limited number of products using absorption technology, which is also less energy efficient than compressor-based refrigeration technology, are also commercially available. Hence, DOE believes that coverage and energy standards for these products are necessary in order to ensure that the existing standards for compressor-based refrigeration products and potential future standards for compressor-based wine chillers are not undermined by a switch to less-efficient technologies.

B. Average Household Energy Use

DOE estimated the average household energy use for two of the primary types of residential refrigeration products that do not incorporate a compressor—thermoelectric wine chillers and absorption refrigeration products.

Thermoelectric wine chillers incorporate cooling modules that utilize the Peltier effect.[3] DOE obtained limited data to estimate their average household energy use and deduced the magnitude of thermoelectric wine chiller energy use from a combination of (1) Thermoelectric wine chiller market data, (2) energy use data for vapor compression (*i.e.,* conventional compressor/condenser-based) wine chillers, and (3) thermoelectric module efficiency.

To estimate the size of the thermoelectric wine chiller market, DOE purchased data on wine chiller sales in the U.S. from 2007 to 2010 from the NPD Group, Inc. (NPD), a marketing research firm.[4] NPD reports that these data represent 30- to 45-percent of the total wine chiller market, yielding a total estimate of between 580,000 to 880,000 unit sales in the U.S. for the year 2009. Unfortunately, the NPD data do not differentiate between vapor compression and thermoelectric products. Therefore, DOE researched manufacturer product offerings to approximate the thermoelectric share of the wine chiller market.

Specifically, DOE researched two of the three largest wine chiller brands based on sales figures in the NPD database, Haier[5] and Vinotemp,[6] and determined that 69-percent and 82-percent, respectively, of their wine chiller product offerings for capacities of fewer than 30 bottles are thermoelectric. Because the NPD data also indicate that 80 percent of the wine chiller market is comprised of products with capacities of fewer than 30 bottles, DOE surmised that thermoelectric wine chillers represent a large fraction of the wine chiller market, specifically within the portion of the market comprised of products with capacities of fewer than 30 bottles.

To estimate vapor compression wine chiller energy use, DOE relied on the annual energy use of vapor compression wine chiller products permitted under California's maximum energy use standards[7] as well as the NPD sales data cited above. The California Energy Commission (CEC) currently specifies a maximum allowable energy use for wine chillers as a function of internal volume. From the purchased NPD sales data, which cover the years 2007 to 2010, DOE deduced an internal volume for each model listed in the database. Using this information, DOE developed a range of vapor compression annual energy use values for the range of internal volumes of models in the NPD database, assuming that the energy use of these products is the maximum allowed by the CEC standard. This derived annual energy use ranges from 305 to 392 kWh for wine chillers with capacities of fewer than 30 bottles.

Additionally, during the recent standards rulemaking for residential refrigeration products, DOE tested a thermoelectric refrigerator. The results from those tests showed that this particular product's efficiency was an order of magnitude lower than that of a conventional comparable vapor compression product.[8] These results suggest that the energy use of thermoelectric refrigeration products could be much higher than that of vapor compression products.

However, because these observations are based on limited testing of a single thermoelectric product purchased in 2008, DOE recently performed metering of four thermoelectric wine chillers with capacities of six, 12, 15, and 28 bottles during the period from May 27, 2011 to June 28, 2011. While the metering was conducted in a non-controlled ambient environment with room temperatures varying between 64 °F and 85 °F, DOE believed that the additional measurements would improve DOE's understanding of typical thermoelectric wine chiller energy use, since a greater number of data points would be likely to improve the confidence of the measured values, because the initial product was not a wine chiller, and because thermoelectric refrigeration technology may have evolved in the past three years. The measured energy use for the four units over the approximately one-month time period varied between 18 to 50 kWh, with the high value associated with the 28 bottle capacity wine chiller. Assuming wine chillers are powered year-round, *i.e.,* consumers do not unplug the units for extended periods of time, the monthly consumption translates into annual energy use values of 218 to 598 kWh, which closely match the values derived for vapor compression units from the NPD and CEC data.

The limited metered data clearly indicate that thermoelectric wine chiller annual energy use exceeds the 100 kWh per year threshold set by EPCA for establishing coverage. DOE notes that the range of thermoelectric wine chiller energy use based on the metering is

[2] See, for example, the residential refrigeration product energy conservation standard rulemaking TSD, Chapter 4, Screening Analysis, *http://www1.eere.energy.gov/buildings/appliance_standards/residential/pdfs/refrig_nopr_tsd_2010-09-23.pdf.*

[3] The Peltier effect refers to the creation of a temperature differential across a device comprised of two dissimilar electrical conductors by passing an electric current through the junction between them.

[4] NPD Group, Inc., available at *http://www.npd.com/corpServlet?nextpage=corp_welcome.html.*

[5] Haier America Trading. (*http://www.haieramerica.com/wine-beer-beverage*).

[6] Vinotemp International. (*http://www.vinotemp.com/Browse.aspx/387/Wine-Coolers?gclid=CPSvs57hlaoCFQo0QgodCEEOxQ*).

[7] California Energy Commission, 2010 Appliance Efficiency Regulations, December 2010. CEC–400–2010–012. *http://www.energy.ca.gov/2010publications/CEC-400-2010-012/CEC-400-2010-012.PDF.*

[8] U.S. Department of Energy. *Final Rule Technical Support Document.* 2011. p. 4–12. Available at *http://www1.eere.energy.gov/buildings/appliance_standards/pdfs/refrig_finalrule_tsd.pdf.*

approximately the same as the derived range for vapor compression wine chillers. Although the implication is that thermoelectric units may have a level of energy consumption comparable to their vapor compression counterparts, DOE emphasizes that the test data are not conclusive and a prescribed test procedure to comprehensively measure their energy use is currently unavailable. As an example of the limitations of the recorded data, the metered tests likely indicate the low end of possible energy use because they did not capture the energy impacts from door openings, nor did they include steps to verify that compartment temperatures were maintained at 55 °F per CEC test procedure requirements. Had these steps been included as part of the measurements, the measured energy consumption of the thermoelectric products examined by DOE would have likely been significantly higher. Consequently, DOE believes that the limited metering data should not be the sole basis for estimating energy use for products of this type.

In contrast with thermoelectric refrigeration products, absorption refrigeration products use a fluid-based refrigeration cycle that relies upon heat addition, which is typically provided by electric resistance heaters or fuels such as natural gas and propane. Such systems ''compress'' [9] the refrigerant, which is typically ammonia, using a sorbent fluid, which is typically water.[10] The refrigerant is absorbed by the fluid, creating a liquid solution containing the refrigerant. This solution is transferred from the ''low-pressure'' to the ''high-pressure'' sides of the system as a liquid, and the refrigerant is subsequently boiled out of the solution by heating it. Most absorption systems used for small refrigeration products employ an inert gas on the low-pressure side of the system, usually hydrogen or helium for ammonia-water systems, which allows the partial pressure of the refrigerant gas to remain low while boosting the total gas pressure. This significantly reduces the total pressure difference between the ''high pressure'' and ''low pressure'' sides. The system eliminates the expansion valve and replaces the pumping action of a mechanical compressor with the thermal siphon driven by the heat input, similar to the arrangement used in coffee makers to lift the boiling water to the top of the coffee maker. By generating By moving the refrigerant from the evaporator back to the condenser using the sorbent, an absorption system generates refrigeration using heat input.

Electric-powered absorption units are commonly used by the hotel industry since they are much quieter than products with a compressor. These products would be part of the coverage determination proposed in this notice. Natural gas- or propane-fired absorption units are used primarily in mobile applications, remote areas, and mobile residences that do not have reliable access to electricity—these products would not be part of the coverage determination as proposed. Electric-powered absorption products tend to have a fairly significant level of energy use. As an example, the energy use of the Dometic CS 52 DV, a representative absorption refrigeration wine chiller product, is reported by the manufacturer to use 1.25 kWh per day in a 68 °F ambient environment,[11] which translates into an annual energy use of 456 kWh, assuming these products are powered year-round. Very small (< 1.5 cubic foot) absorption-cooled refrigerators provided by hotels for their guests use approximately 310 kWh/yr as reported by the manufacturer, or up to 530 kWh/yr in limited field testing.[12] [13] DOE seeks comment on the market share and penetration of all absorption refrigeration products. DOE also seeks comment on whether coverage should also be considered for fuel-fired units.

Based upon these evaluations of the two primary types of residential refrigeration products that do not incorporate a compressor (*i.e.* thermoelectric-based wine chillers and absorption-based refrigeration products), DOE has been able to develop estimates of their annual energy use that indicate that these products consume significantly more than 100 kWh annually. Therefore, DOE has tentatively determined that the average annual per household energy use for residential refrigeration products that do not incorporate a compressor is likely to exceed the 100 kWh threshold set by EPCA.

V. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

The Office of Management and Budget has determined that coverage determination rulemakings do not constitute ''significant regulatory actions'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993). Accordingly, this proposed action was not subject to review under the Executive Order 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.,* as amended by the Small Business Regulatory Enforcement Fairness Act of 1996) requires preparation of an initial regulatory flexibility analysis for any rule that, by law, must be proposed for public comment, unless the agency certifies that the proposed 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 effects. Also, as required by E.O. 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 impact of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990 (February 19, 2003). DOE makes its procedures and policies available on the Office of the General Counsel's Web site at *http://www.gc.doe.gov*.

DOE reviewed today's proposed determination under the provisions of the Regulatory Flexibility Act and the policies and procedures published on February 19, 2003. If adopted, today's proposed determination would set no standards; they would only positively determine that future standards may be warranted and should be explored in an energy conservation standards and test procedure rulemaking. Economic impacts on small entities would be considered in the context of such rulemakings. On the basis of the

[9] ''Compress'' in this context has a different meaning that in conventional compressor-based refrigeration products because, for the absorption systems in most of these products, the refrigerant is moved from a region of low partial pressure to a region of high partial pressure rather than actually being compressed.

[10] A sorbent fluid is one that absorbs gas of another substance (in this case the refrigerant) in an exothermic process similar to condensation.

[11] Dometic Corporation. (*https://www.dometic.com/enus/Americas/USA/Hotel-Equipment/Wine-Cellars/products/?productdataid=68705*).

[12] The Bartender AMB–302 1.1 cu. ft. refrigerator is reported to consume 840 Wh per day, or 307 kWh/yr (*http://www.atlanticminifridge.com/Brochures/AMF_Minibar_Brochure.pdf*).

[13] DOE also undertook field monitoring of absorption-cooled hotel ''mini'' refrigerators (the Dometic RH 341 LD with 1.4 cu. ft. capacity, and the Bartender AMB–302 with 1.1 cu. ft. capacity) in two hotels in the San Francisco Bay Area in March-April 2010. A total of 48 refrigerators were metered over a period of approximately two weeks, resulting in annualized energy use measurements from 307 to 528 kWh/yr.

foregoing, DOE certifies that the proposed determination, if adopted, would have no significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this proposed determination. DOE will transmit this 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

This proposed determination that residential refrigeration products that do not incorporate a compressor meet the criteria for covered products for which the Secretary may prescribe energy conservation standards pursuant to 42 U.S.C. 6295(o) and (p) will impose no new information or record-keeping requirements. Accordingly, the Office of Management and Budget (OMB) clearance is not required under the Paperwork Reduction Act. (44 U.S.C. 3501 *et seq.*)

D. Review Under the National Environmental Policy Act of 1969

In this notice, DOE proposes to positively determine that future standards may be warranted and that environmental impacts should be explored in an energy conservation standards rulemaking. DOE has determined that review under the National Environmental Policy Act of 1969 (NEPA), Public Law 91–190, codified at 42 U.S.C. 4321 *et seq.* is not required at this time. NEPA review can only be initiated ''as soon as environmental impacts can be meaningfully evaluated'' (10 CFR 1021.213(b)). This proposed determination would only determine that future standards may be warranted, but would not itself propose to set any specific standard. DOE has, therefore, determined that there are no environmental impacts to be evaluated at this time. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order (E.O.) 13132, ''Federalism'' 64 FR 43255 (August 10, 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 assess carefully 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 developing regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process that it will follow in developing such regulations. 65 FR 13735 (March 14, 2000). DOE has examined today's proposed determination and concludes that it would not preempt State law or have substantial direct effects on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. DOE notes, however, that if the agency determines that the products at issue in today's notice are covered and energy conservation standards are subsequently promulgated for these products, any existing State standards would be preempted by EPCA. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the product that is the subject of today's proposed determination. States can petition DOE for exemption from such preemption to the extent permitted, and based on criteria, set forth in EPCA. (42 U.S.C. 6297) No further action is required by E.O. 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of E.O. 12988, ''Civil Justice Reform'' 61 FR 4729 (February 7, 1996), imposes on Federal agencies the duty to: (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 E.O. 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation specifies the following: (1) The preemptive effect, if any; (2) any effect on existing Federal law or regulation; (3) a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) the retroactive effect, if any; (5) definitions of key terms; and (6) other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of E.O. 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether these standards are met, or whether it is unreasonable to meet one or more of them. DOE completed the required review and determined that, to the extent permitted by law, this proposed determination meets the relevant standards of E.O. 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4, codified at 2 U.S.C. 1501 *et seq.*) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and tribal governments and the private sector. For regulatory actions likely to result in a rule that may cause expenditures 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) and (b)) UMRA 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.'' UMRA also requires an agency plan for giving notice and opportunity for timely input to small governments that may be potentially affected before establishing any requirement that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820 (March 18, 1997). (This policy also is available at *http://www.gc.doe.gov*). DOE reviewed today's proposed determination pursuant to these existing authorities and its policy statement and determined that the proposed determination contains neither an intergovernmental mandate nor a mandate that may result in the expenditure of $100 million or more in any year, so the UMRA requirements do not apply.

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

Section 654 of the Treasury and General Government Appropriations Act of 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 determination 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

Pursuant to E.O. 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights'' 53 FR 8859 (March 15, 1988), DOE determined that this proposed determination would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under the Treasury and General Government Appropriations Act of 2001

The Treasury and General Government Appropriation Act of 2001 (44 U.S.C. 3516, note) requires agencies to review most disseminations of information they make to the public under guidelines established by each agency pursuant to general guidelines issued by the Office of Management and Budget (OMB). The OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's proposed determination 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

E.O. 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 promulgates a final rule or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under E.O. 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 the Office of Information and Regulatory Affairs (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 if the proposal is implemented, and of reasonable alternatives to the proposed action and their expected benefits on energy supply, distribution, and use.

DOE has concluded that today's regulatory action proposing to determine that residential refrigeration products that do not incorporate a compressor meet the criteria for covered products for which the Secretary may prescribe energy conservation standards pursuant to 42 U.S.C. 6295(o) and (p) would not have a significant adverse effect on the supply, distribution, or use of energy. This action is also not a significant regulatory action for purposes of E.O. 12866, and the OIRA Administrator has not designated this proposed determination as a significant energy action. Therefore, this proposed determination is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects for this proposed determination.

L. Review Under the Information Quality Bulletin for Peer Review

On December 16, 2004, OMB, in consultation with the Office of Science and Technology Policy (OSTP), issued its Final Information Quality Bulletin for Peer Review (the Bulletin). 70 FR 2664 (January 14, 2005). The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal government, including influential scientific information related to agency regulatory actions. The purpose of the Bulletin is to enhance the quality and credibility of the Government's scientific information. DOE has determined that the analyses conducted for this rulemaking do not constitute ''influential scientific information,'' which the Bulletin defines as ''scientific information the agency reasonably can determine will have or does have a clear and substantial impact on important public policies or private sector decisions.'' 70 FR 2667 (January 14, 2005). The analyses were subject to pre-dissemination review prior to issuance of this rulemaking.

DOE will determine the appropriate level of review that would be applicable to any future rulemaking to establish energy conservation standards for set-top boxes and network equipment.

VI. Public Participation

A. Submission of Comments

DOE will accept comments, data, and information regarding this notice of proposed determination no later than the date provided at the beginning of this notice. After the close of the comment period, DOE will review the comments received and determine whether residential refrigeration products that do not incorporate a compressor are covered products under EPCA.

Comments, data, and information submitted to DOE's email address for this proposed determination should be provided in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format. Submissions should avoid the use of special characters or any form of encryption, and wherever possible comments should include the electronic signature of the author. No telefacsimiles (faxes) will be accepted.

According 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 two copies: One copy of the document should have all the information believed to be confidential deleted. DOE will make its own determination as to 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 or available from public sources; (4) whether the information has previously been made available to others without obligations concerning its confidentiality; (5) an explanation of the competitive injury to the submitting persons which would result from public disclosure; (6) a date after which such information might no longer be considered confidential; and (7) why disclosure of the information would be contrary to the public interest.

B. Issues on Which DOE Seeks Comments

DOE welcomes comments on all aspects of this proposed determination. DOE is particularly interested in receiving comments from interested parties on the following issues related to the proposed determination for residential refrigeration products that do not incorporate a compressor:

(1) Is the proposed scope of coverage for residential refrigeration products that do not incorporate a compressor sufficient or are there aspects to this proposed scope that require modification?

(2) Should the scope of coverage be extended to also include products that are not powered or activated solely by AC power input, for instance products that are fired with natural gas or propane? What are the annual shipments of such products?

(3) DOE notes that since the statutory definition of a refrigerator excludes certain products—namely, those devices that are designed to be used without doors—DOE is interested in whether its scope of coverage should also include products that are designed to be used

without doors. DOE is also interested in information regarding the existence and examples of these types of products. Assuming that these types of products exist, what are their annual shipments?

(4) DOE is interested in whether classifying residential refrigeration products that do not incorporate a compressor as covered products is necessary or appropriate to carry out the purposes of EPCA.

(5) DOE seeks stock and shipment data for residential refrigeration products that do not incorporate a compressor, segregated by different product types.

(6) DOE seeks information regarding energy test procedures suited for residential refrigeration products that do not incorporate a compressor.

(7) DOE seeks information regarding energy use of these products.

(8) DOE seeks information concerning the extent to which similar coverage may be appropriate for commercial or industrial products that utilize similar refrigeration technologies.

(9) DOE seeks calculations and accompanying values for household and national energy consumption.

(10) DOE seeks information as to the availability or lack of availability of technologies for improving energy efficiency of residential refrigeration products that do not incorporate a compressor.

The Department is interested in receiving views concerning other relevant issues that participants believe would affect DOE's ability to establish test procedures and energy conservation standards for residential refrigeration products that do not incorporate a compressor. The Department invites all interested parties to submit in writing by December 8, 2011, comments and information on matters addressed in this notice and on other matters relevant to consideration of a determination for residential refrigeration products that do not incorporate a compressor.

After the expiration of the period for submitting written statements, the Department will consider all comments and additional information that is obtained from interested parties or through further analyses, and it will prepare a final determination. If DOE determines that residential refrigeration products that do not incorporate a compressor qualify as covered products, DOE will consider initiating rulemakings to develop test procedures and energy conservation standards for residential refrigeration products that do not incorporate a compressor. Members of the public will be given an opportunity to submit written and oral comments on any proposed test procedure and standards.

List of Subjects in 10 CFR Part 430

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

Issued in Washington, DC, on November 1, 2011.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency and Renewable Energy.

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SMALL BUSINESS ADMINISTRATION

13 CFR Parts 121, 124, 125, 126, and 127

RIN 3245–AG23

Small Business Size and Status Integrity

AGENCY: U.S. Small Business Administration (SBA).

ACTION: Proposed rule; reopening of comment period.

SUMMARY: SBA is reopening the comment period for the proposed rule published in the **Federal Register** on October 7, 2011. In that rule SBA proposed to amend its regulations to implement provisions of the Small Business Jobs Act of 2010 (Jobs Act) pertaining to small business size and status integrity. SBA proposed to amend its program regulations to implement statutory provisions establishing that there is a presumption of loss equal to the value of the contract or other instrument when a concern willfully seeks and receives an award by misrepresentation. SBA proposed to amend its program regulations to implement statutory provisions that provide that the submission of an offer or application for an award intended for small business concerns will be deemed a size or status certification or representation in certain circumstances. SBA proposed to amend its program regulations to implement statutory provisions that provide that an authorized official must sign in connection with a size or status certification or representation for a contract or other instrument. SBA proposed to amend its regulations to implement statutory provisions that provide that concerns that fail to update their size or status in the Online Representations and Certifications Application (ORCA) database (or any successor thereto) at least annually shall no longer be identified in the database as small or some other socioeconomic status, until the representation is updated. SBA proposed to amend its regulations to clarify when size is determined for purposes of entry into the 8(a) Business Development and HUBZone programs. The proposed rule provided a 30-day comment period closing on November 7, 2011.

SBA is reopening the comment period for an additional 30 days in response to the significant level of interest generated by the proposed rule among small businesses. Given the scope of the proposed rule and the nature of the issues raised by the comments received to date, SBA believes that affected businesses need more time to review the proposal and prepare their comments.

DATES: The comment period for the proposed rule published on October 7, 2011 (76 FR 62313) is extended through December 8, 2011.

ADDRESSES: You may submit comments, identified by RIN: 3245–AG23, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail, for paper, disk, or CD/ROM submissions:* Dean Koppel, U.S. Small Business Administration, Office of Government Contracting, 409 Third Street SW., 8th Floor, Washington, DC 20416.
- *Hand Delivery/Courier:* Dean Koppel, U.S. Small Business Administration, Office of Government Contracting, 409 Third Street SW., 8th Floor Washington, DC 20416.

SBA will post all comments on *http://www.regulations.gov.* If you wish to submit confidential business information (CBI) as defined in the User Notice at *http://www.Regulations.gov,* please submit the information to Dean Koppel, U.S. Small Business Administration, Office of Government Contracting, 409 Third Street SW., 8th Floor, Washington, DC 20416, or send an email to *Dean.Koppel@sba.gov.* Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination on whether it will publish the information or not.

FOR FURTHER INFORMATION CONTACT: Dean Koppel, Office of Government Contracting, 409 Third Street SW., Washington, DC 20416; (202) 205–9751; *Dean.Koppel@sba.gov.*