

result in a test procedure that more accurately measures energy consumption. The application of the existing test procedure to the new product is unclear, and this amendment will clarify its application to the new product. For all these reasons, the Department has determined that it should promulgate this direct final rule and make a change to the refrigerator and refrigerator-freezer test procedure.

The revised calculation of the test time period results in a small (generally about one percent) decrease in the tested energy consumption of models that incorporate the advanced defrost timing feature, a feature that delays the initiation of the defrost heater, thereby using natural warming to defrost. Section 323(e) of EPCA requires the Department, in a rulemaking, to determine to what extent, if any, the proposed test procedure would change the existing measured energy efficiency or measured energy use of any covered product under the existing test procedure. This statutory provision is designed to prevent the alteration of an existing Federal energy conservation standard that otherwise could result from a change in a test procedure. It also seeks to ensure that products in compliance with the applicable energy conservation standards under the existing test procedure will not be put out of compliance because the test procedure has been amended. When the Department considers section 323(e) of EPCA in the context of this direct final rule, the Department concludes that no change to the energy conservation standard is required. The reasons are as follows: (1) This test procedure amendment affects only products with a variable defrost control function, none of which minimally comply with the existing standard. There are, therefore, no minimally-compliant products under section 323(e) that would show any change in energy use under the amended test procedure. (2) This test procedure amendment, which was developed to give credit to an energy saving technology, will result in lowering the measured energy use. Lowering measured energy use will, of course, not raise energy use over the standard, which prescribes a ceiling on maximum energy use. Instead, lowering energy use merely removes measured energy use further from that ceiling. Therefore, this amendment does not make any compliant products non-compliant with the applicable energy conservation standard.

### III. Final Action

DOE is publishing this direct final rule without prior proposal because

DOE views this amendment as noncontroversial and anticipates no significant adverse comments. However, in the event that significant adverse or critical comments are filed, DOE has prepared a Notice of Proposed Rulemaking (NPR) proposing the same amendment. This NPR is contained in a separate document in this **Federal Register** publication. The direct final action will be effective May 6, 2003, unless significant adverse or critical comments are received by April 7, 2003. If DOE receives significant adverse or critical comments, the revisions will be withdrawn before the effective date. In the case of withdrawal of this action, the withdrawal will be announced by a subsequent **Federal Register** document. All public comments will then be addressed in a separate final rule based on the proposed rule that is also issued today. DOE will not implement a second comment period on this action. Any parties interested in commenting on this rule should do so at this time. If no significant adverse comments are received, the public is advised that this rule will be effective May 6, 2003.

### IV. Procedural Requirements

#### A. Review Under the National Environmental Policy Act of 1969

In this rule, the Department promulgates a small change to the test procedure for measuring the energy consumption of household refrigerators and refrigerator-freezers. The Department 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 (NEPA), 42 U.S.C. 4321 *et seq.* The rule is covered by Categorical Exclusion A5, for rulemakings that interpret or amend an existing rule without changing the environmental effect, as set forth in the Department's NEPA regulations in Appendix A to subpart D, 10 CFR part 1021. This rule will not affect the quality or distribution of energy usage and, therefore, will not result in any environmental impacts. Accordingly, neither an environmental impact statement nor an environmental assessment is required.

#### B. Review Under Executive Order 12866, "Regulatory Planning and Review"

Today's rule is not a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review." 58 FR 51735 (October 4, 1993). Accordingly, today's action is not subject to review under the Executive Order by the Office of Information and Regulatory Affairs.

#### C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–612, requires that an agency prepare an initial regulatory flexibility analysis for any rule, for which a general notice of proposed rulemaking is required, that would have a significant economic effect on small entities unless the agency certifies that the proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605.

Today's rule prescribes test procedures that will be used to test compliance with energy conservation standards. The rule affects refrigerator and refrigerator-freezer test procedures and would not have a significant economic impact, but rather would provide common testing methods. Therefore DOE certifies that today's rule would not have a "significant economic impact on a substantial number of small entities," and the preparation of a regulatory flexibility analysis is not warranted.

#### D. "Takings" Assessment Review

DOE has determined pursuant to Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights," 53 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.

#### E. Review Under Executive Order 13132, "Federalism"

Executive Order 13132, "Federalism," 64 FR 43255 (August 4, 1999), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the Federal government and the States, or in the distribution of power and responsibilities among various levels of government. If there are substantial direct effects, then this Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action.

The rule published today would not regulate or otherwise affect the States. Accordingly, DOE has determined that preparation of a federalism assessment is unnecessary.

#### F. Review Under the Paperwork Reduction Act

No new information or record keeping requirements are imposed by this rulemaking. Accordingly, no OMB