

# 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 431

[Docket No. EE-RM/TP-05-500]

RIN 1904-AB53

#### Energy Conservation Program: Test Procedures for Refrigerated Beverage Vending Machines and Commercial Refrigerators, Freezers and Refrigerator-Freezers

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

**ACTION:** Supplemental notice of proposed rulemaking.

**SUMMARY:** The Department of Energy (DOE or the Department) published a notice of proposed rulemaking (NPR) to adopt test procedures for measuring energy efficiency and related definitions for various consumer products and commercial and industrial equipment on July 25, 2006, including refrigerated bottled or canned beverage vending machines and commercial refrigerators, freezers, and refrigerator-freezers. For refrigerated bottled or canned beverage vending machines, the Department proposed to adopt the American National Standards Institute (ANSI)/American Society of Heating, Refrigerating, and Air-Conditioning Engineers, Inc. (ASHRAE) Standard 32.1-2004 test procedure for measuring equipment energy consumption and for determining equipment capacity. For commercial refrigerators, freezers, and refrigerator-freezers, the Department proposed to adopt the ANSI/Association of Home Appliance Manufacturers (AHAM) Standard HRF1-1979 for determining equipment capacity.

The Department now proposes an additional method as an alternative means for measuring the capacity of refrigerated bottled or canned beverage vending machines, namely the method to measure refrigerated volume that is

set forth in an updated version of ANSI/AHAM HRF1. The Department also proposes to adopt this updated standard for measuring the volume of commercial refrigerators, freezers, and refrigerator-freezers. The Department will receive written comments in response to the July 25, 2006 NPR or to this supplemental notice of proposed rulemaking (SNOPR).

**DATES:** The Department held a public meeting on this rulemaking on Tuesday, September 26, 2006, from 9 a.m. to 5 p.m., in Washington, DC.

The Department will accept comments, data, and information regarding this SNOPR no later than October 10, 2006. See section IV, "Public Participation," of this proposed rule for details.

**ADDRESSES:** You may submit comments, identified by docket number EE-RM/TP-05-500 and/or Regulatory Information Number (RIN) 1904-AB53, by any of the following methods:

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

[testprocedures\\_EPACT2005@ee.doe.gov](mailto:testprocedures_EPACT2005@ee.doe.gov). Include EE-RM/TP-05-500 and/or RIN 1904-AB53 in the subject line of the message.

- Postal Mail: Ms. Brenda Edwards-Jones, U.S. Department of Energy, Building Technologies Program, Mailstop EE-2J, Energy Conservation Test Procedures for Consumer Products and Commercial Equipment, EE-RM/TP-05-500 and/or RIN 1904-AB53, 1000 Independence Avenue, SW., Washington, DC 20585-0121. Telephone: (202) 586-2945. Please submit one original signed paper.

- Hand Delivery/Courier: Ms. Brenda Edwards-Jones, U.S. Department of Energy, Building Technologies Program, Room 1J-018, 1000 Independence Avenue, SW., Washington, DC 20585-0121.

**Instructions:** All submissions must include the agency name and docket number or RIN for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see section IV, "Public Participation," of this proposed rule for details.

**Docket:** For access to the docket to read background documents or comments received, go to the U.S. Department of Energy, Forrestal

Building, Room 1J-018 (Resource Room of the Building Technologies Program), 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards-Jones at (202) 586-2945 for additional information regarding visiting the Resource Room. Please note that the Department's Freedom of Information Reading Room (formerly Room 1E-190 at the Forrestal Building) is no longer housing rulemaking materials.

**FOR FURTHER INFORMATION CONTACT:** Mr. Charles F. Llenza, 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, (202) 586-2192. E-mail:

[Charles.Llenza@ee.doe.gov](mailto:Charles.Llenza@ee.doe.gov), or Ms. Francine Pinto, U.S. Department of Energy, Office of General Counsel, GC-72, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9507. E-mail: [Francine.Pinto@hq.doe.gov](mailto:Francine.Pinto@hq.doe.gov).

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## I. Introduction

### A. Authority and Background

Part B and Part C of Title III of the Energy Policy and Conservation Act, Public Law 93–163, 42 U.S.C. 6291–6309 and 42 U.S.C. 6311–6317 respectively, as amended by the Energy Policy Act of 2005 (EPACT 2005), Public Law 109–58, provide energy conservation programs for consumer products other than automobiles and for certain commercial and industrial equipment. Further, EPACT 2005 prescribes new or amended energy conservation standards and test procedures, and directs DOE to undertake rulemakings to promulgate such requirements.

Section 135(c)(4) of EPACT 2005 amends section 325 of EPCA by adding, in part, new subsection 325(v)(2), 42 U.S.C. 6295(v)(2), which directs the Secretary to prescribe, by rule, energy conservation standards for refrigerated bottled or canned beverage vending machines. Further, section 135(b)(1) of EPACT 2005 amends section 323(b) of EPCA by adding, in part, new subsection 323(b)(15), 42 U.S.C. 6293(b)(15), which states that test procedures for this equipment shall be based on ANSI/ASHRAE Standard 32.1–2004, entitled “Methods of Testing for Rating Vending Machines for Bottled, Canned or Other Sealed Beverages.” Also pursuant to section 135(b)(2) of EPACT 2005, new subsection 323(f) of EPCA, 42 U.S.C. 6293(f)(1), directs the Secretary to prescribe testing requirements for refrigerated bottled or canned beverage vending machines no later than two years after the enactment of EPACT 2005, that is, August 8, 2007. (42 U.S.C. 6293(f)(1)) This section also directs DOE to base such testing requirements on existing industry test procedures, to the maximum extent practicable. (42 U.S.C. 6292(f)(2)) Finally, section 136(c) of EPACT 2005 amends EPCA to require that, for purposes of standards for commercial refrigerators, freezers, and refrigerator-freezers, compartment volumes be measured in accordance with ANSI/AHAM HRF1–1979. (42 U.S.C. 6313(c))

On July 25, 2006, DOE published a notice of proposed rulemaking to adopt test procedures for measuring energy efficiency and water-use efficiency, and related definitions, as well as test sampling, compliance certification, and enforcement requirements, for various

consumer products and commercial and industrial equipment covered by the EPACT 2005 amendments to EPCA (hereafter referred to as the July 2006 proposed rule). 71 FR 42178. The July 2006 proposed rule includes test procedures for refrigerated bottled or canned beverage vending machines. In accordance with the above described amendments to section 323(b) and (f) of EPCA, the Department proposed to incorporate the ANSI/ASHRAE Standard 32.1–2004 test procedure by reference into Title 10 of the Code of Federal Regulations, Part 431 (10 CFR Part 431) for the measurement of energy consumption and determination of capacity of this equipment.

However, on July 11, 2006, while the July 2006 proposed rule was being prepared for publication in the **Federal Register**, the Department held an informal public meeting to present its proposed methodologies for conducting the rulemaking to establish standards for refrigerated bottled or canned beverage vending machines, discuss issues relevant to that rulemaking proceeding, and initiate stakeholder interaction. During the course of the public meeting, stakeholders suggested that “refrigerated volume” would be a more appropriate measure of capacity than “vendible capacity,” which ANSI/ASHRAE Standard 32.1–2004 uses as the measure of capacity for refrigerated bottled or canned beverage vending machines.

### B. Summary of the Proposed Rule

In today’s SNOPR, the Department proposes to incorporate by reference the methodology for measuring refrigerated volume in section 5.2 (excluding subsections 5.2.2.2–5.2.2.4) of ANSI/AHAM HRF1–2004, “Energy, Performance and Capacity of Household Refrigerators, Refrigerator-Freezers and Freezers,” as an additional method for measuring the capacity of refrigerated bottled or canned beverage vending machines. The Department proposes to retain in the final rule, as an alternative means for measuring the capacity for refrigerated bottled or canned beverage vending machines, the “vendible capacity” method which ANSI/ASHRAE Standard 32.1–2004 uses. In addition, the Department proposes to reference ANSI/AHAM HRF1–2004 as the methodology to measure volume for all commercial refrigerators, freezers, and refrigerator-freezers covered under section 342(c) of EPCA, 42 U.S.C. 6313(c).

## II. Discussion

### A. General Discussion

The Department examined ANSI/ASHRAE Standard 32.1–2004 and believes that it provides sound methods for measuring the daily energy consumption of refrigerated bottled or canned beverage vending machines, and satisfies the requirements of section 323(b)(3) of EPCA, 42 U.S.C. 6293(b)(3). Therefore, as stated above, in the July 2006 proposed rule the Department proposed to incorporate this test procedure by reference into 10 CFR Part 431. Included in the material DOE would incorporate by reference is the method set forth in ANSI/ASHRAE Standard 32.1–2004 for determining the capacity of this equipment, which the standard refers to as “vendible capacity.” Vendible capacity consists essentially of the maximum number of units of product a vending machine can hold for sale.<sup>1</sup> The ANSI/ASHRAE Standard 32.1–2004 does not use this measure of capacity to determine the actual energy consumption of equipment. However, manufacturers use it to compute allowable energy consumption. Energy conservation standards for refrigeration equipment are typically a function of equipment capacity, and the capacity of each model or basic model of equipment is used to calculate its maximum allowable energy use.

As mentioned above, during the July 11, 2006, standards framework public meeting, stakeholders suggested that refrigerated volume would be a more appropriate measure of capacity than vendible capacity. The Coca-Cola Company stated that it would make sense to use refrigerated volume in establishing standards for energy consumption. (Public Meeting Transcript, No. 8 at p. 106, 124 and 130)<sup>2</sup> The American Council for an Energy-Efficient Economy (ACEEE) stated that using refrigerated volume instead of vendible capacity, along with

<sup>1</sup> Section 5 of ASHRAE 32.1–2004 defines vendible capacity as “the maximum quantity of standard product that can be dispensed from one full loading of the vending machine without further reload operations when used as recommended by the manufacturer. The standard product shall be 12 oz (355 ml) cans for machines that are capable of dispensing 12 oz (355 ml) cans. For all other machines, the standard product [sic] shall be the product specified by the manufacturer as the standard product.”

<sup>2</sup> In this and subsequent citations, “Public Meeting Transcript” refers to the transcript of the July 11, 2006, public meeting in the DOE rulemaking on standards for refrigerated bottled or canned beverage vending machines, Docket No. EERE–2006–STD–0125, the “No.8” refers to the document number of the transcript in that Docket, and the page references refer to the place in the transcript where the statement preceding appears.

energy use, would be a reasonable way of establishing baseline energy consumption. (Public Meeting Transcript, No. 8 at p.118) Royal Vendors stated that the metric for measuring the energy consumption of vending machines should be based on volume. (Public Meeting Transcript, No. 8 at pp.123–124) Dixie Narco stated that the industry was in agreement on using refrigerated capacity, not vendible capacity, for this rulemaking. (Public Meeting Transcript, No. 8 at p.124) PepsiCo, Inc. agreed with the idea of using refrigerated volume. (Public Meeting Transcript, No. 8 at p.125)

After considering these comments, the Department now believes refrigerated volume should be included in its rules as a measure of capacity, along with “vendible capacity,” for refrigerated bottled or canned beverage vending machines. This would provide the Department with the means for evaluating whether it should set its standards for this equipment based on one or both of these metrics of capacity. Further, if the Department sets standards based on both metrics, it would have appropriate test procedures in place for determining compliance with such standards. If DOE bases its standards only on one test metric, then DOE could revise the test procedure to delete the other test metric.

Among machines that are designed and intended for vending 12-ounce cans, there are a variety of dispensing mechanisms and storage arrangements that lead to potentially different refrigerated volumes for different machines with the same “vendible capacity.” Therefore, it may be better for the Department to require measurement of capacity, and set standards based on refrigerated volume.

In addition, EPCA has historically used upper limits on energy consumption as a function of volume for the purposes of establishing energy conservation standards for refrigeration equipment. Energy conservation standards based on volume were established under section 325 of EPCA, 42 U.S.C. 6295(b), and subsequently codified by DOE under § 430.32(a) of 10 CFR Part 430, for residential refrigerators, freezers, and refrigerator-freezers. Also, on October 18, 2005, DOE published a final rule (70 FR 60407) that placed energy conservation standards into the CFR for certain commercial refrigeration equipment as prescribed in EPCACT 2005. These standards are in terms of upper limits on daily energy consumption as a function of refrigerated volume. 10 CFR 431.66(b) Since refrigerated bottled and canned beverage vending machines are defined

by EPCACT 2005 as a type of commercial refrigerator, DOE would be consistent with existing residential and commercial refrigerator standards if it were to use refrigerated volume as a measure of capacity.<sup>3</sup>

For these reasons, the Department now believes that it should consider refrigerated volume as the measure of capacity, in addition to vendible capacity, for refrigerated bottled or canned beverage vending machines. The Department is therefore including in today’s SNOPR a methodology to measure the refrigerated volume of refrigerated canned or bottled beverage vending machines.

#### *B. Method for Measuring the Refrigerated Volume of Refrigerated Bottled or Canned Beverage Vending Machines*

The Department proposes to require measurement of the refrigerated volume of refrigerated bottled or canned beverage vending machines using the methodology in ANSI/AHAM HRF1. As mentioned above, the Department has established energy conservation standards for residential refrigerators, freezers, and refrigerator-freezers in terms of upper limits on energy consumption as a function of volume. The test procedure used to measure the compartment volume for each of these products is ANSI/AHAM HRF1–1979. 10 CFR Part 430, Subpart B, Appendix A1, section 1.2. Likewise, for commercial refrigeration equipment standards that are covered under section 342(c) of EPCA, 42 U.S.C. 6313(c), compartment volume is defined in terms of ANSI/AHAM HRF1–1979. (Section 136(c) of EPCACT 2005; 42 U.S.C. 6313(c)(1)(A) and (B)) Therefore, DOE proposed to incorporate this standard by reference into 10 CFR Part 431 in the July 2006 proposed rule. 71 FR 42208. In addition, under section 1606 of Title 20 of the California Code of Regulations (July 2006), manufacturers of refrigerated bottled or canned beverage vending machines are required to use ANSI/AHAM HRF1–1979 to measure and report the internal volume of multi-package units. Since ANSI/AHAM HRF1 is widely used in the refrigeration industry for measuring refrigerated volume for refrigerated bottled or canned beverage vending machines, the Department proposes to

incorporate it by reference into today’s SNOPR.

The Department notes that ANSI/AHAM HRF1 was revised in 2004. The ANSI/AHAM HRF1–2004 is more readily available than the 1979 version and includes the same relevant information pertaining to the measurement of refrigerated volume. Some language is included in the 2004 version that clarifies the methodology specifically for certain types of household refrigerators (e.g., refrigerators with through-the-door ice and/or liquid dispensers). It also includes some clarifying language in the examples (e.g., the addition of control boxes). However, the 2004 version of the standard retains the same methodology for measuring refrigerated volume. Therefore, the Department proposes to reference the 2004 version of ANSI/AHAM HRF1, instead of the 1979 version, for the measurement of refrigerated volume for refrigerated bottled or canned beverage vending machines.

Specifically, the Department proposes to incorporate by reference section 5.2 of ANSI/AHAM HRF1–2004, excluding subsections 5.2.2.2 through 5.2.2.4 that are not relevant to measuring refrigerated volume for refrigerated bottled or canned beverage vending machines. The Department recognizes that sections 4.2 and 5.2 address the measurement of refrigerated volume in household refrigerators and freezers, respectively, and do not directly address refrigerated bottled or canned beverage vending machines for which no commercial standards exist. Nevertheless, the Department believes that the methodology described in section 5.2 includes methods for the measurement of refrigerated volumes that are applicable to refrigerated bottled or canned beverage vending machines. Further, the Department believes that, although EPCA defines such equipment as a type of commercial refrigerator, the language in section 5.2 for household freezers is more appropriate than the language in section 4.2 for household refrigerators, because the methodology in section 5.2 is more relevant to the type of compartment(s) being measured in a refrigerated bottled or canned beverage vending machine.

As addressed above, the EPCACT 2005 amendments to EPCA require that test procedures for refrigerated bottled or canned beverage vending machines be “based on” ANSI/ASHRAE 32.1–2004. Energy consumption testing represents the bulk of the testing that manufacturers must conduct under this test procedure, while capacity measurements represent a minor

<sup>3</sup> Section 135(a)(3) of EPCACT 2005 amends section 321 of EPCA to add subsection 321(40), 42 U.S.C. 6291(40), which defines the term “refrigerated bottled or canned beverage vending machine” as “a commercial refrigerator that cools bottled or canned beverages and dispenses the bottled or canned beverages on payment.”

portion. Under today's proposal, the Department would continue to incorporate ANSI/ASHRAE 32.1-2004 by reference into 10 CFR Part 431 for the purpose of measuring energy consumption and capacity, but it proposes to add ANSI/AHAM HRF1-2004 as an additional method for measuring capacity. Thus, DOE is still proposing a test procedure for refrigerated bottled or canned beverage vending machines that is "based on" ANSI/ASHRAE 32.1-2004 as required by EPCA.

### C. Method for Measuring the Volume of Commercial Refrigerators, Freezers, and Refrigerator-Freezers

As addressed above, the Department proposes to use the 2004 version of ANSI/AHAM HRF1 for measuring the refrigerated volume of refrigerated bottled or canned beverage vending machines. For all the same reasons, DOE proposes to replace references to ANSI/AHAM HRF1-1979 with references to ANSI/AHAM HRF1-2004 at 10 CFR 431.63(b)(2) of the proposed rule for commercial refrigerators, freezers, and refrigerator-freezers, 71 FR 42208 (July 25, 2006), and in the existing rule for such equipment under 10 CFR 431.66(a).

## III. Procedural Requirements

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

Today's proposed rule is not a "significant regulatory action" under section 3(f)(1) of Executive Order 12866, "Regulatory Planning and Review." 58 FR 51735 (October 4, 1993). Accordingly, today's action was not subject to review by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB).

### B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed 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. Also, as required by Executive Order 13272, *Proper Consideration of Small Entities in Agency Rulemaking*, 67 FR 53461 (August 16, 2002), DOE published

procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. The Department has made its procedures and policies available on the Office of General Counsel's Web site: <http://www.gc.doe.gov>.

The Department reviewed today's proposed rule under the provisions of the Regulatory Flexibility Act and the policies and procedures published on February 19, 2003. Refrigerated bottled and canned beverage vending machines are the subject of voluntary standards and test procedures, and State standards and test procedures, but are not yet covered by DOE's Federal manufacturing standards. The Department expects that the measurements for refrigerated volume in today's proposed rule would not take any more time to conduct than the measurement of vendible capacity proposed in the July 2006 proposed rule. Thus, DOE believes that this proposed rule would not impose significant economic costs on small manufacturers of this equipment. On this basis, DOE certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities.

### C. Review Under the Paperwork Reduction Act of 1995

This rulemaking would impose no new information or recordkeeping requirements. Accordingly, Office of Management and Budget 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

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 (42 U.S.C. 4321 *et seq.*) and the Department's implementing regulations at 10 CFR part 1021. Specifically, this rule establishing test procedures will not affect the quality or distribution of energy and, will not result in any environmental impacts, and, therefore, is covered by the Categorical Exclusion in paragraph A6 to subpart D, 10 CFR part 1021. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

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

Executive Order 13132, "Federalism," 64 FR 43255 (August 4, 1999), imposes certain requirements on agencies

formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in developing regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in developing such regulations. 65 FR 13735. The Department examined this proposed rule and determined that it does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Executive Order 13132 requires no further action.

### F. 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 Federal agencies the duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity, (2) write regulations to minimize litigation, (3) provide a clear legal standard for affected conduct rather than a general standard, and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. The Department has completed the required review and determined that, to the extent permitted by law, this

proposed rule meets the relevant standards of Executive Order 12988.

#### *G. Review Under the Unfunded Mandates Reform Act of 1995*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and tribal governments and the private sector. For a proposed regulatory action 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). The 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." The UMRA also requires an agency plan for giving notice and opportunity for timely input to small governments that may be affected before establishing a 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) (also available at <http://www.gc.doe.gov>). Today's proposed rule contains neither an intergovernmental mandate nor a mandate that may result in the expenditure of \$100 million or more in any year, so these requirements under the UMRA 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, 1999 (Pub. L. 105-277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. Today's proposed rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is unnecessary to prepare a Family Policymaking Assessment.

#### *I. 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," 53 FR 8859 (March 18, 1988), that this rule would not result in any takings that might require compensation under the Fifth Amendment to the United States Constitution.

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

Section 515 of the Treasury and General Government Appropriations Act of 2001 (44 U.S.C. 3516) provides for agencies to review most disseminations of information to the public under guidelines each agency establishes pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002); DOE's guidelines were published at 67 FR 62446 (October 7, 2002). The DOE has reviewed today's notice 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, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use"*

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs (OIRA) of the 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 promulgated a final rule or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Because this proposed rule would not have a significant adverse effect on the supply, distribution, or use of energy, the rule is not a significant energy action. Accordingly, DOE has not prepared a statement of energy effects.

#### *L. Review Under Section 32 of the Federal Energy Administration (FEA) Act of 1974*

Under section 301 of the Department of Energy Organization Act (Pub. L. 95-91), the DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. 15 U.S.C. 788. Section 32 provides, in essence that, where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Department of Justice (DOJ) and the Federal Trade Commission (FTC) concerning the impact of the commercial or industry standards on competition.

The ANSI/AHAM HRF1-2004, "Energy, Performance and Capacity of Household Refrigerators, Refrigerator-Freezers and Freezers," incorporated in this proposed rule for the measurement of refrigerated volume, is not referenced by EPACT 2005 for refrigerated bottled or canned beverage vending machines. Although Congress in EPACT 2005 did not require DOE to use this industry test procedure as the basis for the test procedures for refrigerated bottled or canned beverage vending machines, the Department believes that it offers a reasonable basis for developing a method for measuring refrigerated volume. The Department has evaluated this standard and is unable to conclude whether it fully complies with the requirements of section 32(b) of the Federal Energy Administration Act, (i.e., that it was developed in a manner that fully provides for public participation, comment and review). The Department will consult with the Attorney General and the Chairman of the FTC concerning the impact of this test procedure on competition, prior to prescribing a final rule.

## **IV. Public Participation**

### *A. Public Meeting*

The Department will make the entire record of this proposed rulemaking, including the transcript from the September 26, 2006 public meeting, available for inspection at the U.S. Department of Energy, Forrestal Building, Room 1J-018 (Resource Room of the Building Technologies Program), 1000 Independence Avenue, SW., Washington, DC 20585-0121, (202) 586-9127, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Anyone may purchase a copy

of the transcript from the transcribing reporter.

### B. Submission of Comments

The Department will accept comments, data, and information about the proposed rule no later than the date provided at the beginning of this SNOPR. Please submit comments, data, and information electronically to <http://www.regulations.gov> or [testprocedures\\_EPACT2005@ee.doe.gov](mailto:testprocedures_EPACT2005@ee.doe.gov). Please submit electronic comments in Microsoft Word, PDF, or text (ASCII) file format, and avoid the use of special characters or any form of encryption. Comments in electronic format should be identified by the docket number EE-RM/TP-05-500 and/or RIN number 1904-AB53, and wherever possible carry the electronic signature of the author. Absent an electronic signature, comments submitted electronically must be followed and authenticated by submitting the signed original paper document. 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 including all the information believed to be confidential, and one copy of the document without the information believed to be confidential. The Department will make its own determination about the confidential status of the information.

When determining whether to treat submitted information as confidential, the Department considers: (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) whether the submitting person would suffer competitive injury 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.

### V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of today's supplemental proposed rule.

#### List of Subjects in 10 CFR Part 431

Administrative practice and procedure, Commercial products,

Energy conservation test procedures, Incorporation by reference.

Issued in Washington, DC, on September 25, 2006.

**Alexander A. Karsner,**

*Assistant Secretary, Energy Efficiency and Renewable Energy.*

For the reasons set forth in the preamble, the proposed rule that proposed to amend 10 CFR part 431 which was published at 71 FR 42178 on July 25, 2006, is proposed to be amended as set forth below:

### PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

1. The authority citation for part 431 continues to read as follows:

**Authority:** 42 U.S.C. 6291–6317.

2. Section 431.63 as proposed on July 25, 2006 (71 FR 42178) is further amended by revising paragraphs (b)(2), and (c)(2)(ii) to read as follows:

#### Test Procedures

##### § 431.63 Materials incorporated by reference.

\* \* \* \* \*

(b) \* \* \*

(2) American National Standards Institute (ANSI)/Association of Home Appliance Manufacturers (AHAM) Standard HRF1–2004, “Energy, Performance and Capacity of Household Refrigerators, Refrigerator-Freezers and Freezers.”

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(ii) Anyone can purchase a copy of ANSI/AHAM HRF1–2004, “Energy, Performance and Capacity of Household Refrigerators, Refrigerator-Freezers and Freezers,” from the American National Standards Institute, 1819 L Street, NW., 6th floor, Washington, DC 20036, (202) 293–8020, or <http://www.ansi.org>.

\* \* \* \* \*

3. Section 431.64 as proposed on July 25, 2006 (71 FR 42178) is further amended by revising paragraph (b)(4) to read as follows:

##### § 431.64 Uniform test method for the measurement of energy consumption of commercial refrigerators, freezers, and refrigerator-freezers.

\* \* \* \* \*

(b) \* \* \*

(4) Determine the volume of each covered commercial refrigerator, freezer, or refrigerator-freezer using the methodology set forth in the ANSI/AHAM HRF1–2004, § 3.21, §§ 4.1 through 4.3, and §§ 5.1 through 5.3.

4. Section 431.293 as proposed on July 25, 2006 (71 FR 42178) is further amended by revising paragraphs (b), (c)(2) and by adding a new (c)(3) to read as follows:

### Subpart Q—Refrigerated Bottled or Canned Beverage Vending Machines

#### Test Procedures

##### § 431.293 Materials incorporated by reference.

\* \* \* \* \*

(b) Test procedures incorporated by reference.

(1) American National Standards Institute (ANSI)/American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc. (ASHRAE) Standard 32.1–2004, “Methods of Testing for Rating Vending Machines for Bottled, Canned, and Other Sealed Beverages.”

(2) American National Standards Institute (ANSI)/Association of Home Appliance Manufacturers (AHAM) Standard HRF1–2004, “Energy, Performance and Capacity of Household Refrigerators, Refrigerator-Freezers and Freezers.”

(c) \* \* \*

(2) Obtaining copies of standards. (i) Anyone can purchase a copy of ANSI/ASHRAE Standard 32.1–2004 from the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc., 1791 Tullie Circle NE., Atlanta, GA 30329–2305, (404) 636–8400, or <http://www.ashrae.org>.

(3) Anyone can purchase a copy of ANSI/AHAM HRF1–2004, “Energy, Performance and Capacity of Household Refrigerators, Refrigerator-Freezers and Freezers,” from the American National Standards Institute, 1819 L Street, NW., 6th floor, Washington, DC 20036, (202) 293–8020, or <http://www.ansi.org>.

5. Section 431.294 as proposed on July 25, 2006 (71 FR 42178) is further amended by revising paragraph (b) to read as follows:

##### § 431.294 Uniform test method for the measurement of energy consumption of refrigerated bottled or canned beverage vending machines.

\* \* \* \* \*

(b) Testing and Calculations. (1) The test procedure for energy consumption of refrigerated bottled or canned beverage vending machines shall be conducted in accordance with the test procedures specified in section 4, “Instruments,” the second paragraph of section 5, “Vending Machine Capacity,” section 6, “Test Conditions,” and §§ 7.1 through 7.2.3.2, under “Test Procedures,” of ANSI/ASHRAE Standard 32.1–2004, “Methods of

Testing for Rating Vending Machines for Bottled, Canned, and Other Sealed Beverages.”

(2) Determine “vendible capacity” of refrigerated bottled or canned beverage vending machines in accordance with the second paragraph of section 5, “Vending Machine Capacity,” of ANSI/ASHRAE Standard 32.1–2004, “Methods of Testing for Rating Vending Machines for Bottled, Canned, and Other Sealed Beverages,” and measure “refrigerated volume” of refrigerated bottled or canned beverage vending machines in accordance with the methodology specified in § 5.2 (excluding subsections 5.2.2.2 through 5.2.2.4) of the ANSI/AHAM HRF1–2004, “Energy, Performance and Capacity of Household Refrigerators, Refrigerator-Freezers and Freezers.”

\* \* \* \* \*

[FR Doc. 06–8432 Filed 9–28–06; 3:20 pm]

BILLING CODE 6450–01–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA–2006–23842; Directorate Identifier 2005–NM–145–AD]

RIN 2120–AA64

#### Airworthiness Directives; Boeing Model 777–200, 777–300, and 777–300ER Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

**SUMMARY:** The FAA is revising an earlier proposed airworthiness directive (AD) for certain Boeing Model 777–200 and 777–300 series airplanes. The original NPRM would have required repetitive inspections for discrepancies of the splined components that support the inboard end of the inboard trailing edge flap; related investigative, corrective, and other specified actions if necessary; a one-time modification of the inboard support of the inboard trailing edge flap by installing a new isolation strap and attachment hardware; and repetitive replacement of the torque tube assembly. The original NPRM resulted from reports of corrosion on the torque tube and closeout rib fittings that support the inboard end of the inboard trailing edge flap, as well as a structural reassessment of the torque tube joint that revealed the potential for premature

fatigue cracking of the torque tube that would not be detected using reasonable inspection methods. This action revises the original NPRM by providing the terminating action for the repetitive inspections of modifying the inboard main flap. This action also revises the original NPRM by specifying prior or concurrent accomplishment, for certain Boeing Model 777–200 series airplanes, of one-time inspections of the flap seal panels for cracking and minimum clearances, and of the torque tubes for damage; and related investigative and corrective actions if necessary. We are proposing this supplemental NPRM to detect and correct corrosion or cracking of the torque tube and closeout rib fittings that support the inboard end of the inboard trailing edge flap. Cracking in these components could lead to a fracture, which could result in loss of the inboard trailing edge flap and consequent reduced controllability of the airplane.

**DATES:** We must receive comments on this supplemental NPRM by October 30, 2006.

**ADDRESSES:** Use one of the following addresses to submit comments on this supplemental NPRM.

- *DOT Docket Web site:* Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.

- *Government-wide rulemaking Web site:* Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590.

- *Fax:* (202) 493–2251.

- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for service information identified in this proposed AD.

**FOR FURTHER INFORMATION CONTACT:** Gary Oltman, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6443; fax (425) 917–6590.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this supplemental NPRM. Send your comments to an address

listed in the **ADDRESSES** section. Include the docket number “Docket No. FAA–2006–23842; Directorate Identifier 2005–NM–145–AD” at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this supplemental NPRM. We will consider all comments received by the closing date and may amend this supplemental NPRM in light of those comments.

We will post all comments submitted, without change, to <http://dms.dot.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this supplemental NPRM. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT’s complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit <http://dms.dot.gov>.

#### Examining the Docket

You may examine the AD docket on the Internet at <http://dms.dot.gov>, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level in the Nassif Building at the DOT street address stated in **ADDRESSES**. Comments will be available in the AD docket shortly after the Docket Management System receives them.

#### Discussion

We proposed to amend 14 CFR part 39 with a notice of proposed rulemaking (NPRM) for an AD (the “original NPRM”) for certain Boeing Model 777–200 and 777–300 series airplanes. The original NPRM was published in the **Federal Register** on February 9, 2006 (71 FR 6687). The original NPRM proposed to require repetitive inspections for discrepancies of the splined components that support the inboard end of the inboard trailing edge flap; related investigative, corrective, and other specified actions if necessary; a one-time modification of the inboard support of the inboard trailing edge flap by installing a new isolation strap and attachment hardware; and repetitive replacement of the torque tube assembly.