

based companies in domestic and export markets.

#### Executive Order 12988

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

#### Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Public Law 104-13, 109 Stat. 163, all departments are required to submit to OMB, for review and approval, any reporting requirements inherent in a final rule. This rule does not impose any new reporting and recordkeeping requirements under the Paperwork Reduction Act.

#### List of Subjects in 8 CFR Part 217

Air carriers, Aliens, Maritime carriers, Passports and visas.

#### PART 217—VISA WAIVER PROGRAM

1. The heading for part 217 is revised as set forth above.

**Authority:** 8 U.S.C. 1103, 1187; 8 CFR part 2.

2. The authority citation for part 217 continues to read as follows:

##### § 217.2 [Amended]

3. Section 217.2(a) is amended under the definition "Designated country" by removing "and Uruguay" from the list of countries, by adding "and" before "the United Kingdom" and adding a period after, and by adding after "citizens of British Commonwealth countries.", "After May 15, 2003, citizens of Belgium must present a machine-readable passport in order to be granted admission under the Visa Waiver Program".

Dated: February 28, 2003.

**John Ashcroft,**

*Attorney General.*

[FR Doc. 03-5244 Filed 3-6-03; 8:45 am]

**BILLING CODE 4410-10-P**

## DEPARTMENT OF ENERGY

### Office of Energy Efficiency and Renewable Energy

#### 10 CFR Part 430

[Docket No. EE-RM/TP-02-001]

RIN 1904-AB12

#### Energy Conservation Program for Consumer Products: Test Procedure for Refrigerators and Refrigerator-Freezers

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

**ACTION:** Direct final rule.

**SUMMARY:** The Department of Energy (Department or DOE) today promulgates a revision to the test procedure for measuring the energy consumption of refrigerators and refrigerator-freezers. The revision changes the calculation of the test time period for long-time automatic defrost to give credit for a control capable of timing defrost to occur other than during a compressor "on" cycle, thereby taking advantage of the natural warming of the evaporator during an "off" cycle, and saving additional energy. The revision has no effect on the testing of refrigerators and refrigerator-freezers that do not have a long-time automatic defrost system. This change in the test procedure will encourage the use of energy enhancing technology. This amendment to the test procedure will not cause any refrigerator or refrigerator-freezer that currently complies with the minimum energy conservation standards to become noncompliant with the standard.

**DATES:** This direct final rule is effective May 6, 2003, unless adverse or critical comments are received by April 7, 2003. If the effective date is delayed, timely notice will be published in the **Federal Register**.

**ADDRESSES:** Written comments should be addressed to: Ms. Brenda Edwards-Jones, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE-2J, 1000 Independence Avenue, SW., Washington, DC 20585-0121. E-mail address: [Brenda.Edwards-Jones@ee.doe.gov](mailto:Brenda.Edwards-Jones@ee.doe.gov). You should identify all such documents both on the envelope and on the documents as Energy Conservation Program for Consumer Products: Test Procedures for Refrigerators and Refrigerator-Freezers, Docket No. EE-RM/TP-02-001.

Copies of public comments received may be read in the Freedom of Information Reading Room (Room No. 1E-190) at the U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

#### FOR FURTHER INFORMATION CONTACT:

Michael Raymond, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE-2J, 1000 Independence Avenue, SW., Washington, DC 20585-0121, (202) 586-9611, E-mail:

[Michael.Raymond@ee.doe.gov](mailto:Michael.Raymond@ee.doe.gov); or Francine Pinto, Esq., 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).

#### SUPPLEMENTARY INFORMATION:

- I. Introduction
  - A. Authority
  - B. Background
- II. Discussion
- III. Final Action
- IV. Procedural Requirements
  - A. Review Under the National Environmental Policy Act of 1969
  - B. Review Under Executive Order 12866, "Regulatory Planning and Review"
  - C. Review Under the Regulatory Flexibility Act
  - D. "Takings" Assessment Review
  - E. Review Under Executive Order 13132, "Federalism"
  - F. Review Under the Paperwork Reduction Act
  - G. Review Under Executive Order 12988, "Civil Justice Reform"
  - H. Review Under the Unfunded Mandates Reform Act of 1995
  - I. Review Under the Treasury and General Government Appropriations Act, 1999
  - J. Review Under Executive Order 13211
  - K. Review Under the Small Business Regulatory Enforcement Fairness Act
  - L. Approval by the Office of the Secretary

#### I. Introduction

##### A. Authority

Part B of title III of the Energy Policy and Conservation Act, as amended (EPCA or Act), establishes the Energy Conservation Program for Consumer Products Other Than Automobiles (Program). The products currently subject to this Program ("covered products") include residential refrigerators and refrigerator-freezers, the subject of today's direct final rule.

Under the Act, the Program consists of three parts: testing, labeling, and the Federal energy conservation standards. The Department, in consultation with the National Institute of Standards and Technology (NIST), must amend or establish test procedures as appropriate for each of the covered products. (42 U.S.C. 6293). The purpose of the test procedures is to measure energy efficiency, energy use, or estimated annual operating cost of a covered product during a representative average use cycle or period of use. The test procedure must not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)).

If a test procedure is amended, EPCA section 323(e)(1) requires DOE to determine, in the rulemaking, to what extent, if any, the new test procedure would change the measured energy efficiency or measured energy use of any covered product as determined under the existing test procedure. (42 U.S.C. 6293(e)(1)). If DOE determines that the amended test procedure would

change the measured energy efficiency or measured energy use of a covered product, DOE must amend the applicable energy conservation standard during the rulemaking that establishes the new test procedure. In determining the amended energy conservation standard, DOE is required to measure the energy efficiency or energy use of a representative sample of covered products that minimally comply with the existing standard. The average energy efficiency or energy use of these representative samples, tested using the amended test procedure, shall constitute the amended energy conservation or energy use standard for the applicable covered products. (42 U.S.C. 6293(e)(2)).

Beginning 180 days after an amended or new test procedure for a covered product is prescribed or established under section 323(b) of EPCA, no manufacturer, distributor, retailer, or private labeler may make any representation with respect to the energy use, efficiency, or cost of energy consumed by such product, unless such product has been tested in accordance with such amended or new DOE procedure and such representation fully discloses the results of such testing. (42 U.S.C. 6293(c)(2)).

#### B. Background

On November 21, 2000, Electrolux filed an application for interim waiver and a petition for waiver regarding the calculation of the long-time automatic defrost test time period in refrigerators and refrigerator-freezers having a variable defrost control function. The Department granted the interim waiver on July 30, 2001, and published its decision in the **Federal Register** on August 3, 2001. (66 FR 40689). In the same **Federal Register** notice, the Department published Electrolux's petition for waiver, and solicited comments, data, and information respecting the petition. On March 29, 2002, DOE published a notice in the **Federal Register** extending the interim waiver for 180 days, or until July 25, 2002, because it determined that it would seek to amend the refrigerator and refrigerator-freezer test procedure and the planned amendment would eliminate any need for continuation of the waiver. (67 FR 15192). Furthermore, amendment of the test procedure would allow all manufacturers to use the amended test procedure if they have a product with a long-time automatic defrost function.

Electrolux's petition requested that the calculation of the test time period for long-time automatic defrost models be modified for its variable defrost control models. This modification

would allow for the existence of a control that is capable of timing defrost to occur other than during a compressor "on" cycle, thereby taking advantage of the natural warming of the evaporator during an "off" cycle, and saving energy as a result. Technology has advanced sufficiently that it is feasible to design and build a system that no longer has to initiate defrost during a compressor run period, as did the old mechanical defrost timers. Electrolux asked to have the time before the heaters turn "on" be included in the defrost period. The evaporator is warming up during this time, with no use of electrical energy. The current test procedure does not properly account for the energy savings produced by Electrolux's timing of the defrost heater activation.

The Department received three written comments concerning the petition for waiver. All the comments supported granting the waiver, with one modification.

Maytag supported Electrolux's proposal provided that it is applicable on an industry-wide basis to all manufacturers. The Department's waiver process allows for granting of waivers for a "particular basic model," so the waiver requested and granted applies only to the Electrolux basic models that include variable defrost control. Without a test procedure change, any manufacturer desiring to use this modification to the test procedure could do so only by petitioning the Department for its own waiver.

Fisher & Paykel, a major manufacturer of refrigerators in New Zealand, generally approved of Electrolux's petition, but argued for a somewhat different modification. It proposed that the third sentence of section 4.1.2.1 of the test procedure (which is the only sentence Electrolux sought to modify) read as follows:

"The second part would start at the last compressor off that is part of steady state operation (or at a point still within stable operation if there are no temperature swings) before a defrost is initiated. It would terminate at the [second] [third] turn "on" of the compressor or after four hours, whichever comes first. If there are compressor swings without compressor cycling, the start point shall be at the last temperature peak in stable operation and the end point shall be at the [second] [third] temperature peak after the defrost."

Finally, the Association of Home Appliance Manufacturers (AHAM), representing the manufacturers who produce over 90% of the household refrigerators and refrigerator-freezers in the U.S., agreed in principle with Electrolux's petition, but requested a

change in the wording. AHAM suggested that the four hour limitation of the test commence when the defrost heater is initiated, rather than at the beginning of the second part of the two-part test period. It stated that this change would alleviate concerns about "the possibility of being able to modify the performance of a refrigerator to such an extent that it would not recover from defrost in the four hour time period allotted within the proposed waiver."

AHAM recommended that Electrolux's proposed language be changed so that revised section 4.1.2.1 of the test procedure would read as follows:

"Long-time Automatic Defrost. If the model being tested has a long-time automatic defrost system, the test period may consist of two parts. A first part would be the same as the test for a unit having no defrost provisions (section 4.1.1). The second part would start when a defrost is initiated when the compressor "on" cycle is terminated prior to start of the defrost heater and terminates at the second turn "on" of the compressor or four hours from the initiation of the defrost heater, whichever comes first."

AHAM stated that it discussed this change with its members, and was not aware of any member who disagreed with its position. It specifically listed the following members as having participated in and concurred in its proposal: GE Appliances, Electrolux Home Products, Fisher & Paykel, Maytag, Sub-Zero, and Whirlpool. In summary, AHAM asserted that all commenters on Electrolux's Petition were in agreement with AHAM's proposal.

## II. Discussion

The Department consulted with the National Institute of Standards & Technology (NIST), which agreed that the current test procedure for refrigerators and refrigerator-freezers is not clear with regard to the initiation of the defrost cycle test time period in Electrolux's new product. (The current test procedure states: "The second period would start when a defrost period is initiated during a compressor "on" cycle \* \* \*") Electrolux's new product initiates the defrost period when the compressor is "off".) NIST informed the Department that the change proposed in the Electrolux Petition would clarify the defrost cycle initiation and more accurately measure the energy consumption of Electrolux's new product. NIST endorsed the revised language proposed by AHAM. As stated above, all commenters on the test procedure change apparently support AHAM's proposal. This proposed change has widespread support and will

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

clearance is required under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

*G. Review Under Executive Order 12988, "Civil Justice Reform"*

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by sections 3(a) and 3(b) of Executive Order 12988, it 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. DOE reviewed today's rule under the standards of section 3 of the Executive Order and determined that, to the extent permitted by law, the proposed regulations meet the relevant standards.

*H. Review Under the Unfunded Mandates Reform Act of 1995*

Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act") requires that the Department prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. The budgetary impact statement must include: (i) Identification of the Federal law under which the rule is promulgated; (ii) a qualitative and quantitative assessment of anticipated costs and benefits of the Federal mandate and an analysis of the extent to

which such costs to State, local, and tribal governments may be paid with Federal financial assistance; (iii) if feasible, estimates of the future compliance costs and of any disproportionate budgetary effects the mandate has on particular regions, communities, non-Federal units of government, or sectors of the economy; (iv) if feasible, estimates of the effect on the national economy; and (v) a description of the Department's prior consultation with elected representatives of State, local, and tribal governments and a summary and evaluation of the comments and concerns presented.

The Department has determined that the action today does not include a Federal mandate that may result in estimated costs of \$100 million or more to State, local or to tribal governments in the aggregate or to the private sector. Therefore, the requirements of sections 203 and 204 of the Unfunded Mandates Act do not apply to this action.

*I. Review Under the Treasury and General Government Appropriations Act, 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 proposed rule or policy that may affect family well-being. Today's rule 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.

*J. Review Under Executive Order 13211*

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), Office of Management and Budget, 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 or is expected to lead to the 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 of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

Today's rule will not have a significant adverse effect on the supply, distribution, or the use of energy, and, therefore, is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

*K. Review Under the Small Business Regulatory Enforcement Fairness Act*

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of today's rule prior to its effective date. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 801(2).

*L. Approval of the Office of the Secretary*

The Secretary of Energy has approved publication of today's direct final rule.

**List of Subjects in 10 CFR Part 430**

Administrative practice and procedure, Energy conservation, Household appliances.

Issued in Washington, DC, on February 28, 2003.

**David K. Garman,**

*Assistant Secretary, Energy Efficiency and Renewable Energy.*

For the reasons set forth in the preamble, the Department amends part 430 of chapter II of title 10, Code of Federal Regulations, to read as follows:

**PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS**

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

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

2. Section 4.1.2.1 of Appendix A1 to subpart B of part 430 is revised to read as follows:

**Appendix A1 to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Electric Refrigerators and Electric Refrigerator-Freezers**

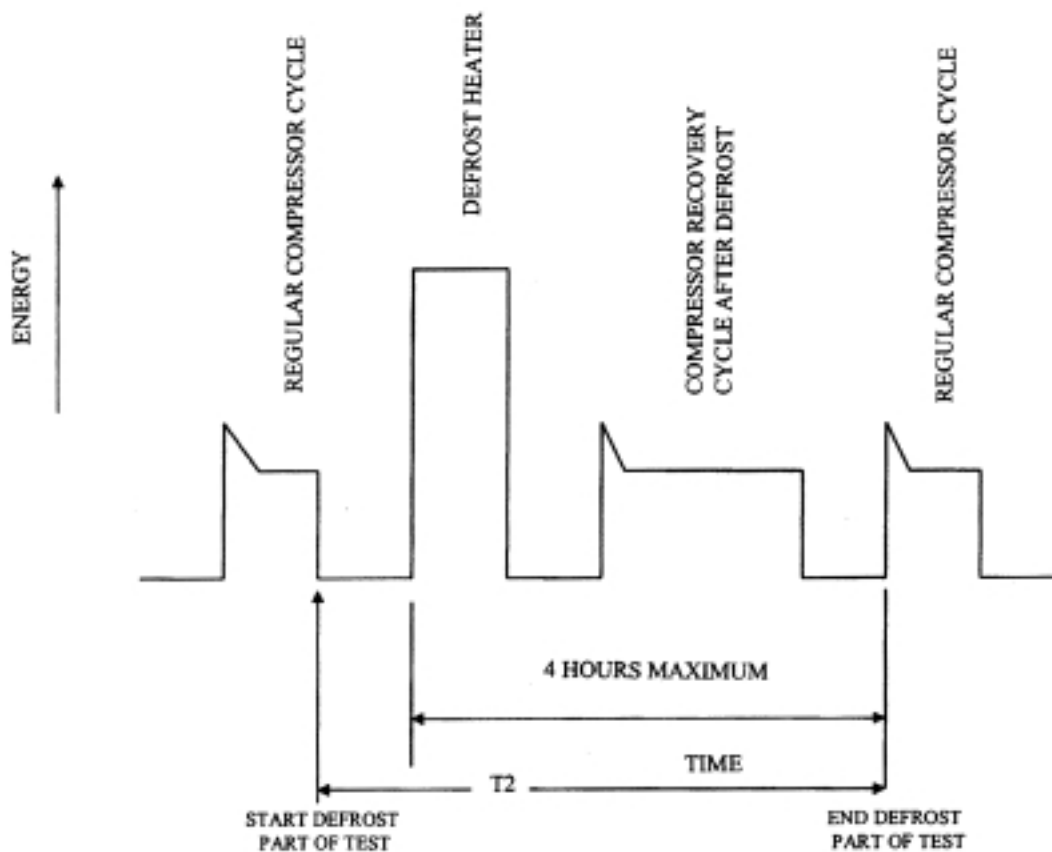
4. \* \* \*

4.1.2.1 Long-time Automatic Defrost. If the model being tested has a long-time automatic defrost system, the test time period may consist of two parts. A first part would be the same as the test for a unit having no defrost provisions (section 4.1.1). The second part would start when a defrost is initiated when the compressor "on" cycle is terminated prior to start of the defrost heater and

terminates at the second turn "on" of the compressor or four hours from the initiation of the defrost heater,

whichever comes first. See diagram in Figure 1 to this section.  
 BILLING CODE 6450-01-P

**Figure 1**  
**Long Time Automatic Defrost Diagram**



[FR Doc. 03-5404 Filed 3-6-03; 8:45 am]  
 BILLING CODE 6450-01-C