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DEPARTMENT OF ENERGY

10 CFR Part 431

[EERE–2019–BT–TP–0025]

RIN 1904–AE55

Energy Conservation Program: Test Procedure for Commercial Prerinse Spray Valves

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

ACTION: Final rule.

SUMMARY: This final rule incorporates by reference the current version of the industry testing standard for commercial prerinse spray valves, which will not substantively change the current test procedure. The Department of Energy (''DOE'') also amends the definition of commercial prerinse spray valve to codify existing guidance on how to apply the definition. This amended definition do not change the current scope of the test procedure.

DATES: The effective date of this rule is April 11, 2022. The final rule changes will be mandatory for product testing starting September 7, 2022. The incorporation by reference of certain material listed in this rule is approved by the Director of the Federal Register on April 11, 2022.

ADDRESSES: The docket, which includes **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials, is available for review at *www.regulations.gov*. All documents in the docket are listed in the *www.regulations.gov* index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

A link to the docket web page can be found at *www.regulations.gov/docket/EERE-2019-BT-TP-0025*. The docket web page contains instructions on how to access all documents, including public comments, in the docket.

For further information on how to review the docket contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: *ApplianceStandardsQuestions@ee.doe.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Bryan Berringer, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–2J, 1000 Independence Avenue SW, Washington, DC, 20585–0121. Telephone: (202) 586–0371. Email: *ApplianceStandardsQuestions@ee.doe.gov*.

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SUPPLEMENTARY INFORMATION: DOE incorporates by reference the following industry standard into 10 Code of Federal Regulations (''CFR'') part 431:

ASTM F2324–13 (R2019), ''Standard Test Method for Prerinse Spray Valves;'' Approved May 1, 2019 (''ASTM F2324–13'').

Copies of ASTM F2324–13 (R2019) can be obtained from ASTM International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428–2959, (610) 832–9585 or by going to *www.astm.org*.

For a further discussion of this standard, see section IV.N of this document.

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I. Authority and Background

Commercial prerinse spray valves (''CPSVs'') are included among the ''covered products'' for which the U.S. Department of Energy (''DOE'') is authorized to establish and amend energy conservation standards and test procedures. (42 U.S.C. 6291(33); 42 U.S.C. 6293(b)(14); 42 U.S.C. 6295(dd)) DOE's energy conservation standards and test procedures for commercial prerinse spray valves are currently prescribed at 10 CFR part 431, subpart O.[1] The following sections discuss DOE's authority to establish test procedures for CPSVs and relevant background information regarding DOE's consideration of test procedures for this product.

A. Authority

The Energy Policy and Conservation Act, as amended (''EPCA''),[2] authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part B [3] of EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles, which sets forth a variety of provisions designed to improve energy efficiency. EPCA

[1] Because Congress included commercial prerinse spray valves in Part B of Title III of EPCA, the consumer product provisions of Part B (rather than the industrial equipment provisions of Part C) apply to commercial prerinse spray valves. However, because commercial prerinse spray valves are commonly considered to be commercial equipment, as a matter of administrative convenience and to minimize confusion among interested parties, DOE codified the requirements for commercial prerinse spray valves into subpart O of 10 CFR part 431. Part 431 contains DOE regulations for commercial and industrial equipment. DOE refers to commercial prerinse spray valves as either ''products'' or ''equipment.''

[2] All references to EPCA in this document refer to the statute as amended through the Energy Act of 2020, Public Law 116–260 (Dec. 27, 2020).

[3] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

provides definitions for commercial prerinse spray valves under 42 U.S.C. 6291(33), the test procedure under 42 U.S.C. 6293(b)(14), and energy conservation standards for flow rate under 42 U.S.C. 6295(dd).

The energy conservation program under EPCA consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA specifically include definitions (42 U.S.C. 6291), test procedures (42 U.S.C. 6293), labeling provisions (42 U.S.C. 6294), energy conservation standards (42 U.S.C. 6295), and the authority to require information and reports from manufacturers (42 U.S.C. 6296).

The testing requirements consist of test procedures that manufacturers of covered products must use as the basis for (1) certifying to DOE that their products comply with the applicable energy conservation standards adopted under EPCA (42 U.S.C. 6295(s)), and (2) making representations about the efficiency of those products (42 U.S.C. 6293(c)). Similarly, DOE must use these test procedures to determine whether the products comply with any relevant standards promulgated under EPCA. (42 U.S.C. 6295(s))

Federal energy efficiency requirements for covered products established under EPCA generally supersede State laws and regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6297) DOE may, however, grant waivers of Federal preemption for particular State laws or regulations, in accordance with the procedures and other provisions of EPCA. (42 U.S.C. 6297(d))

Under 42 U.S.C. 6293, EPCA sets forth the criteria and procedures DOE must follow when prescribing or amending test procedures for covered products. EPCA requires that any test procedures prescribed or amended under this section shall be reasonably designed to produce test results which measure energy efficiency, energy use or estimated annual operating cost of a covered product during a representative average use cycle (as determined by the Secretary) or period of use and shall not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3))

With respect to CPSVs, EPCA requires DOE to use ASTM International (''ASTM'') F2324 (''ASTM F2324'') as the basis for the test procedure for measuring flow rate. (42 U.S.C. 6293(b)(14))

EPCA also requires that, at least once every 7 years, DOE evaluate test procedures for each type of covered product, including CPSVs, to determine whether amended test procedures would more accurately or fully comply with the requirements for the test procedures to not be unduly burdensome to conduct and be reasonably designed to produce test results that reflect energy efficiency, energy use, and estimated operating costs during a representative average use cycle or period of use. (42 U.S.C. 6293(b)(1)(A))

If the Secretary determines, on her own behalf or in response to a petition by any interested person, that a test procedure should be prescribed or amended, the Secretary shall promptly publish in the **Federal Register** proposed test procedures and afford interested persons an opportunity to present oral and written data, views, and arguments with respect to such procedures. The comment period on a proposed rule to amend a test procedure shall be at least 60 days and may not exceed 270 days. In prescribing or amending a test procedure, the Secretary shall take into account such information as the Secretary determines relevant to such procedure, including technological developments relating to energy use or energy efficiency of the type (or class) of covered products involved. (42 U.S.C. 6293(b)(2)). If DOE determines that test procedure revisions are not appropriate, DOE must publish its determination not to amend the test procedures. DOE is publishing this final rule in satisfaction of the 7-year review requirement specified in EPCA. (42 U.S.C. 6293(b)(1)(A))

B. Background

DOE's existing test procedures for CPSVs appear at 10 CFR 431.264. DOE most recently amended the test procedure for CPSVs in a final rule published December 30, 2015, in which DOE incorporated by reference the 2013 version of ASTM F2324 (''ASTM F2324–13''). 80 FR 81441 (''December 2015 Final Rule'').

On June 5, 2020, DOE published a request for information soliciting public comment and data on all aspects of the existing DOE test procedure for CPSVs. 85 FR 34541 (''June 2020 RFI''). DOE published a notice of proposed rulemaking (''NOPR'') for the test procedure on May 20, 2021, presenting DOE's proposals to amend the CPSV test procedure. 86 FR 27298 (''May 2021 NOPR''). DOE held a public meeting related to this NOPR on June 9, 2021.

DOE received comments in response to the May 2021 NOPR from the interested parties listed in Table I.1.

TABLE I.1—WRITTEN COMMENTS RECEIVED IN RESPONSE TO MAY 2021 NOPR

Commenter(s)	Reference in this final rule	Commenter type
Appliance Standards Awareness Project and Natural Resources Defense Council.	ASAP and NRDC	Efficiency Organizations.
Northwest Energy Efficiency Alliance	NEEA	Efficiency Organization.
Pacific Gas and Electric Company, Southern California Edison, and San Diego Gas and Electric Company; collectively, the California Investor-Owned Utilities.	CA IOUs	Utilities.
Plumbing Manufacturers International	PMI	Trade Organization.

A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.[4]

II. Synopsis of the Final Rule

In this final rule, DOE amends 10 CFR 431.264, ''Uniform test method for the measurement of flow rate for commercial prerinse spray valves,'' as follows:

- Amends the definition of ''commercial prerinse spray valve'' to codify existing guidance on how to apply the definition; and

[4] The parenthetical reference provides a reference for information located in the docket of DOE's rulemaking to develop test procedures for CPSVs. (Docket No. EERE–2019–BT–TP–0025, which is maintained at *www.regulations.gov*). The references are arranged as follows: (commenter name, comment docket ID number, page of that document).

• Incorporates by reference the current industry standard—ASTM F2324–13 (R2019), ''Standard Test Method for Prerinse Spray Valves.''

• Explicitly permits voluntary testing using a test pressure other than the test pressure required for determining compliance with the standards at 10 CFR part 431.

The adopted amendments are summarized in Table II.1, including a comparison to the test procedure before amendment, as well as the reason for the adopted change.

TABLE II.1—SUMMARY OF CHANGES IN THE AMENDED TEST PROCEDURE

DOE test procedure prior to amendment	Amended test procedure	Attribution
A ''commercial prerinse spray valve'' is defined as ''a handheld device that has a release-to-close valve and is suitable for removing food residue from food service items before cleaning them in commercial dishwashing or ware washing equipment.''.	A ''commercial prerinse spray valve'' is defined as ''a handheld device that has a release-to-close valve and is suitable for removing food residue from food service items before cleaning them in commercial dishwashing or ware washing equipment based on any or all of the following: (1) Equipment design and representations (for example, whether equipment is represented as being capable of rinsing dishes as compared to equipment that is represented exclusively for washing walls and floors or animal washing); (2) Channels of marketing and sales (for example, whether equipment is marketed or sold through outlets that market or sell to food service entities); (3) Actual sales (including whether the end-users are restaurants or commercial or institutional kitchens, even if those sales are indirectly through an entity such as a distributor).	Codify existing guidance regarding scope of definition.
References industry standard ASTM F2324–13.	References reaffirmed industry standard ASTM F2324–13 (2019)	Harmonize with current industry standard.
Requires testing at 60 pounds per square inch (''psi'').	Requires testing at 60 psi and explicitly permits voluntary testing at other water pressures.	Response to stakeholder comment.

DOE has determined that the amendments described in section III of this document and adopted in this document will not alter the measured efficiency of CPSVs or require retesting or recertification solely as a result of DOE's adoption of the amendments to the test procedures. Additionally, DOE has determined that the amendments will not increase the cost of testing. Discussion of DOE's actions are addressed in detail in section III of this document.

The effective date for the amended test procedures adopted in this final rule is 30 days after publication of this document in the **Federal Register**. Representations of energy use or energy efficiency must be based on testing in accordance with the amended test procedures beginning 180 days after the publication of this final rule.

III. Discussion

A. Scope and Definition

''Commercial prerinse spray valve'' is defined at 10 CFR 431.262 as ''a handheld device that has a release-to-close valve and is suitable for removing food residue from food service items before cleaning them in commercial dishwashing or ware washing equipment.'' DOE notes that EPCA defines ''commercial prerinse spray valve'' as ''a handheld device designed and marketed for use with commercial dishwashing and ware washing equipment that sprays water on dishes, flatware, and other food service items for the purpose of removing food residue before cleaning the items.'' 42 U.S.C. 6291(33)(A) In the December 2015 Final Rule, DOE observed that some products were being designed by the manufacturer for other specific applications but were marketed to rinse dishes before washing. 80 FR 81441, 81443. Accordingly, DOE amended the definition of commercial prerinse spray valve to provide more explicit direction that any spray valve ''suitable'' for prerinsing purposes is subject to energy conservation standards in order to ensure a level and fair playing field for all products serving commercial prerinse spray valve applications. 80 FR 81441, 81443–81444.

In the preamble of the December 2015 Final Rule, DOE provided additional guidance on the various factors that DOE would consider in determining whether a spray valve model is ''suitable'' for removing food residue from food service items before cleaning them in commercial dishwashing or ware washing equipment. *Id.* at 80 FR 81444. Specifically, DOE would consider factors including (1) product design and descriptions (including how the product is identified and described in product catalogs, brochures, specification sheets, and communications with prospective purchasers); (2) channels of marketing and sales (for example, a product marketed or sold through outlets that market or sell to food service entities such as restaurants or commercial or institutional kitchens is more likely to be used as a commercial prerinse spray valve than one marketed or sold through outlets catering to pet care. Similarly, a product marketed outside of the United States as a commercial prerinse spray valve, or for similar use in a kitchen-type setting, would be considered suitable for use as a commercial prerinse spray valve); and (3) actual sales (including whether the end-users are restaurants or commercial or institutional kitchens, even if those sales are indirectly through an entity such as a distributor, to determine whether the spray valve is used extensively in conjunction with commercial dishwashing and ware washing equipment). *Id.*

In response to the June 2020 RFI, NEEA commented that there were valves on the market that appeared to meet the definition of commercial prerinse spray valve and either had marketed flow rates above the energy conservation standard and/or were not being certified to DOE. (NEEA, No. 6 at p. 1) To provide further certainty as to the definition of ''commercial prerinse spray valve,'' in the May 2021 NOPR DOE proposed to amend the definition of ''commercial prerinse spray valve'' to codify the guidance that had been provided in the December 2015 Final Rule for determining whether equipment is suitable for removing food

residue from food service items before cleaning them in commercial dishwashing or ware washing equipment. 86 FR 27298, 27301–27302. Specifically, DOE proposed to define a ''commercial prerinse spray valve'' as a handheld device that has a release-to-close valve and is suitable for removing food residue from food service items before cleaning them in commercial dishwashing or ware washing equipment. DOE may determine that a device is suitable for removing food residue from food service items before cleaning them in commercial dishwashing or ware washing equipment based on any or all of the following: (1) Equipment design and representations (for example, whether equipment is represented as being capable of rinsing dishes as compared to equipment that is represented exclusively for washing walls and floors); (2) Channels of marketing and sales (for example, whether equipment is marketed or sold through outlets that market or sell to food service entities); (3) Actual sales.'' 86 FR 27298, 27302. DOE tentatively determined that the proposed definition would not change the scope of coverage. *Id.* Rather, the proposal would only codify in the CFR the existing guidance on how to apply the definition.

ASAP, NRDC and NEEA commented that the proposed definition adds clarity and reduces the risk of misclassification of commercial prerinse spray valves. (ASAP and NRDC, No. 10 at p. 1; NEEA, No. 12 at pp. 1–2) ASAP and NRDC commented that there are many CPSV models that appear to meet the current definition of a CPSV, yet do not meet the efficiency standards that DOE previously prescribed. These commenters believe that considerable water savings are likely being lost due to non-compliant products and believe that the definition DOE proposed in the NOPR encompasses the CPSV models in violation and will help close loopholes in the current standards. (ASAP and NRDC, No. 10 at p. 1; Webinar Transcript, No. 9 at p. 14)

NEEA stated that the first two criteria provide clarity that products marketed for use as a prerinse valve (no matter where they are sold) and valves sold via commercial kitchen retailers (even if they are marketed as ''utility'' valves) meet the definition of a CPSV and therefore must meet the CPSV regulated flow rates; and the third criteria clarifies that valves sold and installed in CPSV applications also meet the criteria of a CPSV no matter where they were sold or how they were marketed. (NEEA, No. 12 at p. 2)

The CA IOUs generally supported the proposed definition for CPSVs, stating that it is likely to reduce the risk of misclassification of higher flow valves not intended for food service prerinse applications. (CA IOUs, No. 11 at p. 4) The CA IOUS also stated that some ambiguity could still exist under DOE's proposed definition for certain products meant for other applications like washing walls. The CA IOUs recommended adding that CPSVs are ''intended to be installed in fixtures with a faucet or overhead pull-down hose over a multi-compartment sink, wash-down trough, or a scrapping device.'' (CA IOUs, No. 11 at p. 5)

PMI opposed the proposed definition, claiming that manufacturers would no longer have a clear definition by which to produce and sell CPSVs, and would instead rely on a subjective set of requirements that would be left up to the discretion of DOE to apply and enforce, leading to confusion. (PMI, No. 13 at pp. 1–2; Webinar Transcript, No. 9 at pp. 12–13) PMI commented that NEEA's comment in response to the June 2020 RFI demonstrates that use of the word ''suitable'' has led to confusion in the market and scrutiny of products that were never intended for food service applications. *Id.* PMI asserted that manufacturers submitted comment during the previous rulemaking recommending that DOE define the term ''suitable'' in order to ensure only products intended to be used as CPSVs are regulated as such. *Id.* PMI recommended modifying the current definition by replacing the phrase ''is suitable for removing'' with the phrase ''intended by the manufacturer to remove.'' *Id.*

PMI further asserted that manufacturers provide clear statements on their websites, and within their product literature, regarding which products are intended to meet DOE's current CPSV regulations. (PMI, No. 13 at p. 2; Webinar Transcript, No. 9 at p. 13) PMI provided four examples of product literature: (1) A product with a represented 1.15 gallon per minute (''gpm'') flow rate marketed as ''SUITABLE for removing food residue from food service items before cleaning them in commercial dishwashing or ware washing equipment''; (2) a product with a represented 2.45 gpm flow rate marketed as ''NOT SUITABLE for removing food residue from food service items before cleaning them in commercial dishwashing or ware washing equipment''; (3) a product with a represented 1.07 gpm flow rate marketed as ''EPAct/DOE Compliant'' and ''2019 DOE PRSV—Class II compliant''; and (4) a product represented with a 5.6 gpm flow rate marketed as ''Not Intended for USA Pre-Rinse.'' *Id.*

PMI additionally commented that manufacturers will incur additional costs if they are required to meet energy conservation standards for products not intended for removing food residue, such as washdown equipment or pet grooming equipment. (*Id.;* Webinar Transcript, No. 9 at p. 13)

Regarding the CA IOUs' suggestion to base the CPSV definition on the intended location for installing the fixture, intent suggests subjectivity, which not only reduces regulatory transparency but also creates challenges for enforcement. DOE has previously rejected such an approach. 80 FR 81441, 81443. As discussed in the notice of proposed rulemaking to the December 2015 Final Rule, DOE has also observed products marketed as ''pull-down kitchen faucet'' or ''commercial style prerinse,'' which generally are handheld devices that can be used for commercial dishwashing or ware washing regardless of intended installation location. 80 FR 35874, 35876 (Jun. 23, 2015). DOE notes that these categories of products typically do not have a release-to-close valve and therefore generally do not meet the definition of commercial prerinse spray valve. However, if such a product does have a release-to-close valve, it would meet the definition of commercial prerinse spray valve regardless of intended installation location, provided it were being sold through channels of marketing that sell to food service entities.

In response to comments regarding lack of clarity around the term ''suitable,'' DOE notes that neither DOE nor manufacturers have identified any physical characteristics that would distinguish valves suitable for removing food residue from food service items before cleaning them in commercial dishwashing or ware washing equipment from other valves. In the absence of any physical identifying characteristics that could be used to distinguish a CPSV, DOE articulated in the December 2015 Final Rule the means by which DOE would consider a spray valve to be ''suitable'' for removing food residue from food service items before cleaning them in commercial dishwashing or ware washing equipment. 80 FR 81441, 81443–81445 The intent of DOE's proposal in the May 2021 NOPR to codify this guidance as part of the CPSV definition is to provide manufacturers with greater certainty as to how DOE would determine whether a particular spray valve model is covered by the scope of DOE's CPSV test procedure and

energy conservation standards. As stated, the intent is not to amend the scope of the definition. 86 FR 27298, 27302.

In response to the suggestion by PMI that the definition of CPSV reference the use of the equipment as intended by the manufacturer, DOE notes that the definition of CPSV as defined by EPCA references how the device is ''designed and marketed for use'' without limiting consideration of the marketed use to that of the manufacturer. (42 U.S.C. 6291(33)(A)) As discussed in the December 2015 Final Rule, DOE observed instances in which products designed by the manufacturer for other specific applications were marketed on retailer websites for commercial dishwashing and ware washing. 80 FR 81441, 81443. This, in part, prompted DOE to codify a definition of CPSV that replaces the term ''designed and marketed for use'' with the phrase ''suitable for use.'' *Id.* 80 FR 81444. DOE's prior observations of the market have demonstrated that statements of manufacturer intent may not correspond to how such products are marketed by third-party distributors, or how such products would be used by the consumer. DOE research indicates that a large majority of CPSVs are sold through third-party distributors. Without any physical features that would distinguish between types of potential end uses, a definition that is limited to manufacturer intent, as suggested by PMI, would ignore the marketing practice of third-party distributors that likely influences how many of these products are used. As noted in the preamble of the December 2015 Final Rule and May 2021 NOPR, DOE also may consider actual sales, including whether the end-users are restaurants or commercial or institutional kitchens, even if those sales are indirectly through an entity such as a distributor. 86 FR 27298, 27301–27302 and 80 FR 81441, 81444. The amended definition explicitly provides, consistent with the discussion in the May 2021 NOPR, that spray valves with actual sales to commercial prerinse applications may be considered suitable even if those sales are through a third-party distributor.

With regard to the concern expressed by PMI that manufacturers would incur additional costs if products not intended for removing food residue (such as washdown equipment or pet grooming products) are required to meet the CPSV energy conservation standards—the revised definition proposed by DOE and adopted in this final rule does not change the scope of the definition. The amendment to the definition of CPSV adopted in this final rule codifies the guidance DOE has previously provided on the factors to consider when determining whether a valve is suitable for removing food residue from food service items before cleaning them in commercial dishwashing or ware washing equipment. If a spray valve model is not represented as being capable of rinsing dishes, is not marketed or sold through outlets that market or sell to food service entities, and is not sold to end-users that are restaurants or commercial or institutional kitchens, is not a CPSV. A spray valve that a manufacturer markets exclusively for wall washing and floors (*i.e.,* washdown equipment) is an example of a device that would not be a CPSV because it is not represented as being capable of rinsing dishes and therefore would not be considered suitable for removing food residue from food service items before cleaning them in commercial dishwashing or ware washing equipment). Similarly, the amended definition includes spray valves represented exclusively for animal washing as an example of valves that are not CPSVs.

For the reasons described in the May 2021 NOPR and reiterated in this final rule, and in consideration of comments from interested parties, DOE is amending the definition of ''commercial prerinse spray valve'' to mean ''a handheld device that has a release-to-close valve and is suitable for removing food residue from food service items before cleaning them in commercial dishwashing or ware washing equipment. DOE may determine that a device is suitable for removing food residue from food service items before cleaning them in commercial dishwashing or ware washing equipment based on any or all of the following: (1) Equipment design and representations (for example, whether equipment is represented as being capable of rinsing dishes as compared to equipment that is represented exclusively for washing walls and floors or for animal washing); (2) Channels of marketing and sales (for example, whether equipment is marketed or sold through outlets that market or sell to food service entities); (3) Actual sales (including whether the end-users are restaurants or commercial or institutional kitchens, even if those sales are indirectly through an entity such as a distributor).''

B. Updates to Industry Standards

The CPSV test procedure incorporates by reference ASTM F2324–13 at 10 CFR 431.263. The specific sections of ASTM F2324–13 that are specified in the test method in 10 CFR 431.264 are the test methods for measuring flow rate at Sections 6.1 through 6.9 (except 6.4 and 6.7), 9.1 through 9.4, and 10.1 through 10.2.5 of ASTM F2324–13. 10 CFR 431.264(b)(1). The DOE test procedure incorporates the corresponding calculations in Section 11.3.1 of ASTM F2343–13. For the spray force test method, the DOE test procedure references Sections 6.2, 6.4 through 6.9, 9.1 through 9.5.3.2, and 10.3.1 through 10.3.8 of ASTM F2324–13. 10 CFR 431.264(b)(2).

In the May 2021 NOPR, DOE proposed to update the DOE test procedure to reference the reaffirmed industry testing standard, ASTM F2324–13 (R2019), and tentatively determined that such a change would not result in any substantive changes to the existing CPSV test procedure. 86 FR 27298, 27302.

The CA IOUs and PMI both commented that they support DOE incorporating the reaffirmed industry test standard. (CA IOUs, No. 11 at p. 5; PMI, No. 13 at p. 2; Webinar Transcript, No. 9 at p. 15) PMI commented that incorporating the reaffirmed industry standard would not lead to any additional costs. (PMI, No. 23 at p. 2) DOE did not receive any comments opposing incorporation of the reaffirmed industry standard ASTM F2324–13 (2019). For the reasons discussed in the May 2021 NOPR, DOE is updating the incorporation by reference in the CPSV test procedure to reference the reaffirmed industry standard, ASTM F2324–13 (R2019).

C. Water Pressure

ASTM F2324–13 specifies testing CPSVs at a water pressure of 60 ± 2 pounds per square inch (''psi'').[5]

In the May 2021 NOPR, DOE stated that it did not receive any data suggesting that a different test pressure would be more representative and noted that the DOE test pressure aligns with the industry-consensus standard. 86 FR 27298, 27302–27303. Therefore, DOE proposed maintaining testing with a dynamic water pressure[6] of 60 ± 2 psi.

DOE received several comments suggesting a different water pressure may be appropriate and one suggesting an additional labeling requirement. NEEA encouraged DOE to review

[5] The latest version of the industry standard, ASTM F2324–13 (R2019), that DOE is incorporating by reference in this document also specifies testing with a water pressure at 60 ± 2 psi.

[6] Dynamic water pressure refers to the water pressure when water is flowing. For the DOE test procedure, this is measured upstream of the CPSV. In this notice, dynamic water pressure can be assumed when referencing water pressure unless explicitly stated to be ''static'' pressure.

available data to ensure that 60 psi is not higher than the average water pressure. (NEEA, No. 12 at p. 3) The CA IOUs commented that its investigation of four field studies indicates an average dynamic water pressure of 52 psi, and that their analysis of these field studies indicates that more than one third of the sites with CPSVs with flow rates of 1.28 gpm had pressures less than 50 psi, while only 16 percent had flow pressures over 60 psi. (CA IOUs, No. 11 at pp. 2–3) The CA IOUs further commented that model plumbing codes adopted by most states limit the maximum static pressure [7] at the meter at 80 psi. The CA IOUs estimated that this would result in a dynamic pressure of around 66 psi. (CA IOUs, No. 11 at p. 3) The CA IOUs further commented that several cities require a minimum static pressure of 30 psi, which the CA IOUs estimate would result in a minimum dynamic pressure of 25 psi. *Id.* Based on these estimates of the maximum and minimum expected water pressures, the CA IOUs suggested, at least for Class 1 products, that testing CPSVs at 40 psi would provide a good indication of water use at the low end of pressures. (CA IOUs, No. 11 at pp. 3–4) The CA IOUs commented that although 50 psi would be more representative of an average pressure in commercial kitchens, given that current standards are based on testing at 60 psi, an additional test at 40 psi should be added to represent the lower end of pressures experienced in commercial kitchens. *Id.* at p. 4 The CA IOUs asserted that an additional test at 40 psi would not be unduly burdensome for manufacturers to conduct. *Id.* Finally, the CA IOUs recommended that DOE consider requiring a label on CPSVs denoting the tested flow rate at 40 psi in addition to labeling with the tested flow rate at 60 psi, to enable consumers to purchase products best suited for their operational needs and building constraints, while maximizing energy and water savings. *Id.*

NEEA commented that low water pressure is an important consideration when installing a CPSV, as dissatisfied CPSV users are known to replace low-flow valves with higher flow valves in order to achieve the performance they need. (NEEA, No. 12 at pp. 2–3) NEEA stated that with the current test pressure of 60 psi, consumers with lower water pressure do not have the information they need to know if a valve will perform as they need it to before purchasing and installing it. *Id.* at p. 3 NEEA recommended that DOE adopt an optional informational test pressure of 40 psi that would provide a consistent point of comparison for products looking to highlight and differentiate performance at lower pressures and would provide a foundation for voluntary labeling programs at the state or national level. *Id.*

As an accompaniment to the December 2015 Final Rule, DOE provided a separate report titled ''Analysis of Water Pressure for Testing Commercial Prerinse Spray Valves Final Report,'' [8] in which DOE collected data from studies that reported pressures and flow rates for typical CPSV applications to determine the representative water pressure for testing commercial prerinse spray valves. The report concluded that the flow rate of CPSVs can vary by almost 40 percent when the water pressure changes from 40 psi to 80 psi. Based on the data, the weighted average dynamic water pressure was estimated to be around 55 psi, which resulted in a 4-percent decrease in flow rate as compared to the flow rate of a CPSV installed with a water pressure of 60 psi. (Docket No. EERE–2014–BT–TP–0055–0008 at p. 4–5) Thus, the weighted average pressure of the available data is sufficiently similar to the prescribed test pressure in the industry test procedure. Accordingly, DOE determined that 60 psi is sufficiently representative of the water pressures CPSVs will experience in the field. 80 FR 81441, 81447.

In the December 2015 Final Rule, DOE acknowledged that water pressure will affect the flow rate of a CPSV once installed. 80 FR 81441, 81446. Typically, lower pressures result in lower flow rates and higher pressures result in higher flow rates. Nevertheless, DOE noted that testing at a single specific water pressure to demonstrate compliance with the maximum allowable flow rate would create a consistent and standardized reference that would be comparable across all models *Id.* DOE also noted that requiring testing at multiple water pressures would increase the test burden. *Id.* Additionally, a review of industry testing standards indicated that testing at lower water pressures was typically for the purpose of determining a minimum flow rate. *Id.*

As discussed, the requirement in 10 CFR 431.264 to test at 60 ± 2 psi is based on ASTM F2324, which is an industry consensus standard that includes input from a wide variety of national stakeholders and was corroborated with the data compiled for the December 2015 Final Rule. The data cited by the CA IOUs are largely consistent with the data previously presented by DOE in support of the December 2015 Final Rule. DOE has not received any new data indicating that an alternative test pressure would be more representative. Because the weighted average pressure of the available data is sufficiently similar to the prescribed test pressure in the industry test procedure, DOE reaffirms its prior conclusion that a 60-psi test pressure is sufficiently representative of the water pressures CPSVs will experience in the field. Moreover, testing at a single test pressure is appropriate for measuring flowrate for determination of compliance with the maximum flow rate applicable under the energy conservation standards. Based on the reasons discussed in this section, DOE has decided to maintain the current test pressure of 60 ±2 psi.

With regard to the suggestions to add a second test at a test pressure of 40 psi, DOE recognizes that some consumers may value representations of flow rate corresponding to other water pressures than 60 psi. DOE has determined, however, that requiring all manufacturers to perform an additional test at a pressure of 40 psi, for mandatory energy conservation standards and/or a mandatory labeling requirement as suggested by the CA IOUs, would be unduly burdensome, because this would require manufacturers to retest and recertify all CPSVs and the current test pressure is representative of average use. However, based on the comments received from NEEA and the CA IOUs in response to DOE's request for data regarding water pressure, DOE recognizes that representations of flow rate at pressures other than 60 psi may provide useful information to consumers at the lower end of the water pressure range. Therefore, in this final rule, DOE is explicitly providing for optional testing at test pressures other than the required 60 ± 2 psi. Specifically, DOE is establishing a new paragraph (d) of 10 CFR 431.264, which provides that manufacturers may voluntarily test pursuant to the DOE test procedure using other test pressures in addition to the 60 psi test pressure required for determining compliance with the standards at 10 CFR part 431. When making voluntary representations, manufacturers must represent flow rate at alternative water pressures in accordance with the sampling plan at 10 CFR 429.51(a); however, manufacturers are not required to submit certification reports for voluntary representations.

[7] Static water pressure refers to the water pressure when water is not flowing.

[8] The water pressure sensitivity analysis is available at *www.regulations.gov* under docket number EERE–2014–BT–TP–0055.

D. Test Procedure Costs

In this final rule, DOE amends the test procedures for CPSVs to amend the definition of CPSV to clarify the current scope, incorporate by reference the reaffirmed industry standard, ASTM F2324–13 (R2019), and explicitly permit voluntary testing at alternative water pressures.

As discussed, the amendment to the definition of ''commercial prerinse spray valve'' codifies DOE guidance on factors for determining whether a spray value is suitable for removing food residue from food service items before cleaning them in commercial dishwashing or ware washing equipment. The amendment does not change the scope of the definition or the scope of the test procedure and energy conservation standards.

DOE has determined that the reaffirmed industry standard, ASTM F2324–13 (R2019), is not substantively different from the prior version referenced by the DOE test procedure. As such, reference to ASTM F2324–13 (R2019) will not change how the testing CPSVs is conducted and would not impact the measured values of water use or spray force used to determine compliance with standards. Regarding voluntary representations, the provisions providing for testing at additional water pressures are optional only.

Accordingly, DOE has determined that these adopted amendments will not be unduly burdensome for manufacturers to conduct. Further, DOE has determined that the adopted test procedure amendments will not impact testing costs already experienced by manufacturers.

E. Effective and Compliance Dates

The effective date for the adopted test procedure amendment will be 30 days after publication of this final rule in the **Federal Register**. EPCA prescribes that all representations of energy efficiency and energy use, including those made on marketing materials and product labels, must be made in accordance with an amended test procedure, beginning 180 days after publication of the final rule in the **Federal Register**. (42 U.S.C. 6293(c)(2)) EPCA provides an allowance for individual manufacturers to petition DOE for an extension of the 180-day period if the manufacturer may experience undue hardship in meeting the deadline. (42 U.S.C. 6293(c)(3)) To receive such an extension, petitions must be filed with DOE no later than 60 days before the end of the 180-day period and must detail how the manufacturer will experience undue hardship. *Id.*

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

The Office of Management and Budget (''OMB'') has determined this test procedure rulemaking does not constitute ''significant regulatory actions'' under section 3(f) of Executive Order (''E.O.'') 12866, Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993). Accordingly, this action was not subject to review under the Executive order by the Office of Information and Regulatory Affairs (''OIRA'') in OMB.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of a final regulatory flexibility analysis (FRFA) for any final rule where the agency was first required by law to publish a proposed rule 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. 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 DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's website: *energy.gov/gc/office-general-counsel.*

As stated, the amendments adopted in this final rule revise the definition of CPSVs without modifying the scope and update references to the reaffirmed industry standard, which made no substantive changes to the test procedure. DOE has determined that the adopted test procedure amendments would not impact testing costs already experienced by manufacturers.

The amendments adopted in this final rule would do not have significant economic impact on small businesses. The Small Business Administration (''SBA'') considers a business entity to be a small business, if, together with its affiliates, it employs less than a threshold number of workers or earns less than the average annual receipts specified in 13 CFR part 121. The threshold values set forth in these regulations use size standards and codes established by the North American Industry Classification System (''NAICS'').[9]

The NAICS code for commercial prerinse spray valve manufacturing is covered under NAICS code 332919, other metal valve and pipe fitting manufacturing. The SBA employee threshold for small businesses for NAICS code 332919 is 750 employees or less.

DOE collected data from DOE's compliance certification database to identify manufacturers of commercial prerinse spray valves.[10] DOE identified 13 companies that sell commercial prerinse spray valves covered by this rulemaking. To identify if these companies were small manufacturers, DOE used markets research tools (*e.g.,* D&B Hoovers, Glassdoor, LinkedIn) to estimate employment and determine whether companies met the SBA's definition of a small business. Two of these companies are large businesses with more than 750 total employees. Therefore, DOE determined that there are 11 companies that meet SBA's definition of a small business.

In summary, DOE concludes that the cost effects accruing from this final rule would not have a ''significant economic impact on a substantial number of small entities,'' and that the preparation of a FRFA is not warranted. DOE has submitted a 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

Manufacturers of CPSVs must certify to DOE that their products comply with any applicable energy conservation standards. To certify compliance, manufacturers must first obtain test data for their products according to the DOE test procedures, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including CPSVs (*See generally* 10 CFR part 429.) The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork

[9] The size standards are listed by NAICS code and industry description and are available at: *www.sba.gov/document/support—table-size-standards* (Last accessed on December 1, 2021).

[10] Certified equipment in the CCD are listed by product class and can be accessed at *www.regulations.doe.gov/certification-data/#q=Product_Group_s%3A** (Last accessed December 1, 2021).

Reduction Act (PRA). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 35 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act of 1969

In this final rule, DOE establishes test procedure amendments that it expects will be used to develop and implement future energy conservation standards for CPSVs. DOE 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 DOE's implementing regulations at 10 CFR part 1021. Specifically, DOE has determined that adopting test procedures for measuring energy efficiency of consumer products and industrial equipment is consistent with activities identified in 10 CFR part 1021, appendix A to subpart D, A5 and A6. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

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 the development of 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 the development of such regulations. 65 FR 13735. DOE examined this final rule and determined that it will 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. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this final rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general 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. DOE has completed the required review and determined that, to the extent permitted by law, this final 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'') requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a regulatory action resulting in a rule that may cause the expenditure 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), (b)) The UMRA also 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,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820; also available at *energy.gov/gc/office-general-counsel.* DOE examined this final rule according to UMRA and its statement of policy and determined that the 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 do not apply.

H. 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 rule that may affect family well-being. This final rule will 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

DOE has determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights'' 53 FR 8859 (March 18, 1988), that this regulation will not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by

each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). Pursuant to OMB Memorandum M–19–15, Improving Implementation of the Information Quality Act (April 24, 2019), DOE published updated guidelines which are available at *www.energy.gov/sites/prod/files/2019/12/f70/DOE%20Final%20Updated%20IQA%20Guidelines%20Dec%202019.pdf.* DOE has reviewed this final rule 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

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 OMB, a Statement of Energy Effects for any significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated 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 significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use if the regulation is implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

This regulatory action is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91; 42 U.S.C. 7101), 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; ''FEAA'') Section 32 essentially provides in relevant part 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 Attorney General and the Chairman of the Federal Trade Commission (''FTC'') concerning the impact of the commercial or industry standards on competition.

The amendments to the test procedure for CPSVs adopted in this final rule incorporates testing methods contained in certain sections of the following commercial standard: ASTM F2324–13 (R2019). DOE has evaluated this standard and is unable to conclude whether it fully complies with the requirements of section 32(b) of the FEAA (*i.e.,* whether it was developed in a manner that fully provides for public participation, comment, and review.) DOE has consulted with both the Attorney General and the Chairman of the FTC about the impact on competition of using the methods contained in these standards and has received no comments objecting to their use.

M. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this rule before 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. 804(2).

N. Description of Materials Incorporated by Reference

In this final rule, DOE incorporates by reference the test standard published by ASTM, titled ''Standard Test Method for Prerinse Spray Valves,'' ASTM Standard F2324–13 (R2019). ASTM F2324–13 (R2019) is an industry-accepted test procedure that measures water flow rate and spray force for CPSVs and is applicable to product sold in North America. Specifically, the test procedure codified by this final rule references various sections of ASTM F2324–13 (R2019) that address test set-up, instrumentation, test conduct, and calculations.

Copies of ASTM F2324–13 (R2019) can be obtained from ASTM International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428–2959, (610) 832–9585 or by going to *www.astm.org.*

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final rule.

List of Subjects in 10 CFR Part 431

Administrative practice and procedure, Confidential business information, Energy conservation test procedures, Incorporation by reference, Reporting and recordkeeping requirements.

Signing Authority

This document of the Department of Energy was signed on March 6, 2022, by Kelly J. Speakes-Backman, Principal Deputy Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE **Federal Register** Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on March 8, 2022.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

For the reasons stated in the preamble, DOE amends part 431 of Chapter II of Title 10, Code of Federal Regulations 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; 28 U.S.C. 2461 note.

■ 2. Section 431.262 is amended by revising the definition for ''Commercial prerinse spray valve'' to read as follows:

§ 431.262 Definitions.

* * * * *

Commercial prerinse spray valve means a handheld device that has a release-to-close valve and is suitable for removing food residue from food service items before cleaning them in commercial dishwashing or ware washing equipment. DOE may determine that a device is suitable for removing food residue from food service items before cleaning them in commercial dishwashing or ware washing equipment based on any or all of the following:

(1) Equipment design and representations (for example, whether equipment is represented as being capable of rinsing dishes as compared to equipment that is represented exclusively for washing walls and floors or animal washing);

(2) Channels of marketing and sales (for example, whether equipment is marketed or sold through outlets that market or sell to food service entities);

(3) Actual sales (including whether the end-users are restaurants or commercial or institutional kitchens, even if those sales are indirectly through an entity such as a distributor).

* * * * *

■ 3. Section 431.263 is transferred from under the undesignated center heading ''Test Procedures'' to immediately following § 431.262 and revised to read as follows:

§ 431.263 Materials incorporated by reference.

(a) Certain material is incorporated by reference into this subpart with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the U.S. Department of Energy (DOE) must publish a document in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the DOE and at the National Archives and Records Administration (NARA). Contact DOE at: The U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, 6th Floor, 950 L'Enfant Plaza SW, Washington, DC 20024, (202) 586–9127, or *Buildings@ee.doe.gov, https://www.energy.gov/eere/buildings/building-technologies-office.* For information on the availability of this material at NARA, email: *fr.inspection@nara.gov,* or go to: *www.archives.gov/federal-register/cfr/ibr-locations.html.* The material may be obtained from the source(s) in the following paragraph(s) of this section.

(b) *ASTM.* ASTM, International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959, (610) 832–9585, or go to *www.astm.org.*

(1) ASTM F2324–13 (R2019) (''ASTM F2324''),''Standard Test Method for Prerinse Spray Valves'', Approved May 1, 2019; IBR approved for § 431.264.

(2) [Reserved]

■ 4. Section 431.264 is amended by revising paragraph (b) and adding paragraph (d) to read as follows:

§ 431.264 Uniform test method to measure flow rate and spray force of commercial prerinse spray valves.

* * * * *

(b) *Testing and calculations for a unit with a single spray setting*—(1) *Flow rate.* (i) Test each unit in accordance with the requirements of Sections 6.1 through 6.9 (Apparatus) (except 6.4 and 6.7), 9.1 through 9.4 (Preparation of Apparatus), and 10.1 through 10.2.5 (Procedure) of ASTM F2324, (incorporated by reference, see § 431.263). Precatory language in ASTM F2324 is to be treated as mandatory for the purpose of testing. In Section 9.1 of ASTM F2324, the second instance of ''prerinse spray valve'' refers to the spring-style deck-mounted prerinse unit defined in Section 6.8. In lieu of using manufacturer installation instructions or packaging, always connect the commercial prerinse spray valve to the flex tubing for testing. Normalize the weight of the water to calculate flow rate using Equation 1 to this paragraph, where W_{water} is the weight normalized to a 1 minute time period, W_1 is the weight of the water in the carboy at the conclusion of the flow rate test, and t_1 is the total recorded time of the flow rate test.

$$W_{water} = W_1 \, x \, \frac{60 \, s}{t_1} \qquad \text{(Eq. 1 to paragraph (b)(1)(i))}$$

(ii) Perform calculations in accordance with Section 11.3.1 (Calculation and Report) of ASTM F2324. Record the water temperature (°F) and dynamic water pressure (psi) once at the start for each run of the test. Record the time (min), the normalized weight of water in the carboy (lb) and the resulting flow rate (gpm) once at the end of each run of the test. Record flow rate measurements of time (min) and weight (lb) at the resolutions of the test instrumentation. Perform three runs on each unit, as specified in Section 10.2.5 of ASTM F2324, but disregard any references to Annex A1. Then, for each unit, calculate the mean of the three flow rate values determined from each run. Round the final value for flow rate to two decimal places and record that value.

(2) *Spray force.* Test each unit in accordance with the test requirements specified in Sections 6.2 and 6.4 through 6.9 (Apparatus), 9.1 through 9.5.3.2 (Preparation of Apparatus), and 10.3.1 through 10.3.8 (Procedure) of ASTM F2324. In Section 9.1 of ASTM F2324, the second instance of ''prerinse spray valve'' refers to the spring-style deck-mounted prerinse unit defined in Section 6.8. In lieu of using manufacturer installation instructions or packaging, always connect the commercial prerinse spray valve to the flex tubing for testing. Record the water temperature (°F) and dynamic water pressure (psi) once at the start for each run of the test. In order to calculate the mean spray force value for the unit under test, there are two measurements per run and there are three runs per test. For each run of the test, record a minimum of two spray force measurements and calculate the mean of the measurements over the 15-second time period of stabilized flow during spray force testing. Record the time (min) once at the end of each run of the test. Record spray force measurements at the resolution of the test instrumentation. Conduct three runs on each unit, as specified in Section 10.3.8 of ASTM F2324, but disregard any references to Annex A1. Ensure the unit has been stabilized separately during each run. Then for each unit, calculate and record the mean of the spray force values determined from each run. Round the final value for spray force to one decimal place.

* * * * *

(d) *Test procedure for voluntary representations.* Follow paragraph (b)(1) or (2) or (c) of this section, as applicable, using test water pressure(s) of interest for voluntary representations of flow rate. Representations made at a water pressure other than the required test water pressure cannot replace a representation at the required test water pressure specified in Section 9.1 of ASTM F2324. Any voluntary representation of flow rate made pursuant to this paragraph shall specify the water pressure associated with the represented flow rate.

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