adding paragraph (b)(5) to read as follows:

§ 1650.32 Financial hardship withdrawals.

* * * * *

(b) To be eligible for a financial hardship withdrawal, a participant must have a financial need that results from at least one of the following five conditions:

* * * * *

(5) The participant has incurred expenses and losses (including loss of income) on account of a disaster declared by the Federal Emergency Management Agency (FEMA) under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 100–707, provided that the participant's principal residence or principal place of employment at the time of the disaster was located in an area designated by the FEMA for individual assistance with respect to the disaster.

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DEPARTMENT OF ENERGY

10 CFR Part 430

[EERE–2017–BT–STD–0062]

RIN 1904–AE84

Energy Conservation Program for Appliance Standards: Procedures for Evaluating Statutory Factors for Use in New or Revised Energy Conservation Standards

AGENCY: Office of Energy Efficiency and Renewable Energy (EERE), Department of Energy.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Department of Energy (DOE) is proposing amendments to its decision-making process for selecting energy conservation standards. More specifically, DOE is proposing changes that would require DOE to conduct a comparative analysis of the relative costs and benefits of all of the proposed alternative levels for potentially establishing or amending an energy conservation standard in order to make a reliable determination that the chosen alternative is economically justified.

DATES: DOE will accept comments, data, and information regarding this notice of proposed rulemaking on or before March 16, 2020.

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

The docket web page can be found at: *https://www.regulations.gov/docket?D=EERE-2017-BT-STD-0062.* The docket web page contains instructions on how to access all documents, including public comments, in the docket.

FOR FURTHER INFORMATION CONTACT: Ms. Francine Pinto, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585. Telephone: (202) 586–7432. Email: *Francine.Pinto@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Summary of the Supplemental Notice of Proposed Rulemaking

On February 13, 2019, the United States Department of Energy (''DOE'' or ''the Department'') published a Notice of Proposed Rulemaking (''NOPR'') to update and modernize its ''Procedures, Interpretations, and Policies for Consideration of New or Revised Energy Conservation Standards for Consumer Products'' (*i.e.,* ''Process Rule'') found in 10 CFR part 430, subpart C, appendix A. 84 FR 3910. Among other changes, DOE proposed a process to determine whether a trial standard level (''TSL'') would be economically justified when compared to the set of other feasible TSLs. Further, in the NOPR DOE explained that in making that determination it would consider whether an economically rational consumer would choose a product meeting the TSL over products meeting the other feasible TSLs after considering relevant *statutory* factors, including but not limited to, energy savings, efficacy, product features, and life-cycle costs. DOE received numerous comments asking for clarification on how this concept would be implemented and what effect it would have on DOE's ''walk-down'' process for selecting standard levels. In response, DOE did not finalize that proposal when it issued a final rule in the proceeding to update the Process Rule. Rather, in this document, DOE proposes to revise Section 7 of the Process Rule, Policies on Selection of Standards, to clarify its earlier proposal and explain how this approach would be incorporated into DOE's decisionmaking process for selecting energy conservation standards. More specifically, DOE clarifies that its revisions to Section 7 would require the agency to conduct a comparative analysis of the relative costs and benefits of all of the proposed TSLs in order to make a reliable determination that the chosen TSL is economically justified. This comparative analysis includes assessing the incremental changes in costs and benefits for each TSL's benefits and burdens relative to other TSLs and as part of an holistic analysis across all TSLs. 42 U.S.C. 6295(o)(2)(B).

II. Authority and Background

A. Authority

Title III, Parts B [1] and C [2] of the Energy Policy and Conservation Act, as amended, (''EPCA'' or ''the Act''), Public Law 94–163 (42 U.S.C. 6291–6317, as codified), established the Energy Conservation Program for consumer products and certain industrial equipment.[3] Under EPCA, DOE's energy conservation program for covered products consists essentially of four parts: (1) Testing; (2) certification and

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

[2] For editorial reasons, upon codification in the U.S. Code, Part C was redesignated Part A–1.

[3] All references to EPCA in this document refer to the statute as amended through America's Water Infrastructure Act of 2018, Public Law 115–270 (Oct. 23, 2018).

enforcement procedures; (3) establishment of Federal energy conservation standards; and (4) labeling. Subject to certain criteria and conditions, DOE is required to develop test procedures to measure the energy efficiency, energy use, or estimated annual operating cost of each covered product and covered equipment during a representative average use cycle or period of use. (42 U.S.C. 6293 and 42 U.S.C. 6314) Manufacturers of covered products and covered equipment must use the prescribed DOE test procedure when certifying to DOE that their products and equipment comply with the applicable energy conservation standards adopted under EPCA and when making any other representations to the public regarding the energy use or efficiency of those products. (42 U.S.C. 6293(c), 42 U.S.C. 6295(s), 42 U.S.C. 6314(a), and 42 U.S.C. 6316(a)) Similarly, DOE must use these test procedures to determine whether the products comply with standards adopted pursuant to EPCA. (42 U.S.C. 6295(s) and 42 U.S.C. 6316(a)) In addition, pursuant to EPCA, any new or amended energy conservation standard for covered products (and at least certain types of equipment) must be designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A) and 42 U.S.C. 6316(a)) In determining whether a standard is economically justified, EPCA requires DOE, to the greatest extent practicable, to consider the following seven factors: (1) The economic impact of the standard on the manufacturers and consumers; (2) the savings in operating costs, throughout the estimated average life of the products (*i.e.,* life cycle costs), compared with any increase in the price of, or in the initial charges for, or operating and maintaining expenses of, the products which are likely to result from the imposition of the standard; (3) the total projected amount of energy savings likely to result directly from the imposition of the standard; (4) any lessening of the utility or the performance of the products likely to result from the imposition of the standard; (5) the impact of any lessening of competition, after consultation with the Department of Justice; (6) the need for national energy and water conservation; and (7) other factors DOE finds relevant. (42 U.S.C. 6295(o)(2)(B)(i)) Furthermore, the new or amended standard must result in a significant conservation of energy (42 U.S.C. 6295(o)(3)(B), 42 U.S.C. 6313(a)(6), and 42 U.S.C. 6316(a)) and comply with any other applicable statutory provisions, such as that DOE may not prescribe an amended or new standard if that standard is likely to result in the unavailability in the United States in any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States at the time of the Secretary's finding. (42 U.S.C. 6295(o)(4)) Finally, the Federal Trade Commission (''FTC''), in consultation with DOE, is generally responsible for issuing labeling rules. (42 U.S.C. 6294(a)(1), 42 U.S.C. 6294(a)(5) and 42 U.S.C. 6294(f))

B. Background

DOE conducted a formal effort between 1995 and 1996 to improve the process it follows to develop energy conservation standards for covered appliance products. This effort involved many different stakeholders, including manufacturers, energy-efficiency advocates, trade associations, state agencies, utilities, and other interested parties. The result was the publication of a final rule on July 15, 1996, titled, ''Procedures, Interpretations and Policies for Consideration of New or Revised Energy Conservation Standards for Consumer Products.'' 61 FR 36974. This document was codified at 10 CFR part 430, subpart C, appendix A, and became known colloquially as the ''Process Rule.''

On December 18, 2017, DOE issued an RFI to address potential improvements to the Process Rule so as to achieve meaningful burden reduction while continuing to discharge the Department's statutory obligations in the development of energy conservation standards and test procedures. 82 FR 59992. On February 13, 2019, DOE issued a NOPR (''February 2019 NOPR'') to update and improve the Process Rule. 84 FR 3910. Among other revisions, DOE proposed to refine its current walk-down approach for selecting standard levels. Under the proposed approach, DOE would require determinations of economic justification to consider comparisons of economically relevant factors across trial standard levels, consistent with the relative economics of the choices and rational purchasing behavior of the average consumer. 84 FR 3938. As noted previously, elsewhere in this issue of the **Federal Register**, DOE has published a final rule to amend the Process Rule. In that final rule, DOE stated that it is initiating another rulemaking to further consider potential amendments to the walk-down approach.

III. Discussion of Revisions to DOE's Policies on Selecting Standard Levels

DOE received a substantial amount of comment on its proposal that determinations of economic justification be based on choices made by an economically rational consumer. A significant number of commenters stated that DOE's proposal, specifically the use of a rational consumer to determine economic justification, lacked sufficient detail to provide for a meaningful opportunity to comment. For instance, the Natural Resources Defense Council (''NRDC'') argued that without a definition of an economically rational consumer, it was impossible to provide feedback on the methodology by which standard levels would be evaluated. (NRDC, EERE–2017–BT–STD–0062, No. 131, at pp. 16–17) [4] Furthermore, even if the term ''economically rational consumer'' were to be defined, some of the commenters expressed doubt about the utility of such a construct. For example, the Connecticut Department of Energy & Environmental Protection (''CT–DEEP'') opposed DOE's proposal based on what it characterized as a hypothetical and arbitrary economically rational consumer, arguing that modern economic theory suggests that such a consumer does not truly exist. (CT–DEEP, EERE–2017–BT–STD–0062, No. 93 at p. 4) Several commenters also questioned whether the proposal is permissible under EPCA. For example, the Attorneys General (''AG'') Joint Commenters [5] argued that DOE's focus on what TSL an economically rational consumer would choose ''ignores the EPCA-defined factors that DOE must consider and thus violates the statute.'' (AG Joint Commenters, EERE–2017–BT–STD–0062, No. 111, at p. 16) The Alliance to Save Energy (''ASE'') expressed concern that the proposal would result in DOE choosing the most economically justified TSL as opposed to the TSL that results in the maximum improvement in energy efficiency that is technologically feasible and economically justified. (ASE, EERE–2017–BT–STD–0062, No. 108, at pp. 6–7)

A number of other commenters expressed varying degrees of theoretical support for potential modifications to DOE's walk-down but requested more

[4] This type of notation identifies the commenter, the docket document number of the comment, and the relevant pages of that document, pp. 16–17.

[5] Comments of Attorneys General of California, Colorado, Connecticut, Illinois, Maine, Maryland, Michigan, Minnesota, New York, North Carolina, Oregon, Vermont, Washington, the Commonwealth of Massachusetts, the District of Columbia, and the city of New York.

detail or explanation concerning the DOE proposal. Among this group, the Association of Home Appliance Manufacturers (''AHAM'') stated that because DOE's walk-down proposal was not sufficiently clear and fully articulated, it was not in a position to comment, but it added that the concept should not be discarded. (AHAM, April 11, 2019 Public Meeting Transcript, EERE–2017–BT–STD–0062, No. 92, at p. 169) Similarly, the National Electrical Manufacturers Association (''NEMA'') stated that while it is not opposed to considering the behavior of consumers as part of the walk-down to determine the economic justification of potential standards, it would need to know more about how such approach would work in regulatory practice. NEMA expressed concern that different perspectives about the ''rational consumer'' are capable of being variably applied, and consequently, it recommended that DOE approach this issue on a case-by-case basis in rulemakings where there is an opportunity for notice and comment. Thus, NEMA suggested that these principles would need to evolve before being incorporated into the Process Rule. (NEMA, EERE–2017–BT–STD–0062, No. 107 at pp. 7–8). Many commenters favored further examination of the subject matter of the proposal (perhaps as part of a peer review) but stated that the lack of clarity and sufficient detail rendered them unable to express an opinion or comment further.

As noted earlier, EPCA requires that in prescribing new or amended standards, DOE shall design a standard such that it achieves the maximum improvement in energy efficiency, or in the case of showerheads, faucets, water closets, or urinals, water efficiency, which the Secretary determines is technologically feasible and economically justified. 42 U.S.C. 6295(o)(2)(A). In determining whether a standard is economically justified, EPCA further requires that DOE determine whether the benefits of the standard exceed its burdens based on the previously noted seven statutory factors. 42 U.S.C. 6295(o)(2)(B) More specifically, in response to the concerns and requests for further explanation, DOE is: (1) Clarifying its proposal on how impacts are considered in determining economic justification through the seven factors specified in EPCA; and (2) explaining that the requirement to determine economic justification is based on comparisons across the full range of TSLs and is consistent with EPCA. This comparative analysis includes assessing the incremental changes in costs and benefits for each TSL's benefits and burdens relative to other TSLs and as part of an holistic analysis across all TSLs. 42 U.S.C. 6295(o)(2)(B). DOE has determined that the ''walk-down'' approach may not allow for a full consideration of the economic justification required by 42 U.S.C. 6295(o)(2)(B)(i) for any new or amended standard. In only comparing the costs and benefits of the TSL under consideration against the baseline case (no new or amended standards) and generally ceasing consideration at the highest TSL for which benefits exceed burdens, DOE may select a TSL that has significant, adverse economic impacts when compared to another TSL. DOE is concerned that this approach may make it more likely that DOE would inadvertently select a TSL that has significant, adverse economic impacts that exceed the benefits of the standard. DOE also believes that its consideration of whether the benefits of any particular standard exceed its burdens should be informed by a holistic understanding of the relative costs and benefits of other standards. Relatedly, DOE believes that its weighing of benefits and burdens of particular standards should be informed by consideration of alternate scenarios, *i.e.,* other TSLs, against which benefits and burdens are to be assessed, and not simply by consideration of a scenario in which no new or amended standard is issued.

A. Consumer Impacts on Economic Justification

In the February 2019 NOPR, DOE proposed that a determination of economic justification for a particular trial standard level (TSL) should consider whether an economically rational consumer would choose a product meeting the TSL over products meeting other feasible TSLs after considering all relevant factors, including but not limited to, energy savings, efficacy, product features, and life-cycle costs. 84 FR 3938. DOE went on to state that if an economically rational consumer would not choose the candidate trial standard level after considering these factors, the TSL would be rejected as economically unjustified. *Id.* As discussed previously, commenters either did not understand this construct or expressed concerns regarding the use of an economically rational consumer construct to determine whether a standard level is economically justified.

After further consideration, DOE is of the view that it is not necessary to utilize the construct of an ''economically rational consumer'' to determine economic justification. The factors DOE stated that the economically rational consumer would consider in the previous proposed rule, (energy savings, efficacy, product features, and life-cycle costs), arise out of EPCA's seven factors for determining economic justification. (See 42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII).)[6] Because the seven factors are familiar to DOE stakeholders and can effectively provide a means to account for the decisions of an economically rational consumer discussed in the prior proposal, DOE believes it is unnecessary to refer to a theoretical concept of an ''economically rational consumer'' to determine economic justification. Instead, DOE clarifies that because the current walk-down approach generally ceases analysis at the highest TSL for which benefits exceeded burdens, precluding a fuller consideration of the economic justification required by 42 U.S.C. 6295(o)(2)(B)(i) for any new or amended standard, DOE proposes to amend the prior process to require the agency to determine economic justification based on comparisons across the full range of TSLs and is consistent with EPCA. This comparative analysis includes assessing the incremental changes in costs and benefits for each TSL's benefits and burdens relative to other TSLs and as part of an holistic analysis across all TSLs. 42 U.S.C. 6295(o)(2)(B).

This proposed approach is consistent with EPCA, which provides a list of factors that DOE may consider, and to weigh in DOE's discretion, in considering whether the benefits of a particular standard outweigh its burdens. EPCA authorizes DOE to consider seven factors including factors that the Secretary considers relevant. The authorization of these broad factors gives DOE wide discretion. Collectively,

[6] The seven factors specified in 42 U.S.C. 6295(o)(2)(B)(i) are as follows:

(I) The economic impact of the standard on the manufacturers and on the consumers of the product subject to the standard;

(II) the savings in operating costs throughout the estimated average lifetime of the covered product in the type (or class) compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered products which are likely to result from imposition of the standard;

(III) the total projected amount of energy, or as applicable, water, savings likely to result directly from imposition of the standard;

(IV) any lessening of the utility or the performance of the covered products likely to result from the imposition of the standard;

(V) the impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the imposition of the standard;

(VI) the need for national energy and water conservation; and

(VII) other factors the Secretary considers relevant.

this list of factors allows DOE to consider the relative costs and benefits of alternative standards and to take into account disparities in cost-benefit profiles between standards that would result in significant costs to consumers or other stakeholders if a particular standard is chosen to the exclusion of another standard when considered after a determination of technological feasibility. Relatedly, DOE believes that its weighing of benefits and burdens of particular standards should be informed by consideration of alternate scenarios, *i.e.,* other TSLs, against which benefits and burdens are to be assessed, and not simply by consideration of a scenario in which no new or amended standard is issued. The text of EPCA, which does not foreclose such consideration or use of alternate scenarios, provides DOE with ample discretion in identifying and applying methods for determining whether the benefits of a standard outweigh the burdens.

B. The ''Walk-Down'' Process

To ensure that any new or amended standard meets these statutory criteria, DOE historically has implemented an approach referred to as the ''walk-down'' in selecting standard levels.

As a first step in undertaking that approach, DOE puts possible technologies for improving energy efficiency through a design options screening process. In this process, as part of assessing technological feasibility, DOE reviews a number of design factors that overlap significantly with technical considerations, as well as some market considerations. DOE will not consider a technology for inclusion in a TSL if: (1) It is not incorporated in a commercial product or in a commercially-viable, existing prototype; [7] (2) it is determined that mass production of a technology in commercial products and reliable installation and servicing of the technology could not be achieved on the scale necessary to serve the relevant market at the time of the compliance date of the standard; (3) it is determined to have a significant adverse impact on the utility of the product/equipment to subgroups of consumers, or result in the unavailability of any covered product type with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as products generally available in the U.S.; (4) it is determined to have significant adverse impacts on health or safety; or (5) it has proprietary protection and represents a unique pathway to achieving a given efficiency level.[8] *See* section 7(b) of 10 CFR part 430, subpart C, appendix A.

Following the technological feasibility assessment, DOE then uses the remaining technologies to create a range of TSLs. These TSLs will typically include: (1) The most-stringent TSL that is technologically feasible, *i.e.,* the ''max-tech'' standard; (2) the TSL with the highest life-cycle cost; (3) a TSL with a payback period of not more than three years; and (4) any TSLs that incorporate noteworthy feasible technologies or fill in large gaps between efficiency levels of other TSLs.

After determining technological feasibility and developing the TSLs, DOE then conducts a cost-benefit assessment of the TSLs starting with the max-tech standard. Under the current walk-down approach, if the cost-benefit assessment demonstrates that the benefits of max-tech TSL exceed its costs, the analysis ends, and DOE adopts the max-tech TSL as the new or amended standard. However, if DOE determines that the benefits of the max-tech TSL do not exceed its costs, DOE ''walks down'' to consider the next most-stringent TSL, again by application of a simple cost-benefit comparison. This ''walk-down'' process continues until DOE determines that the benefits of a TSL exceed its costs, and, thus, is economically justified, or that none of the TSLs are economically justified.

C. Proposed Changes

While the current ''walk-down'' approach ensures that DOE considers adopting TSLs that represent the maximum improvement in energy efficiency that is technologically feasible, it may not allow for a full consideration of the economic justification required by 42 U.S.C. 6295(o)(2)(B)(i) for any new or amended standard. In only comparing the costs and benefits of the TSL under consideration against a baseline case and generally ceasing consideration at the highest TSL for which benefits exceed burdens, DOE may select a TSL that has significant, adverse economic impacts when compared to another TSL. For example, if two TSLs have similar energy savings (one is slightly higher than the other) and would both have monetized benefits that exceed monetized burdens when compared to the case, typically DOE has selected the TSL with the slightly higher energy savings under this approach. However, if, for example, the TSL with the slightly higher energy savings also has a significant, adverse impact on small business manufacturers as compared to the other TSL, it could be difficult to argue that it is economically justified. To generalize further, in considering whether the benefits exceed the burdens for a particular standard, the relative impacts on lessening market competition in moving from one TSL to another may prove material to the choice of TSL, all other factors considered. As a result, in order to make a determination of economic justification, it is necessary to compare the TSLs to each other to determine the relative benefits in light of the costs to achieve those benefits. As such, DOE must conduct a comparative analysis of the relative costs and benefits of all of the proposed TSLs to make a reliable determination that a specific TSL is economically justified. This comparative analysis includes assessing the incremental changes in costs and benefits for each TSL's benefits and burdens relative to other TSLs and as part of an holistic analysis across all TSLs. 42 U.S.C. 6295(o)(2)(B).

To implement this comparative analysis, DOE is proposing to modify the ''Policies on Selection of Standards'' section of the Process Rule to clarify that a determination of economic justification for a specific TSL must be based on a comparison of the benefits and burdens of that standard, determined by considering the seven factors listed in EPCA, against the benefits and burdens of the baseline case (no new standards case) and all other TSLs as an incremental comparison. In addition, this approach is intended to incorporate the potential consumer welfare impacts that would arise out of the factors contemplated in EPCA, and specifically 42 U.S.C. 6295(o)(2)(B). As a result, while DOE will continue to start the TSL evaluation process with the max-tech TSL and ''walk down'' to less-stringent TSLs, economic justification would be expanded to be determined through a comparative analysis of the benefits and burdens of all of the proposed TSLs, including relative comparisons of each TSL's benefits and burdens as part of an holistic analysis among all TSLs as outlined in 42 U.S.C. 6295(o)(2)(B). To be clear, this new comparative analysis will inform the policy choice, based on the statutory factors, and DOE will no longer simply adopt the max-tech TSL without clear consideration of the results of the comparative analysis.

[7] For example, for purposes of technological feasibility, DOE would not consider as a dishwasher a box within which water is sprayed on dishware without actually cleaning that dishware.

[8] That is, for purposes of technological feasibility, DOE would not consider setting a standard that could only be met by using a particular patented technology.

DOE has done such comparisons in the past. For example, in the most recent energy conservation standards rulemaking for dehumidifiers, DOE stated that one TSL would minimize disproportionate impacts to small, domestic dehumidifier manufacturers relative to two other TSLs under consideration. 81 FR 38338, 38388 (June 13, 2016). DOE's current proposal would ensure that such comparisons are consistently conducted across rulemakings with respect to the factors and considerations for determining economic justification listed in 42 U.S.C. 6295(o)(2)(B)(i) and section 7(e)(2) of the proposed Process Rule, respectively.

Furthermore, concerns that this proposal will result in DOE selecting standards that are the most economically justified, instead of standards that result in the maximum improvement in energy efficiency that is technologically feasible and economically justified, are misplaced. If DOE determines more than one trial standard level is economically justified, DOE will select the standard that results in the maximum improvement in energy efficiency with the greatest beneficial impact given burdens. 42 U.S.C. 6295(o)(2)(B). That could be the standard level that maximizes net benefits. It may, in some cases, be the TSL that optimizes consumer life cycle cost savings (*i.e.,* the comparison of upfront increases in installed cost against long-term energy savings and operating and maintenance costs), which would indicate the standard level that is best tailored to a specific product. It could also be the standard that minimizes negative impacts to either consumers or manufacturers even if a different TSL would maximize energy savings or net benefits. For example, in the 2015 final rule amending the standards for general service fluorescent lamps, TSL 5 would have resulted in maximum energy savings and positive net benefits; however, DOE did not select TSL 5 because the Secretary determined that doing so would decrease industry net present value by 24 percent and pose net costs for 22 percent of consumers.[9] In the dehumidifier example discussed above, TSL 2 was selected, at least in part, because it minimized the impact to small business manufacturers compared to other TSLs. Additionally, DOE may consider a range of potential consumer effects in this calculation, potentially including effects on product functionality or consumer utility, following the conclusion of its ongoing peer review on analytical methods. For example, to the extent that a revised standard could extend cycle times or other convenience factors that consumers' value, DOE would seek to quantify this impact and assess that value in its comparison of potential standard levels.

When considered as part of the amendments to DOE's Procedures for Use in New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Commercial/Industrial Equipment finalized elsewhere in this issue of the **Federal Register**, this proposal will enable DOE to more readily and consistently satisfy its continuing obligation to review its standards, as well as its separate ongoing obligations to review all of its test procedures, on a cyclical basis, by helping DOE to quickly identify those areas that will yield the most beneficial information from DOE's efforts to amend or establish standards producing significant energy conservation for a given regulated product or equipment. By helping DOE to prioritize its efforts, the revised procedures will allow DOE to better focus on standards that effectively provide for improved energy efficiency of major appliances and certain other consumer products. *See* 42 U.S.C. 6201(5).) The proposed changes in this document (and the final rule published elsewhere in this issue of the **Federal Register**) as a whole are anticipated to help enable manufacturers to focus more on innovation and to make more investment in research and development for their products. DOE seeks comment on the clarifications provided in this document and its proposed approach for determining economic justification.

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866 and 13563

This regulatory action is a significant regulatory action under section 3(f) of Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (Oct. 4, 1993). Accordingly, this proposed regulatory action was subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB).

B. Review Under Executive Orders 13771 and 13777

On January 30, 2017, the President issued Executive Order (E.O.) 13771, ''Reducing Regulation and Controlling Regulatory Costs.'' 82 FR 9339 (Jan. 30, 2017). More specifically, the Order provides that it is essential to manage the costs associated with the governmental imposition of requirements necessitating private expenditures of funds required to comply with Federal regulations. In addition, on February 24, 2017, the President issued Executive Order 13777, ''Enforcing the Regulatory Reform Agenda.'' 82 FR 12285 (March 1, 2017). The Order requires the head of each agency to designate an agency official as its Regulatory Reform Officer (RRO). Each RRO is tasked with overseeing the implementation of regulatory reform initiatives and policies to ensure that individual agencies effectively carry out regulatory reforms, consistent with applicable law. Further, E.O. 13777 requires the establishment of a regulatory task force at each agency. The regulatory task force is required to make recommendations to the agency head regarding the repeal, replacement, or modification of existing regulations, consistent with applicable law.

To implement these Executive Orders, the Department, among other actions, issued a request for information (RFI) seeking public comment on how best to achieve meaningful burden reduction while continuing to achieve the Department's regulatory objectives. 82 FR 24582 (May, 30, 2017). In response to this RFI, the Department received numerous and extensive comments pertaining to DOE's Process Rule.

C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act of 1996) requires preparation of an initial regulatory flexibility analysis (IRFA) for any rule that by law must be proposed for public comment and a final regulatory flexibility analysis (FRFA) for any such rule that an agency adopts as a final rule, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. A regulatory flexibility analysis examines the impact of the rule on small entities and considers alternative ways of reducing negative effects. Also, as required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies

[9] 80 FR 4142.

available on the Office of the General Counsel's website at: *http://energy.gov/gc/office-general-counsel.*

Because this proposed rule does not directly regulate small entities but instead only imposes procedural requirements on DOE itself, DOE certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities, and, therefore, no regulatory flexibility analysis is required. *Mid-Tex Elec. Co-Op, Inc.* v. *F.E.R.C.,* 773 F.2d 327 (1985).

D. Review Under the Paperwork Reduction Act of 1995

Manufacturers of covered products/equipment must certify to DOE that their products comply with any applicable energy conservation standards. In certifying compliance, manufacturers must test their products according to the DOE test procedures for such products/equipment, including any amendments adopted for those test procedures, on the date that compliance is required. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment. 76 FR 12422 (March 7, 2011); 80 FR 5099 (Jan. 30, 2015). The collection-of-information requirement for certification and recordkeeping is subject to review and approval by OMB under the Paperwork 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 30 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.

Specifically, this proposed rule, addressing clarifications to the Process Rule itself, does not contain any collection of information requirement that would trigger the PRA.

E. Review Under the National Environmental Policy Act of 1969

In this document, DOE proposes to revise its Process Rule, which outlines the procedures DOE will follow in conducting rulemakings for new or amended energy conservation standards and test procedures for covered consumer products and commercial/industrial equipment. 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, this proposed rule is strictly procedural and is covered by the Categorical Exclusion in 10 CFR part 1021, subpart D, paragraph A6. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

F. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 10, 1999), imposes certain requirements on Federal 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 has examined this proposed rule and has 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. It will primarily affect the procedure by which DOE develops proposed rules to revise energy conservation standards and test procedures. EPCA governs and prescribes Federal preemption of State regulations that are the subject of DOE's regulations adopted pursuant to the statute. In such cases, 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)) Therefore, Executive Order 13132 requires no further action.

G. 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. Regarding the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that each Executive agency make every reasonable effort to ensure that when it issues a regulation, 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 has determined that, to the extent permitted by law, the proposed rule meets the relevant standards of Executive Order 12988.

H. 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. (Pub. L. 104–4, sec. 201 (codified at 2 U.S.C. 1531)) For a proposed regulatory action likely to result 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 them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. (62 FR 12820) (This policy is also available at *http://www.energy.gov/gc/office-general-counsel* under ''Guidance & Opinions'' (Rulemaking)) DOE examined the proposed rule according to UMRA and its statement of policy and has determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year. Accordingly, no further assessment or analysis is required under UMRA.

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 rule that may affect family well-being. This proposed 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.

J. Review Under Executive Order 12630

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

K. Review Under the 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 Federal agencies to review most disseminations of information to the public under information quality 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). DOE has reviewed this proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with the applicable policies in those guidelines.

L. 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 OIRA at OMB, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

DOE has tentatively concluded that the regulatory action in this document, which makes clarifications to the Process Rule that guides the Department in proposing energy conservation standards is not a significant energy action because 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 for this proposed rule.

M. Review Consistent With OMB's Information Quality Bulletin for Peer Review

On December 16, 2004, OMB, in consultation with the Office of Science and Technology Policy (OSTP), issued its Final Information Quality Bulletin for Peer Review (the Bulletin). 70 FR 2664 (Jan. 14, 2005). The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal Government, including influential scientific information related to agency regulatory actions. The purpose of the bulletin is to enhance the quality and credibility of the Government's scientific information. Under the Bulletin, the energy conservation standards rulemaking analyses are ''influential scientific information,'' which the Bulletin defines as ''scientific information the agency reasonably can determine will have or does have a clear and substantial impact on important public policies or private sector decisions.'' *Id.* at 70 FR 2667.

In response to OMB's Bulletin, DOE conducted formal in-progress peer reviews of the energy conservation standards development process and analyses and has prepared a Peer Review Report pertaining to the energy conservation standards rulemaking analyses. Generation of this report involved a rigorous, formal, and documented evaluation using objective criteria and qualified and independent reviewers to make a judgment as to the technical/scientific/business merit, the actual or anticipated results, and the productivity and management effectiveness of programs and/or projects. The ''Energy Conservation Standards Rulemaking Peer Review Report,'' dated February 2007, has been disseminated and is available at the following website: *http://www1.eere.energy.gov/buildings/appliance_standards/peer_review.html.* Because available data, models, and technological understanding have changed since 2007, DOE has engaged in a new peer review of its analytical methodologies.

V. Approval of the Office of the Secretary

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

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Small businesses, Test procedures.

Signed in Washington, DC, on December 31, 2019.

Daniel R Simmons,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons stated in the preamble, DOE proposes to amend part 430 of title 10 of the Code of Federal Regulations as set forth below:

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. In appendix A to subpart C of part 430, revise section 7(e) to read as follows:

Appendix A to Subpart C of Part 430—Procedures, Interpretations and Policies for Consideration of New or Revised Energy Conservation Standards for Consumer Products

* * * * *

7. Policies on Selection of Standards

* * * * *

(e)(1) *Selection of proposed standard.* Based on the results of the analysis of impacts, DOE will select a standard level to be proposed for public comment in the NOPR. As required under 42 U.S.C. 6295(o)(2)(A), any new or revised standard must be designed to achieve the maximum improvement in energy efficiency that is determined to be both technologically feasible and economically justified.

(2) *Statutory policies.* The fundamental policies concerning the selection of standards include:

(i) A candidate/trial standard level will not be proposed or promulgated if the Department determines that it is not both technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A) and 42 U.S.C. (o)(3)(B)) For a standard level to be economically justified, the Secretary must determine that the benefits of the standard exceed its burdens by, to the greatest extent practicable, considering the factors listed in 42 U.S.C. 6295(o)(2)(B)(i). In making such a determination, the Secretary shall compare the benefits and burdens of the standard against the benefits and burdens of the baseline case (no new standards case) and all other candidate/trial standard levels. This comparative analysis includes assessing the incremental changes in costs and benefits for each TSL's benefits and burdens relative to other TSLs and as part of an holistic analysis across all TSLs. 42 U.S.C. 6295(o)(2)(B). A standard level is subject to a rebuttable presumption that it is economically justified if the payback period is three years or less. (42 U.S.C. 6295(o)(2)(B)(iii))

(ii) If the Department determines that a standard level is likely to result in the unavailability of any covered product/equipment type with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as products generally available in the U.S. at the time, that standard level will not be proposed. (42 U.S.C. 6295(o)(4))

(iii) If the Department determines that a standard level would not result in significant conservation of energy, that standard level will not be proposed. (42 U.S.C. 6295(o)(3)(B))

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[FR Doc. 2020–00022 Filed 2–13–20; 8:45 am]

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FEDERAL TRADE COMMISSION

16 CFR Part 453

Funeral Industry Practices Rule

AGENCY: Federal Trade Commission.

ACTION: Regulatory review; request for comment.

SUMMARY: The Federal Trade Commission (''FTC'' or ''Commission'') is requesting public comment on its Trade Regulation Rule entitled ''Funeral Industry Practices Rule'' (''Funeral Rule'' or ''Rule''). The Rule defines unfair and deceptive practices in the sale of funeral goods and services and prescribes preventive requirements to protect against these practices. The Commission is soliciting comments about the efficiency, costs, benefits, and regulatory impact of the Rule as part of its systematic review of all current Commission regulations and guides. All interested persons are hereby given notice of the opportunity to submit written data, views, and arguments concerning the Rule.

DATES: Written comments must be received on or before April 14, 2020.

ADDRESSES: Interested parties may file a comment online or on paper by following the instructions in the Instructions for Submitting Comments part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Funeral Rule Regulatory Review, 16 CFR part 453, Project No. P034410,'' on your comment, and file your comment online through *https://www.regulations.gov.* If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex B), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex B), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Patti Poss (202–326–2413), Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580, *pposs@ftc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Commission issued the Funeral Rule pursuant to its authority under Sections 5 and 18 of the Federal Trade Commission Act to proscribe unfair or deceptive acts or practices.[1] The Funeral Rule's goal is to lower barriers to price competition in the funeral goods and services market and to facilitate informed consumer choice.[2] The Rule helps to achieve these goals by ensuring that: (1) Consumers have access to sufficient information to permit them to make informed decisions; (2) consumers are not required to purchase goods and services that they do not want and are not required by law to purchase; and (3) misrepresentations are not used to influence consumers' decisions.[3]

When it promulgated the Funeral Rule, the Commission recognized that the arrangement of a funeral is an important financial transaction for consumers, with unique characteristics that reduce the ability of consumers to make careful, informed purchase decisions. The Commission noted that funeral arrangement decisions must often be made while under the emotional strain of bereavement, and that consumers often lack familiarity with the funeral transaction. Further, ''consumers are called upon to make several important and potentially costly decisions under tight time constraints.'' [4]

The Commission issued the Funeral Rule on September 24, 1982, and it became fully effective on April 30, 1984.[5] The original Rule included a provision requiring a regulatory review of the Rule no later than four years after its effective date to determine whether it should be amended or terminated.[6] The Rule was amended effective July 19, 1994,[7] and the United States Court of Appeals for the Third Circuit upheld the amended Rule following a challenge by funeral industry groups.[8]

The Rule specifies that it is an unfair or deceptive act or practice for a funeral provider to: (1) Fail to furnish accurate price information disclosing the cost to the purchaser for each of the specific funeral goods or services used in connection with the disposition of deceased human remains; (2) require

[1] Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. 45(a), prohibits ''unfair or deceptive acts or practices in or affecting commerce.'' Section 18 of the FTC Act, 15 U.S.C. 57a, permits the Commission to promulgate, modify, and repeal trade regulation rules that define with specificity acts or practices that are unfair or deceptive in or affecting commerce within the meaning of Section 5.

[2] Original Funeral Rule Statement of Basis and Purpose, 47 FR 42260 (Sept. 24, 1982).

[3] *Id.*

[4] *Id.*

[5] Certain portions of the Rule became effective on January 1, 1984 and others on April 30, 1984. 48 FR 45537, 45538 (Oct. 6, 1983); 49 FR 564 (Jan. 5, 1984). Several funeral providers challenged the Rule, but it was upheld by the Fourth Circuit. *Harry and Bryant Co.* v. *FTC,* 726 F.2d 993 (4th Cir.), *cert. denied,* 469 U.S. 820 (1984).

[6] 16 CFR 453.10 (1982).

[7] Amended Funeral Rule Statement of Basis and Purpose, 59 FR 1592 (Jan. 11, 1994).

[8] *Pennsylvania Funeral Directors Ass'n, Inc.* v. *FTC,* 41 F.3d 81, 83 (3d Cir. 1994).