

# Proposed Rules

Federal Register

Vol. 86, No. 146

Tuesday, August 3, 2021

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF ENERGY

### 10 CFR Part 430

[EERE-2017-BT-TP-0024]

RIN 1904-AE01

#### Energy Conservation Program: Test Procedure for Microwave Ovens

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

**ACTION:** Supplemental notice of proposed rulemaking and request for comment.

**SUMMARY:** On November 14, 2019, the U.S. Department of Energy (“DOE”) published a notice of proposed rulemaking (“NOPR”) for the test procedure for microwave ovens. Following receipt of comments, DOE is publishing this supplemental notice of proposed rulemaking (“SNOPR”) for the limited purpose of clarifying the current procedure for testing a microwave oven that has a connected (*i.e.*, network) function, which is generally to disable the connected function when measuring standby mode power consumption. Further, DOE proposes to explicitly specify in its test procedure that standby power be measured with the connected function enabled if the means for disabling the network function are not provided in the manufacturer’s user manual. DOE is seeking comment from interested parties on the proposal.

**DATES:** DOE will accept comments, data, and information regarding this proposal no later than September 2, 2021. See section V, “Public Participation,” for details.

**ADDRESSES:** Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov). Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE-2017-BT-TP-0024, by any of the following methods:

1. *Federal eRulemaking Portal:* [www.regulations.gov](http://www.regulations.gov). Follow the instructions for submitting comments.

2. *Email:* to [MWO2017TP0024@ee.doe.gov](mailto:MWO2017TP0024@ee.doe.gov). Include docket number EERE-2017-BT-TP-0024 in the subject line of the message.

No telefacsimiles (“faxes”) will be accepted. For detailed instructions on submitting comments and additional information on this process, see section V of this document.

Although DOE has routinely accepted public comment submissions through a variety of mechanisms, including postal mail and hand delivery/courier, the Department has found it necessary to make temporary modifications to the comment submission process in light of the ongoing Covid-19 pandemic. DOE is currently suspending receipt of public comments via postal mail and hand delivery/courier. If a commenter finds that this change poses an undue hardship, please contact Appliance Standards Program staff at (202) 586-1445 to discuss the need for alternative arrangements. Once the Covid-19 pandemic health emergency is resolved, DOE anticipates resuming all of its regular options for public comment submission, including postal mail and hand delivery/courier.

**Docket:** The docket, which includes **Federal Register** notices, public meeting attendee lists and transcripts (if a public meeting is held), comments, and other supporting documents/materials, is available for review at [www.regulations.gov](http://www.regulations.gov). All documents in the docket are listed in the [www.regulations.gov](http://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.

The docket web page can be found at [www.regulations.gov/docket?D=EERE-2017-BT-TP-0024](http://www.regulations.gov/docket?D=EERE-2017-BT-TP-0024). The docket web page contains instructions on how to access all documents, including public comments, in the docket. See section V for information on how to submit comments through [www.regulations.gov](http://www.regulations.gov).

#### FOR FURTHER INFORMATION CONTACT:

Dr. Stephanie Johnson, 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) 287-1943. Email [MWO2017TP0024@ee.doe.gov](mailto:MWO2017TP0024@ee.doe.gov).

Ms. Celia Sher, U.S. Department of Energy, Office of the General Counsel, GC-33, 1000 Independence Avenue SW, Washington, DC 20585-0121. Telephone: (202) 287-1445. Email: [Celia.Sher@hq.doe.gov](mailto:Celia.Sher@hq.doe.gov).

For further information on how to submit a comment, review other public comments and the docket, or participate in a public meeting (if one is held), contact the Appliance and Equipment Standards Program staff at (202) 287-1445 or by email: [ApplianceStandardsQuestions@ee.doe.gov](mailto:ApplianceStandardsQuestions@ee.doe.gov).

#### Table of Contents

- I. Authority and Background
  - A. Authority
  - B. Background
- II. Synopsis of the Notice of Proposed Rulemaking
- III. Discussion
  - A. Connected Functions
  - B. Compliance Date
- IV. Procedural Issues and Regulatory Review
  - A. Review Under Executive Order 12866
  - B. Review Under the Regulatory Flexibility Act
  - C. Review Under the Paperwork Reduction Act of 1995
  - D. Review Under the National Environmental Policy Act of 1969
  - E. Review Under Executive Order 13132
  - F. Review Under Executive Order 12988
  - G. Review Under the Unfunded Mandates Reform Act of 1995
  - H. Review Under the Treasury and General Government Appropriations Act, 1999
  - I. Review Under Executive Order 12630
  - J. Review Under Treasury and General Government Appropriations Act, 2001
  - K. Review Under Executive Order 13211
  - L. Review Under Section 32 of the Federal Energy Administration Act of 1974
  - M. Description of Materials Incorporated by Reference
- V. Public Participation
  - A. Submission of Comments
- VI. Approval of the Office of the Secretary

#### I. Authority and Background

“Kitchen ranges and ovens,” which include microwave ovens, are included in the list of “covered products” for which DOE is authorized to establish and amend energy conservation standards and test procedures. (42 U.S.C. 6292(a)(10)) DOE’s energy conservation standard for microwave ovens is currently prescribed at title 10 of the Code of Federal Regulations (“CFR”) part 430 section 430.32(j). Currently, the energy conservation

standard for microwave ovens addresses standby mode and off mode power use only. DOE's test procedures for microwave ovens are prescribed at 10 CFR 430.23(i) and appendix I to subpart B of 10 CFR part 430 ("Appendix I"). The following sections discuss DOE's authority to establish test procedures for microwave ovens 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"),<sup>1</sup> 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<sup>2</sup> 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. These products include microwave ovens, the subject of this document. (42 U.S.C. 6292(a)(10))

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 Federal 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 pursuant to EPCA (42 U.S.C. 6295(s)), and (2) making representations about the efficiency of those consumer products (42 U.S.C. 6293(c)). Similarly, DOE must use these test procedures to determine whether the products comply with 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 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 or period of use and not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3))

In addition, EPCA requires that DOE amend its test procedures for all covered products to integrate measures of standby mode and off mode energy consumption. (42 U.S.C. 6295(gg)(2)(A)) Standby mode and off mode energy consumption must be incorporated into the overall energy efficiency, energy consumption, or other energy descriptor for each covered product unless the current test procedures already account for and incorporate standby mode and off mode energy consumption or such integration is technically infeasible. If an integrated test procedure is technically infeasible, DOE must prescribe a separate standby mode and off mode energy use test procedure for the covered product, if technically feasible. (42 U.S.C. 6295(gg)(2)(A)(ii)) Any such amendment must consider the most current versions of the International Electrotechnical Commission ("IEC") Standard 62301<sup>3</sup> and IEC Standard 62087<sup>4</sup> as applicable. (42 U.S.C. 6295(gg)(2)(A))

EPCA also requires that, at least once every 7 years, DOE evaluate test procedures for each type of covered product, including microwave ovens, 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.<sup>5</sup> 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 SNOPR in accordance with the 7-year review requirement specified in EPCA. (42 U.S.C. 6293(b)(1)(A))

#### B. Background

On November 14, 2019, DOE published a NOPR ("November 2019 NOPR") that, in part, proposed to amend the standby mode test procedure of microwave ovens to explicitly provide that microwave ovens with connected functions (e.g., microwave ovens that use Bluetooth® technology, Wi-Fi, or internet connections) are to be tested with network functions disabled. 84 FR 61836, 61843. DOE further proposed that if the connected function cannot be disabled per manufacturer's instructions in the owner's manual (e.g., by pressing a button on the microwave oven's control panel), the energy use of such connected function need not be

<sup>5</sup> DOE has historically provided a 75-day comment period for test procedure NOPRs pursuant to the North American Free Trade Agreement, U.S.-Canada-Mexico ("NAFTA"), Dec. 17, 1992, 32 I.L.M. 289 (1993); the North American Free Trade Agreement Implementation Act, Public Law 103–182, 107 Stat. 2057 (1993) (codified as amended at 10 U.S.C.A. 2576) (1993) ("NAFTA Implementation Act"); and Executive Order 12889, "Implementation of the North American Free Trade Agreement," 58 FR 69681 (Dec. 30, 1993). However, on July 1, 2020, the Agreement between the United States of America, the United Mexican States, and the United Canadian States ("USMCA"), Nov. 30, 2018, 134 Stat. 11 (i.e., the successor to NAFTA), went into effect, and Congress's action in replacing NAFTA through the USMCA Implementation Act, 19 U.S.C. 4501 *et seq.* (2020), implies the repeal of E.O. 12889 and its 75-day comment period requirement for technical regulations. Thus, the controlling laws are EPCA and the USMCA Implementation Act. Consistent with EPCA's public comment period requirements for consumer products, the USMCA only requires a minimum comment period of 60 days. In the present case, DOE initially provided 60 days for comment on the proposed rulemaking. 84 FR 61835 (Nov. 11, 2019). DOE is providing an additional 30-day comment period for the supplemental proposal presented in this document.

<sup>1</sup> 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).

<sup>2</sup> For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

<sup>3</sup> IEC 62301, *Household electrical appliances—Measurement of standby power* (Edition 2.0, 2011–01).

<sup>4</sup> IEC 62087, *Methods of measurement for the power consumption of audio, video, and related equipment* (Edition 3.0, 2011–04).

reported to DOE nor used in determining compliance with the applicable energy conservation standard. *Id.* Aside from an alternative approach of generally subtracting the energy use of the network functions from the standby mode energy

measurement, DOE did not propose a specific test method or calculation for disaggregating energy use from a connected function from standby energy use in those instances in which the connected function cannot be disabled per manufacturer's instructions. DOE

held a public meeting via a webinar to present the proposed amendments and provide stakeholders an opportunity to comment.<sup>6</sup>

DOE received comments in response to the November 2019 NOPR from the interested parties listed in Table I.1.

TABLE I.1—WRITTEN COMMENTS RECEIVED IN RESPONSE TO NOVEMBER 2019 NOPR

Organization(s)	Reference in this SNO PR	Organization type
Association of Home Appliance Manufacturers .....	AHAM .....	Trade Association.
California Investor Owned Utilities (Pacific Gas and Electric Company, San Diego Gas and Electric, and Southern California Edison).	CA IOUs .....	Utility Association.
Natural Resources Defense Council, Appliance Standards Awareness Project, American Council for an Energy-Efficient Economy, National Consumer Law Center, Consumer Federation of America, Northwest Energy Efficiency Alliance.	Joint Commenters .....	Efficiency Organizations.
Whirlpool Corporation .....	Whirlpool .....	Manufacturer.

A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.<sup>7</sup> This SNO PR addresses only those comments relevant to the proposals laid out in this document; all other relevant comments will be addressed in a future test procedure final rule for microwave ovens.

## II. Synopsis of the Notice of Proposed Rulemaking

In this SNO PR, DOE revises its November 2019 NOPR proposal for testing microwave ovens with a connected function and specifies explicitly that if the manufacturer's user manual does not provide a means for disabling the network function, the microwave oven is tested with the network function in the factory default setting or in the as-shipped condition.

DOE has tentatively determined that this approach to testing microwave ovens with a connected function would not impact the measured standby energy use of a microwave oven nor impact the cost of testing. Discussion of DOE's proposed actions are addressed in detail in section III of this SNO PR.

## III. Discussion

### A. Connected Functions

As stated, the energy conservation standard for microwave ovens at 10 CFR 430.23(i) and the test procedure at Appendix I address standby mode and off mode energy use only. In establishing the standby energy test procedures for dishwashers, dehumidifiers, and conventional cooking products, DOE explicitly stated that it was not including the energy use associated with a connected function

based on the lack of data on their functionality, but that DOE may consider addressing such energy use as data becomes available. 77 FR 65942, 65954 (Oct. 31, 2012). DOE's most recent test procedure for microwave ovens did not address network functionality. 81 FR 91418 (Dec. 16, 2016).

Section 2.1.3 of Appendix I generally specifies that a microwave oven must be installed in accordance with paragraph 5.2 of IEC Standard 62301, "Household electrical appliances—Measurement of standby power," Edition 2.0, 2011–01 (IEC Standard 62301 (Second Edition)), which states that the product must be prepared and setup in accordance with manufacturer's instructions, and if no instructions for use are available, then factory or default settings must be used, or if such settings are not indicated, the product must be tested as supplied. DOE recognizes that there may be some confusion as to how the direction in section 2.1.3 applies to connected functions. In order to minimize potential confusion, DOE proposed to include explicit instruction in Appendix I to disable a connected function, if present. 84 FR 61836, 61843.

AHAM and Whirlpool expressed support for disabling connected features during testing. (AHAM, No. 15 at p. 4; Whirlpool, No. 16 at p. 1) AHAM stated that connected functionalities, consumers' usage, and understanding of such features are still developing, and that regulating such features could stifle innovation, increase regulatory burden, and prevent manufacturers from including them. (AHAM, No. 15 at p. 4) AHAM further commented that connected features can add energy

saving benefits to consumers, increase energy efficiency of the grid, help utilities increase demand response, and facilitate renewable energy sources; however, because connected products are still in early stages of development with limited market penetration, no meaningful data on consumer use is available yet. (AHAM, No. 15 at p. 4)

CA IOUs disagreed with excluding the energy use from connected functions, stating that connected functions could qualify under EPCA's definition of standby mode by remotely facilitating the activation or deactivation of functions, including active mode. (CA IOUs, No. 14 at p. 1) CA IOUs further suggested that DOE consider California Energy Commission's ("CEC's") low power mode data collection requirements, as well as low power requirements by the European Union ("EU") and other jurisdictions, when investigating how to regulate connected functions' power consumption. (CA IOUs, No. 14 at p. 2)

The Joint Commenters opposed excluding the energy use from connected functions, stating that this approach would deny consumers accurate information about microwave ovens' energy usage. (Joint Commenters, No. 13 at p. 3) The Joint Commenters stated that a growing number of connected features are being added to products, and that their energy consumption can vary widely. The Joint Commenters cited Natural Resources Defense Council research data showing a wide variation in the standby mode energy consumption of connected functions on televisions, ranging from 1 watt ("W") on some models to 20 W on others. (Joint Commenters, No. 13 at pp.

<sup>6</sup> The transcript of the public meeting is available at [www.regulations.gov/document?D=EERE-2017-BT-TP-0024-0011](http://www.regulations.gov/document?D=EERE-2017-BT-TP-0024-0011).

<sup>7</sup> The parenthetical reference provides a reference for information located in the docket of DOE's rulemaking for the test procedure for microwave ovens. (Docket No. EERE-2017-BT-TP-0024,

which is maintained at [www.regulations.gov](http://www.regulations.gov)). The references are arranged as follows: (commenter name, comment docket ID number, page of that document).

3–4) The Joint Commenters further asserted that DOE's exclusion of energy use from connected features in the test procedure harms consumers and manufacturers that implemented these features efficiently. (Joint Commenters, No. 13 at p. 4) The Joint Commenters urged DOE to undertake its own investigation of the energy use of connected features. (Joint Commenters, No. 13 at p. 4)

DOE is aware of microwave ovens on the market with connected functionality to communicate with other cooking products, such as a range, or with a consumer, either via voice commands or a smartphone or other device. Such a feature could consume additional energy use, depending on how it is implemented in the product's controls. However, DOE lacks sufficient data to design a test procedure that measures the energy use associated with a connected function that is representative of average use, as required by EPCA. (See 42 U.S.C. 6293(b)(3)) As stated in the November 2019 NOPR, for a unit that is connected to the internet, the speed and configuration of an internet connection could also impact the energy consumed by the device. 84 FR 61836, 61843. Based on a review of manufacturer websites and user manuals of various appliances, as well as testing conducted in-house and at third-party laboratories, connected features in microwave ovens are also implemented in a variety of ways across different brands similar to the Joint Commenters findings with regards to the implementation of standby mode in televisions. *Id.* Further, the design and operation of these features is continuously evolving as the nascent market begins to grow for these products. *Id.*

In addition, DOE notes that the CEC's low power mode open rulemaking<sup>8</sup> is still in an early development stage, during which CEC is actively seeking stakeholder feedback. CEC's stated goal for the low power mode open rulemaking is to develop a test procedure for low power mode energy consumption across a wide variety of products.

DOE notes that CEC's draft test procedure does not measure the energy consumption of the individual network components of connected devices. Similarly, the EU's regulation on low power modes<sup>9</sup> also does not address

how to individually measure the energy consumption of the network components of connected devices; rather, it requires measuring the device energy consumption as a whole and provides a 0.5 W maximum power allowance for standby mode and off mode, or 1.0 W maximum standby power for units with a display. The EU's regulation also provides design requirements for networked standby mode, requiring connected devices to automatically switch to a networked standby mode when not in use.

DOE is not aware of any data available, nor did interested parties provide any such data, regarding the consumer use of connected features. Absent such data, DOE is unable to establish a representative test configuration for assessing the energy consumption of connected functionality for microwave ovens. Therefore, DOE is proposing explicit language to require a connected function be disabled, where possible.

DOE requests information and data on the consumer use of connected functions.

In the November 2019 NOPR, DOE proposed a test procedure provision to address instances in which a user manual does not provide for disabling a connected function. 84 FR 61836, 61843. DOE proposed that in such an instance, the energy use associated with a connection function need not be reported to DOE nor used in determining compliance with the applicable energy conservation standard. *Id.* DOE recognized that alternative approaches could be considered to address the issue of microwave ovens that do not provide a means for disabling connected functionality and suggested that one such approach could be to require the energy use of the network function to be measured and subtracted from the standby mode energy measurement. *Id.* However, DOE did not propose a specific method for determining the energy associated with a connected function so that it could be disaggregated from the measured standby energy use.

In certain microwave oven models, the circuitry that enables connected functions can be tightly integrated into the circuitry that provides core functionality. In these conditions, disabling connected functions would require extensive reconfiguration of a microwave oven's circuitry. For such a model, with no means for the consumer to disable the connected functions, a

test procedure that is "reasonably designed to produce test results which measure [the] energy use" of that model "during a representative average use cycle or period of use" would include the energy used by the connected functions. The same would be true of any energy-consuming function that a manufacturer might add to a model without allowing it to be disabled.

Therefore, DOE is proposing to explicitly state in Appendix I that if manufacturer instructions provided in a microwave oven's user manual do not provide for disabling a connected function, the standby power test procedure is conducted with the connected function in the "as-shipped" condition.

To the extent that manufacturer instructions do not provide for disabling a connected function, this proposal is consistent with the current test procedure in Appendix I. Section 2.1.1 of Appendix I specifies that a microwave oven must be installed in accordance with paragraph 5.2 of IEC 62301 (Second Edition), which states that the product must be prepared and setup in accordance with manufacturer's instructions; and if no instructions are available, then the unit must be tested using factory or default settings, or, in case such settings are not indicated, the product must be tested as supplied.

DOE requests comment on the proposed requirements for testing microwave ovens with network function in the "as-shipped" condition if the manufacturer instructions do not provide for disabling such function.

DOE is maintaining its proposal from the November 2019 NOPR regarding the standby power provisions related to microwave oven clock display and will address this proposal in a future test procedure final rule. 84 FR 61836, 61841–61842.

#### B. Compliance Date

EPCA prescribes that, if DOE amends a test procedure, all representations of energy efficiency and energy use, including those made on marketing materials and product labels, must be made in accordance with that amended test procedure, beginning 180 days after publication of such a test procedure final rule in the **Federal Register**. (42 U.S.C. 6293(c)(2)) DOE proposes to add an introductory note to Appendix I specifying that prior to the date 180 days after publication of a final rule, representations with respect to the energy use or efficiency of a microwave oven, including compliance certifications, must be based on testing conducted in accordance with either the

<sup>8</sup> Available at <https://efiling.energy.ca.gov/Lists/DocketLog.aspx?doctnetnumber=17-AAER-12>.

<sup>9</sup> Available at <https://ec.europa.eu/info/energy-climate-change-environment/standards-tools-and-labels/products-labelling-rules-and-requirements/energy-label-and-ecodesign/energy-efficient-products/mode-standby-and-networked-standby-en>.

test procedure as amended by the final rule, or Appendix I as it appeared as of January 1, 2021. Beginning on the date 180 days after publication of a final rule, representations with respect to energy use or efficiency of a microwave oven, including compliance certifications, would be required to be based on testing conducted in accordance with the test procedure as amended by the final rule.

If DOE were to publish an amended test procedure, 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 that this proposed test procedure rulemaking does not constitute a “significant regulatory action” 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 an initial regulatory flexibility analysis (“IRFA”) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. 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: <https://energy.gov/gc/office-general-counsel>.

DOE reviewed this proposal to amend the test procedures for microwave ovens under the provisions of the Regulatory Flexibility Act and the procedures and

policies published on February 19, 2003. DOE certifies that this proposed rule does not have a significant economic impact on a substantial number of small entities. The factual basis for this certification is set forth in the following paragraphs.

DOE uses the Small Business Administration’s (“SBA”) small business size standards to determine whether manufacturers qualify as small businesses, which are listed by the North American Industry Classification System (“NAICS”) and are available at [www.sba.gov/document/support-table-size-standards](http://www.sba.gov/document/support-table-size-standards). The SBA considers a business entity to be a small business, if, together with its affiliates, it employs less than a threshold number of workers specified in 13 CFR part 121. The NAICS code for microwave ovens is 335220, major household appliance manufacturing. The threshold number for NAICS code 335220 is 1,500 employees. This employee threshold includes all employees in a business’s parent company and any other subsidiaries.

Most of the manufacturers supplying microwave ovens are either large multinational corporations or overseas microwave oven original equipment manufacturers (“OEMs”) that manufacture microwave ovens sold under another company’s brand. DOE conducted a focused inquiry into small business manufacturers of products covered by this rulemaking. DOE primarily used DOE’s Compliance Certification Database for microwave ovens to create a list of companies that sell microwave ovens covered by this rulemaking in the United States. DOE also used the California Energy Commission’s database, Modernized Appliance Efficiency Database System, to correlate brands with OEMs. DOE identified a total of 48 distinct companies that manufacture or import microwave ovens in the United States.

DOE then reviewed these companies to determine whether the entities met the SBA’s definition of “small business” and screened out any companies that do not manufacture products covered by this rulemaking, do not meet the definition of a “small business,” or are foreign-owned and operated. Based on this review, DOE identified one potential small business that manufactures microwave ovens in the United States.

The amendments proposed in this SNOPR would provide more explicit direction for the testing of microwave ovens with a connected function. The test procedure amendments proposed in this SNOPR are consistent with the current test procedure in Appendix I

and do not affect the small business manufacturer because it does not make microwave ovens with network functions.

Therefore, DOE initially concludes that the impacts of the proposed test procedure amendments proposed in this SNOPR would not have a “significant economic impact on a substantial number of small entities,” and that the preparation of an IRFA is not warranted. DOE will transmit the 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 microwave ovens 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 microwave ovens. (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 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.

The proposal in this SNOPR would not amend the existing reporting requirements or establish new reporting requirements for manufacturers of microwave ovens.

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

DOE is analyzing this proposed regulation in accordance with the National Environmental Policy Act of 1969 (“NEPA”) and DOE’s NEPA implementing regulations (10 CFR part

1021). DOE's regulations include a categorical exclusion for rulemakings interpreting or amending an existing rule or regulation that does not change the environmental effect of the rule or regulation being amended. 10 CFR part 1021, subpart D, Appendix A5. DOE anticipates that this rulemaking qualifies for categorical exclusion A5 because it is an interpretive rulemaking that does not change the environmental effect of the rule and otherwise meets the requirements for application of a categorical exclusion. See 10 CFR 1021.410. DOE will complete its NEPA review before issuing the final rule.

#### *E. Review Under Executive Order 13132*

Executive Order 13132, "Federalism," 64 FR 43255 (Aug. 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 has examined this proposed rule and has determined that it would 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 proposed 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, the proposed rule meets the relevant standards of Executive Order 12988.

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

Title II of the Unfunded Mandates Reform Act of 1995 ("UMRA") 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 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 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 [www.energy.gov/gc/office-general-](http://www.energy.gov/gc/office-general-)

*counsel*. DOE examined this proposed 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 proposed rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is 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 proposed regulation would 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](http://www.energy.gov/sites/prod/files/2019/12/f70/DOE%20Final%20Updated%20IQA%20Guidelines%20Dec%202019.pdf). DOE has reviewed this proposed 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 proposed 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 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.

The proposed regulatory action to amend the test procedure for measuring the energy efficiency of microwave ovens 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.

DOE is not proposing any new incorporations by reference of commercial standards in this SNOPR. The proposed modifications to the test procedure for microwave ovens in this SNOPR do not incorporate any new commercial standard.

#### *M. Description of Materials Incorporated by Reference*

The proposal in this SNOPR would maintain the previously approved incorporation by reference of IEC Standard 62301, “Household electrical appliances—Measurement of standby power,” Edition 2.0, 2011–01 (IEC Standard 62301 (Second Edition)). The incorporation by reference of IEC 62301 (Second Edition) in appendix I to subpart B of 10 CFR part 430 has already been approved by the Director of the Federal Register and there are no proposed changes to the incorporation by reference in this SNOPR.

### **V. Public Participation**

#### *A. Submission of Comments*

DOE will accept comments, data, and information regarding this proposed rule no later than the date provided in the **DATES** section at the beginning of this proposed rule. Interested parties may submit comments using any of the methods described in the **ADDRESSES** section at the beginning of this document.

*Submitting comments via www.regulations.gov.* The [www.regulations.gov](http://www.regulations.gov) web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to [www.regulations.gov](http://www.regulations.gov) information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (“CBI”)). Comments submitted through [www.regulations.gov](http://www.regulations.gov) cannot be claimed

as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through [www.regulations.gov](http://www.regulations.gov) before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that [www.regulations.gov](http://www.regulations.gov) provides after you have successfully uploaded your comment.

*Submitting comments via email.* Comments and documents submitted via email also will be posted to [www.regulations.gov](http://www.regulations.gov). If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information on a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. No faxes will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, written in English and free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

*Campaign form letters.* Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters’ names compiled into one or more PDFs. This reduces comment processing and posting time.

*Confidential Business Information.* Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email two well-marked copies: One copy of the document marked confidential including all the information believed to be confidential, and one copy of the document marked non-confidential with the information believed to be confidential deleted. DOE



will make its own determination about the confidential status of the information and treat it according to its determination.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

## VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this supplemental notice of proposed rulemaking.

### 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.

### Signing Authority

This document of the Department of Energy was signed on July 22, 2021, by Kelly Speakes-Backman, Principal Deputy Assistant Secretary and Acting 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 July 23, 2021.

**Treena V. Garrett,**

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

For the reasons stated in the preamble, DOE is proposing to amend part 430 of Chapter II of Title 10, 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. Appendix I to subpart B of part 430 is amended by:

- a. Adding an introductory note; and
- b. Revising section 2.1.1;

The addition and revision read as follows:

### Appendix I to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Cooking Products

*Note:* Prior to [Date 180 days after publication of a final rule], representations with respect to the energy use or efficiency of a microwave oven, including compliance certifications, must be based on testing conducted in accordance with either this appendix as it now appears or appendix I as it appeared at 10 CFR part 430, subpart B revised as of January 1, 2021. Beginning on [Date 180 days after publication of a final rule] representations with respect to energy use or efficiency of a microwave oven, including compliance certifications, must be based on testing conducted in accordance with this appendix.

\* \* \* \* \*

2.1.1 *Microwave ovens, excluding any microwave oven component of a combined cooking product.* Install the microwave oven in accordance with the manufacturer's instructions and connect to an electrical supply circuit with voltage as specified in section 2.2.1 of this appendix. Install the microwave oven in accordance with section 5, paragraph 5.2 of IEC 62301 (Second Edition) (incorporated by reference; see § 430.3), disregarding the provisions regarding batteries and the determination, classification, and testing of relevant modes. If the microwave oven can communicate through a network (*e.g.*, Bluetooth® or internet connection), disable the network function, by means provided in the manufacturer's user manual, for the duration of testing. If the manufacturer's user manual does not provide a means for disabling the network function, test the microwave oven with the network function in the factory default setting or in the as-shipped condition as instructed in Section 5, Paragraph 5.2 of IEC 62301 (Second Edition). The clock display must be on, regardless of manufacturer's instructions or default setting or supplied setting. The clock display must remain on during testing, unless the clock display powers down automatically with no option for the consumer to override this function. Install a watt meter in the circuit that meets the requirements of section 2.6.1.1 of this appendix.

\* \* \* \* \*

[FR Doc. 2021–16023 Filed 8–2–21; 8:45 am]

**BILLING CODE 6450–01–P**

## FEDERAL DEPOSIT INSURANCE CORPORATION

### 12 CFR Part 330

RIN 3064–AF27

### Simplification of Deposit Insurance Rules

**AGENCY:** Federal Deposit Insurance Corporation.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Deposit Insurance Corporation is seeking comment on proposed amendments to its regulations governing deposit insurance coverage. The proposed rule would simplify the deposit insurance regulations by establishing a “trust accounts” category that would provide for coverage of deposits of both revocable trusts and irrevocable trusts, and provide consistent deposit insurance treatment for all mortgage servicing account balances held to satisfy principal and interest obligations to a lender.

**DATES:** Comments will be accepted until October 4, 2021.

**ADDRESSES:** You may submit comments on the notice of proposed rulemaking using any of the following methods:

- **Agency Website:** <https://www.fdic.gov/resources/regulations/federal-register-publications/>. Follow the instructions for submitting comments on the agency website.
- **Email:** [comments@fdic.gov](mailto:comments@fdic.gov). Include RIN 3064–AF27 on the subject line of the message.
- **Mail:** James P. Sheesley, Assistant Executive Secretary, Attention: Comments–RIN 3064–AF27, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- **Hand Delivery:** Comments may be hand delivered to the guard station at the rear of the 550 17th Street NW building (located on F Street) on business days between 7 a.m. and 5 p.m.
- **Public Inspection:** All comments received, including any personal information provided, will be posted generally without change to <https://www.fdic.gov/resources/regulations/federal-register-publications/>.

**FOR FURTHER INFORMATION CONTACT:** James Watts, Counsel, Legal Division, (202) 898–6678, [jwatts@fdic.gov](mailto:jwatts@fdic.gov); Kathryn Marks, Counsel, Legal Division, (202) 898–3896, [kmarks@fdic.gov](mailto:kmarks@fdic.gov).

### SUPPLEMENTARY INFORMATION:

#### Table of Contents

- I. Simplification of Deposit Insurance Trust Rules
  - A. Policy Objectives